



## A P P E A R A N C E S

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on behalf of the Defendant.



MINNESOTA  
JUDICIAL  
BRANCH

1	I N D E X	
2		PAGE
3	WITNESS-ABBY DESANTO (cont.)	
4	Cross-Examination by Mr. Gray	405
5		
6	WITNESS-BRIAN KJELLBERG	
7	Direct Examination by Mr. Gray	425
	Cross-Examination by Mr. Tahir	462
8	Redirect Examination by Mr. Gray	469
9	WITNESS-ERIK HOLMGREN	
10	Direct Examination by Ms. Montgomery	474
11	WITNESS-EDWARD SUMMERS	
12	Direct Examination by Ms. Montgomery	479
13	WITNESS-BRIAN CLARK	
14	Direct Examination by Ms. Montgomery	481
15		
16	* * * *	
17	E X H I B I T S	
18	NUMBER	PAGE
19	221	406
20	200	407
21	203	438
22	204	451
23	201	456
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE LAW CLERK: All rise.

THE COURT: Thank you. You may be seated.

All right. Anything we need to address  
before we bring out the jurors?

MR. TAHIR: No, Your Honor.

MR. GRAY: No, Your Honor.

THE COURT: All right. And we have our  
witness available?

MR. TAHIR: Yes, Your Honor.

THE COURT: All right. Let's go grab the  
jury.

Good morning.

THE WITNESS: Good morning.

THE LAW CLERK: All rise for the jury.

(The jurors entered the courtroom.)

THE COURT: You may be seated. Good morning,  
Ladies and Gentlemen.

JURY: Good morning (as a whole.)

THE COURT: All right. We're going to  
continue on now with the cross-examination of the  
Sergeant.

MR. GRAY: Thank you, Your Honor.

THE COURT: Go ahead, Mr. Gray.

MR. GRAY: Thank you.

## 1 CROSS-EXAMINATION

2 BY MR. GRAY

3 Q. Good morning, Ms. DeSanto -- Investigator DeSanto.

4 A. Good morning.

5 Q. Do you go by Investigator or Detective? Or doesn't it  
6 matter?7 A. It doesn't. Sergeant -- Investigator. It doesn't  
8 really matter.9 Q. And Investigator DeSanto, as I read the reports, you  
10 arrived that evening of December 2nd at about 11:28; is  
11 that right?

12 A. Okay.

13 Q. Accurate?

14 A. I'm not 100 percent sure of the exact time that I  
15 arrived on scene.

16 Q. It was at least around that time, correct?

17 A. If my record states that then yes.

18 Q. All right. How long did you remain on the scene? Do  
19 you remember?

20 A. I do not recall.

21 Q. Well, would it be an hour, two hours?

22 A. I don't recall the amount of time that I was there.

23 Q. Have you read your reports before you testified today?

24 A. Ah, yes.

25 Q. Okay. Do they indicate how long you were there? I

1 mean --

2 A. I don't recall.

3 Q. I'm going to show you Exhibit 221.

4 MR. GRAY: May I approach, Your Honor?

5 THE COURT: Yes, you may.

6 BY MR. GRAY

7 Q. Do you recognize that?

8 A. I do.

9 Q. And is that a true and accurate picture of Brian  
10 Kjellberg's back?

11 A. Yes.

12 MR. GRAY: We'd offer, Your Honor,  
13 Exhibit 221, Defense Exhibit.

14 MR. TAHIR: No objection.

15 THE COURT: 221 is admitted.

16 MR. GRAY: Can we publish that, Your Honor?

17 THE COURT: Yes, you may.

18 MR. GRAY: Do we have a close-up of that or  
19 is that --

20 MR. TAHIR: That's 100 percent for me.

21 MR. GRAY: I think they've all seen it.

22 Okay.

23 Thank you. That's --

24 BY MR. GRAY

25 Q. I'm going to show you another exhibit, 200. And do you

1 recognize that?

2 A. I do, yes.

3 Q. And what is that?

4 A. That's Mr. Kjellberg's home.

5 Q. Is that a true and accurate picture of the front of his  
6 home?

7 A. Yes.

8 MR. GRAY: We'd offer Exhibit 200.

9 MR. TAHIR: No objection.

10 THE COURT: Exhibit 200 is admitted. Do you  
11 want that published, Mr. Gray?

12 MR. GRAY: Yes, Your Honor. Thank you.

13 BY MR. GRAY

14 Q. Now, when you arrived that evening -- about 11:30,  
15 would that be fair?

16 A. Okay. Yes.

17 Q. And you -- there were many other police officers there  
18 at that time; is that correct?

19 A. Yes.

20 Q. And did you obtain the keys to this residence and  
21 Mr. Kjellberg's phone from another police officer?

22 A. I do not recall getting keys or a cell phone from an  
23 officer.

24 Q. One second.

25 Well, let me ask you this: Did you know that

1 the key to Mr. Kjellberg's residence and his phone were  
2 obtained that night? Did you learn that?

3 A. Yes.

4 Q. And I'm going to back up a minute. You were the -- as  
5 I remember it here, you were the head investigator of  
6 this case; is that correct?

7 A. No.

8 Q. Who was the head investigator?

9 A. Sergeant Dan Zebro.

10 Q. Zebro?

11 A. Yes, sir.

12 Q. And he's retired?

13 A. Yes, sir.

14 Q. And I notice on that photo -- well, back -- withdraw  
15 that. You were the one that obtained the search  
16 warrants, were you not?

17 A. I wrote the search warrants, yes.

18 Q. And -- okay. And what does that mean, you wrote them?

19 A. I sat at my desk, had the probable cause, typed out a  
20 search warrant, and sent it to the on-call judge.

21 Q. And the search warrant was for the house?

22 A. Yes, sir.

23 Q. And the search warrant was for the phone?

24 A. I wrote a search warrant later, yes, for the phone.

25 Q. For the phone?



1 A. Yes.

2 Q. And with respect to the house, was there anything at  
3 all of evidentiary value found in that large house?

4 A. I was not at that house.

5 Q. Afterwards, did you review the reports of these  
6 officers to determine whether or not anything would be  
7 used in this case?

8 A. I do not believe so. Nothing.

9 Q. You don't believe --You remember if you did or not?

10 A. I wasn't out there physically, so I couldn't tell you  
11 exactly.

12 MR. TAHIR: Your Honor, we'll stipulate there  
13 was nothing of evidentiary value found inside the  
14 house.

15 THE COURT: So stipulated.

16 Everyone hear that? No? All right. The  
17 State is stipulating that there was nothing of  
18 evidentiary value inside the house.

19 BY MR. GRAY

20 Q. And with respect to the search of the phone, you didn't  
21 review that phone either as far as the looking at  
22 its --

23 A. The content you mean --

24 Q. Yeah.

25 A. -- of the phone? No, I did not.

1 Q. With respect to a set of glasses that were -- one of  
2 the exhibits shows these glasses on the Mercedes SUV in  
3 the back that was parked there. Did you have anything  
4 to do with those glasses?

5 A. I do not believe so. No, sir.

6 Q. You don't remember ever dealing with those at all?

7 A. Not that I can recall.

8 Q. Do you know whether or not those glasses were seized by  
9 the St. Paul Police Department?

10 A. I don't.

11 Q. Now, when you become an investigator, you get trained  
12 on how to question people and how to investigate,  
13 correct?

14 A. Yes, sir.

15 Q. And one of the trainings you have is with respect to  
16 interrogating witnesses; is that correct?

17 A. Yes, sir.

18 Q. And that interview or the interrogation room that was  
19 shown where Mr. Kjellberg was located, you testified  
20 that the actual video camera is hidden in the light.  
21 Is that it, or where?

22 A. The clock.

23 Q. Oh, the clock, I'm sorry, right. And the clock, if  
24 somebody's seated there, where Mr. Kjellberg was,  
25 unless he was told that he was being videotaped and

1 audio-taped, the person wouldn't know it; is that  
2 correct?

3 A. Yes.

4 Q. And that's why you have it in a clock, correct?

5 A. Yes.

6 Q. Now, there's more than one interrogation room. Is that  
7 a fair statement?

8 A. Yes.

9 Q. And, for example, if you -- one night you and your  
10 investigators arrested two people and you believed they  
11 were accomplices and you interviewed one person in one  
12 room while the other person was being interviewed in  
13 the other room, okay? You got that?

14 A. Yes.

15 Q. Is one of the investigative tools in that situation --  
16 were you were trained that you can tell the suspect  
17 that, "Oh, by the way, your buddy in the next room just  
18 snitched on you and told us that you were involved with  
19 him on this"?

20 A. Are you asking if I can do that?

21 Q. Yes.

22 A. I don't think I have done it, but I think you can.

23 Q. Okay.

24 A. I -- without lying, yeah.

25 Q. Pardon me?

1 A. I would think that you can, but --

2 Q. Okay. Because you're trying to get a statement from  
3 the witness that makes him guilty of the crime,  
4 correct?

5 A. (No audible response.)

6 Q. Or at least confess? Let's put it that way.

7 A. Okay.

8 Q. And is that --

9 A. I haven't done that, but I --

10 Q. Well, I'm talking about your training as an  
11 investigator.

12 A. Oh, we -- I haven't been trained to do that, no.

13 Q. You haven't been trained to do that?

14 A. Not in a training. No, I have not.

15 Q. Okay. But have you been advised by any of the other  
16 investigators that you can do that?

17 A. I don't recall. I wouldn't say that we've been told to  
18 do that. I wouldn't say that I've been trained to do  
19 that from experienced investigators.

20 Q. If you were interrogating somebody and there was an  
21 accomplice next door, you weren't told that you could  
22 not do that, were you?

23 A. No.

24 Q. I notice on that exhibit that the front door is busted  
25 in. See that?

1 A. On the side?

2 Q. Yes.

3 A. Yeah, okay.

4 THE COURT: Would it be easier for you to  
5 look at the picture?

6 THE WITNESS: Sure, Your Honor. Sorry.

7 THE COURT: Because that's quite a distance  
8 from you.

9 THE WITNESS: I have glasses, but my eyes  
10 aren't the best. Thanks.

11 Okay. Yes.

12 BY MR. GRAY

13 Q. All right. And in reading the records on this case, or  
14 being involved in the investigation, do you know how  
15 that door got broke?

16 A. I do not. I was not out there.

17 Q. And as I understand it, you had nothing to do with  
18 Mr. Kjellberg's keys or phone; is that correct?

19 A. I don't recall.

20 Q. And would it be on any of your reports that would  
21 refresh your memory?

22 A. If it is on my reports, but I don't recall if I grabbed  
23 his cell phone or his keys on scene.

24 Q. So your involvement is that you drafted the search  
25 warrants for the house and the phone, correct?

1 A. Yes, sir.

2 MR. GRAY: That's all I have.

3 Thank you, ma'am.

4 THE COURT: Anything on that?

5 MR. TAHIR: No, Your Honor.

6 THE COURT: All right. Thank you, Sergeant.

7 THE WITNESS: Thank you.

8 THE COURT: You're excused.

9 MR. TAHIR: Your Honor, at this time the  
10 State rests.

11 THE COURT: Approach.

12 (A bench discussion was held off the record.)

13 THE COURT: Ladies and Gentlemen, we didn't  
14 anticipate that that cross-examination would be that  
15 short. But in any event, now that the State has rested  
16 there are some few legal matters that we need to take  
17 care of outside of your presence, okay? So we're going  
18 to ask that you step back into the jury deliberation  
19 room.

20 Again, do not discuss the case amongst  
21 yourselves or with anyone else. It should -- I can't  
22 say exactly how much time it will take. It probably  
23 will take at least 15 minutes or maybe more, so if you  
24 want to take a fifteen-minute break and then be back at  
25 9:30 -- or 9:35 back in the jury deliberation room.

1           Otherwise you can just hang out there. Okay. Please  
2           leave your notepads face down on your chair.

3                       All rise. The jury is excused.

4                       (The jurors exited the courtroom.)

5                       THE COURT: You may be seated.

6                       Mr. Gray or Ms. Montgomery?

7                       MR. GRAY: I got it. Judge, we at this time  
8           are making a motion for judgment of acquittal. The  
9           issue in this case, I believe, is self-defense, and the  
10          State has proven our case. None of their evidence at  
11          all -- direct evidence, first, establishes anything but  
12          my client was hit four times at least by Mr. Stewart.  
13          Every one of the statements, every -- every one of the  
14          witnesses indicated that, I should say.

15                      And the video, "What you're doing, boy?"  
16          What that video was -- the surveillance video I'm  
17          dealing with, you can hear Stewart say that and then  
18          you hear the fight, and you see my client being knocked  
19          back into the rock pile.

20                      The only evidence about that fight is that  
21          Mr. Stewart hit my client approximately four times.  
22          And during the time he was hit, you'll see on the video  
23          that he was backing up, my client was. So after being  
24          hit numerous times or three times -- and you've got  
25          evidence of that because he's got a bruise on his face.

1 He's got a bruise here. It's hard to see but you don't  
2 bruise on a chin much. But you do bruise on a cheek,  
3 but he's got one there and his left side is red.  
4 That's circumstantial evidence that he was hit by this  
5 fellow.

6 And there's further circumstantial evidence  
7 that he was calling the cops, because when Stewart  
8 said, "What you doing, boy," he was making a phone call  
9 to the police. And when Stewart hit him, the phone  
10 flew out of his hand and ended up on the floor. And  
11 when Mr. Kjellberg got up from the rock pile, he went  
12 to pick his phone up, and his keys -- but he -- we'll  
13 just deal with the phone.

14 He picked his phone up. And at that time  
15 from him dialing the phone before he was assaulted, the  
16 911 caller -- the dispatcher was on the line and she  
17 says, you could hear it, "Hello? Hello?" And nothing  
18 responds -- nobody responds until my client  
19 Mr. Kjellberg picks up the phone, and you've heard what  
20 he said. He said, "You had better come out here."  
21 He's calling the police. Innocent conduct.

22 And then -- from then on, every statement he  
23 gave was consistent that he was hit by this fellow. He  
24 had a traumatic brain injury. None of that is  
25 impeached. And he did this -- the statement, the



1 hour-and-15-minute statement. He said, because I  
2 was -- I had a traumatic brain injury two years before  
3 this, and he actually said in that that, "I felt that I  
4 was going to die," or "I wanted to avoid death."  
5 Something to that effect.

6 There is absolutely no evidence saying  
7 differently. And the State -- on self-defense  
8 instruction, the Judge is -- will instruct the State --  
9 or excuse me the jury -- that the State has the burden  
10 once we present this evidence, which I believe we have.  
11 I think we presented beyond a reasonable doubt. Once  
12 we present this evidence and it's presumed the  
13 presumption of innocence is there, the State must prove  
14 beyond a reasonable doubt that it was not self-defense.  
15 It wasn't reasonable.

16 And all of the evidence in this case that's  
17 been presented on that issue -- forget the parking,  
18 whether it's parking there or parking not [sic]. On  
19 that issue, those three, four seconds that occurred  
20 during that time, when Mr. Kjellberg took the tool out  
21 and shoved it at him, like he said in one of his  
22 statements, and he did that because he was afraid he  
23 was going to die, he thought.

24 And the law -- it doesn't have to be afraid  
25 you're going to die. If you get beat by somebody or

1 get hit by somebody, you have a right to defend  
2 yourself. This man is 51, 100 percent disability from  
3 the service, and two years prior to this he had a  
4 traumatic brain injury. What would be reasonable to do  
5 when you're being hit by somebody in the back of your  
6 house? You would defend yourself and he pulled out the  
7 tool and it shoved it at him. He didn't shove it  
8 twice. He only shoved it once, and it fell down. It  
9 was found in a rock pile, which is more circumstantial  
10 evidence that this actually happened the way he said.

11 So Judge, they have a burden of proving that  
12 it's not self-defense, and they haven't called one  
13 witness, direct or circumstantial, that says that my  
14 client was not being hit at the time he shoved that  
15 tool forward.

16 So I think the case should be dismissed. He  
17 should get an acquittal. Thank you. That's all I  
18 have.

19 THE COURT: Mr. Tahir?

20 MR. TAHIR: Yes. Thank you, Your Honor.

21 The test for ruling on a motion for judgment  
22 of acquittal is whether the evidence is sufficient to  
23 present a fact question for the jury's determination  
24 after viewing the evidence and all the resulting  
25 inferences in favor of the State. That comes from a

1 Minnesota Supreme Court case from 1980, 297 N.W.2d 152.

2 Without reciting the State's entire closing  
3 argument, I will say this: The kind and degree of  
4 force that Mr. Kjellberg, used -- assuming for the sake  
5 of argument he was being punched in the face -- I think  
6 that is a fact question for a jury to decide, whether  
7 or not it was a mere shove of this instrument or  
8 something else.

9 I think the -- there is a fact question for a  
10 jury to decide whether or not Mr. Kjellberg had other  
11 options at his disposal that he could have employed  
12 before resorting to that shove -- or however one wishes  
13 to classify how he used that tool -- is also a question  
14 for the jury's determination.

15 The law of self-defense is clear that a  
16 person, even when they are being attacked, is limited  
17 by use of reasonable force depending on the  
18 circumstances of how they're being attacked, and how --  
19 whether or not they have any means of retreat. And I  
20 think these are questions that when viewed in the light  
21 most favorable to the State do present a fact question  
22 for the jury, and so I would ask the Court to deny  
23 Defense's motion.

24 MR. GRAY: Judge, may I respond just briefly?

25 THE COURT: Yes, you may.

1 MR. GRAY: Okay. Your Honor, this comes from  
2 a learned Supreme Court Justice, but in looking at the  
3 reasonableness of a situation like this, "you must  
4 embody the allowance for split-second judgments." You  
5 can't sit back in hindsight, say, "He should have done  
6 something else." We know by the telephone that he had  
7 in his hand and, "What you're doing, boy?" That this  
8 one two, three, maybe four seconds that he hit my  
9 client and my client, defending himself, shoved the  
10 tool out. That's -- and my client has a traumatic  
11 brain injury that he was worried about.

12 All of that evidence was in his statement.  
13 That shows that it was reasonable for what he did.  
14 What else could he do? He's got a traumatic brain  
15 injury, he's getting punched by this guy, and he's  
16 backing up. You see that. And even after he uses a  
17 tool, he's knocked into the rock pile. Split-second  
18 judgments in circumstances as in this case that are  
19 tense, uncertain, and rapidly evolving in determining  
20 the amount of force that you should use and whether you  
21 should retreat.

22 Well, he was backing up. You've got to  
23 decide this looking at the reasonableness of those  
24 seconds, not before and not after. When he got hit and  
25 he's backing up, what should he do? He had no defense

1           except that tool, and he shoved it out at him. That's  
2           reasonable. I mean, they have to prove beyond a  
3           reasonable doubt it wasn't. It should be dismissed,  
4           Judge. Thank you.

5           THE COURT: Well, before we get to the  
6           self-defense, I guess the Court needs to decide whether  
7           or not the State has provided sufficient evidence of  
8           the underlying crime itself, which in viewing the facts  
9           most favorable to the State, the Court does find that  
10          there is sufficient evidence to show that Murder in the  
11          Second Degree Without Intent While Committing a Second  
12          Degree Felony Assault did occur. And that there is  
13          sufficient evidence to send this matter to a jury. As  
14          it relates to the death of Mr. Arnell Stewart that has  
15          been -- there is sufficient evidence to prove that's  
16          been proven.

17          Second, that the Defendant caused the death  
18          of Arnell Stewart, and he caused the death by  
19          assaulting him with that sharp tool, which would  
20          qualify as an Assault in the Second Degree. And that  
21          it occurred in Ramsey County, Minnesota, on December  
22          2nd, 2021.

23          So, the question for the Court is -- what  
24          you're asking this Court is to decide whether or not  
25          his use of that tool was reasonable under the

1           circumstances. And, you know, the self-defense  
2           instruction is a somewhat complicated instruction  
3           because it has both a subjective and objective  
4           component.

5                       I'm certain that in Mr. Kjellberg's mind it  
6           was reasonable to use that tool. I think, because it  
7           is a question of fact -- and whether or not the use of  
8           that tool was reasonable -- must be left to the jury's  
9           decision. So for those reasons, your motion for a  
10          judgment of acquittal is denied.

11                      Saying that, though, I believe the Court has  
12          sufficient information, based on the State's  
13          case-in-chief, to provide the instruction for Defense  
14          of self-defense of property and also include the  
15          trespassing instruction as well, which was requested by  
16          Defense.

17                      So then my next question is: Whether or not  
18          you intend on having Mr. Kjellberg testify?

19                      MR. GRAY: Yes.

20                      THE COURT: All right.

21                      And Mr. Kjellberg, you understand that you  
22          are under no obligation to testify, sir?

23                      THE DEFENDANT: Yes, sir.

24                      THE COURT: That you have a constitutional  
25          right to remain silent? That you do not have to

1 present any evidence? You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, sir, you've had sufficient  
4 time to discuss this issue with your attorney?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that this  
7 decision to testify or not testify has to be yours?

8 THE DEFENDANT: Yes.

9 THE COURT: And I'm sure your attorneys told  
10 you that if you decided not to testify, that I could  
11 read an instruction to the jury that says, essentially,  
12 that, "The State must convince you by evidence beyond a  
13 reasonable doubt that the Defendant is guilty of the  
14 crime charged. The Defendant has no obligation to  
15 prove innocence. The Defendant has the right not to  
16 testify. This right is guaranteed by the federal and  
17 state constitutions, and you should not draw any  
18 inference from the fact that the Defendant has not  
19 testified in this case."

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you decided not to testify and  
22 you wanted me to read that instruction, I would. You  
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. So having that in

1 mind and having the, you know, having spoken to your  
2 attorneys, what is your decision, sir?

3 THE DEFENDANT: I'm going to testify.

4 THE COURT: All right.

5 All right. Anything else we need to address?

6 MR. TAHIR: Nothing from the State, Your  
7 Honor.

8 THE COURT: And what other witnesses do you  
9 know that you have?

10 MR. GRAY: We have -- after Mr. Kjellberg, we  
11 have three character witnesses and then we'll end.

12 THE COURT: All right. Let's go get the  
13 jury.

14 MR. GRAY: Your Honor, we have a stipulation.

15 MS. MONTGOMERY: I think we'll read that  
16 first as the stipulation that we agreed upon.

17 THE COURT: All right. Do you have any  
18 objection to that?

19 MR. TAHIR: No, Your Honor.

20 THE LAW CLERK: All rise for the jury.

21 (The jurors entered the courtroom.)

22 THE COURT: You may be seated.

23 And Ladies and Gentlemen, the Defense will  
24 now begin its case-in-chief. Before they do, there is  
25 a stipulation that the parties have agreed that I will



1 now read to you, and it goes as follows: "That on  
2 November 29, 2021, Arnell Stewart was before a judge  
3 and was ordered as a condition of release to remain  
4 law-abiding."

5 MR. GRAY: Thank you.

6 THE COURT: Mr. Gray.

7 MR. GRAY: Thank you, Your Honor. The  
8 Defense calls Brian Kjellberg to the stand.  
9 Mr. Kjellberg, please step forward.

10 BRIAN KJELLBERG,

11 was called as a witness and, being first duly  
12 sworn, was examined and testified as follows:

13 THE COURT: Please have a seat.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: And state your full name and  
16 spell it for us.

17 THE WITNESS: Brian Kjellberg, B-R-I-A-N  
18 K-J-E-L-L-B-E-R-G.

19 MR. GRAY: Do you want a glass of water?

20 THE WITNESS: I've got one.

21 THE COURT: We gave him one there.

22 THE WITNESS: Thank you.

23 DIRECT EXAMINATION

24 BY MR. GRAY

25 Q. All right. Mr. Kjellberg, I am going to ask you

1 questions about your background --

2 A. Yes, sir.

3 Q. -- and the incident on December 2nd, 2021. You going  
4 to be able to handle that?

5 A. Yes, sir.

6 Q. Okay. How old are you?

7 A. Fifty-one.

8 Q. What was your date of birth?

9 A. 9/28/71.

10 Q. And are your parents still alive?

11 A. Yes, sir.

12 Q. And where did you grow up initially?

13 A. Initially in St. Paul.

14 Q. And where in St. Paul?

15 A. Ah, east side.

16 Q. And how long did you -- who did you live with?

17 A. Well, both my parents.

18 Q. And did you have a sister?

19 A. I have a sister.

20 Q. How old is she?

21 A. Seven years older.

22 Q. And how long did you remain on the east side?

23 A. Till I was five years old.

24 Q. And then when did you move to?

25 A. Coon Lake.

1 Q. And Coon Lake, that's out north, is it?

2 A. Approximately 45 minutes north.

3 Q. Were you on the lake --

4 A. Yes.

5 Q. -- or off?

6 Okay. And when you moved out to Coon Lake,  
7 did you go to high school?

8 A. Yes, sir.

9 Q. Where did you go to high school?

10 A. Forest Lake.

11 Q. And did you graduate?

12 A. Yes.

13 Q. After graduation, what did you do?

14 A. I enlisted in -- I enlisted in the Navy.

15 Q. Okay. And where did you go to for basic training?

16 A. Great Lakes.

17 Q. Great Lakes. Is that in --

18 A. Illinois, Chicago.

19 Q. Chicago?

20 A. Yes.

21 Q. After basic training, what did you do? Where did you  
22 go? Give us a little history of that.

23 A. My first ship was stationed in Newport, Rhode Island, a  
24 frigate, and then I went on deployment. That was after  
25 we sold that ship. I was on an aircraft carrier.

1 After that, I went to school. After school I got  
2 transferred to San Diego. I got stationed on a repair  
3 ship. After the repair ship, I was on a helo carrier,  
4 and then I was an instructor for three years.

5 Q. Okay. And how long were you in the Navy?

6 A. Ten years.

7 Q. And how were you discharged?

8 A. Honorable.

9 Q. Honorable discharge. And did you work in the  
10 boilers --

11 A. Yes.

12 Q. -- on the ships? Wait till I get done.

13 A. Sorry.

14 Q. We talked about that, right? Okay. So you worked on  
15 the boilers, and what is a boiler on a ship?

16 A. A boiler takes the fuel oil where it just has the fire,  
17 heats the water up to make steam. The steam turns the  
18 turbines, which turns the props on the rear of the ship  
19 to make it go.

20 Q. And these boilers, where are they located on the ship?

21 A. The very bottom.

22 Q. Okay. Is that where you worked? The very bottom?

23 A. Yes.

24 Q. As a result of that and after ten years, did you have a  
25 disability from the service?

1 A. Yes.

2 Q. And at the present time what is the percentage of that  
3 disability?

4 A. I'm 100 percent disabled.

5 Q. I also notice in your right ear you have a hearing aid  
6 and not in your left?

7 A. Yes. Yes, I do.

8 Q. And what is that about?

9 A. Hearing loss.

10 Q. When did you receive the hearing loss?

11 A. While I was in the service.

12 Q. And was that the result of working in these boilers?

13 A. Yes, sir.

14 Q. And also, you have tinted glasses?

15 A. Yes.

16 Q. And you saw the glasses on the Mercedes, in those  
17 photos, correct?

18 A. Correct.

19 Q. Were those your glasses?

20 A. Yes, sir. They were.

21 Q. And you have new tinted glasses on now?

22 A. Yes.

23 Q. And why are the glasses tinted?

24 A. From a traumatic brain injury I had approximately three  
25 and a half years ago now.

1 Q. And what is the tint? What does that do? What does it  
2 alleviate?

3 A. Migraines. It helps with traumatic brain injury, it --  
4 I'm not -- I don't know the whole medical background.  
5 It just -- it prevents a lot of migraines.

6 Q. The glasses that were on the Mercedes, did you have  
7 those on that night?

8 A. Yes.

9 Q. And where did you have them -- strike that. Were you  
10 wearing a baseball cap that night?

11 A. Yes, sir.

12 Q. And with respect to those glasses, where were they  
13 located?

14 A. They were above my -- the brim of the cap like so  
15 (indicating).

16 Q. All right. After the Navy, did you find -- where did  
17 you live?

18 A. I initially lived in San Diego.

19 Q. And how long did you live in San Diego?

20 A. Two more years.

21 Q. And I'm going to back up but maybe it was after. I'm  
22 not quite sure. You also have an associate's degree  
23 from Century College; is that right?

24 A. Yes.

25 Q. Was that before the Navy or after the Navy?

1 A. After the Navy.

2 Q. All right. So after you got out of the Navy you were  
3 in San Diego, correct?

4 A. Correct.

5 Q. And you decided to move back here?

6 A. Yes.

7 Q. To Minnesota?

8 A. I -- yes.

9 Q. Okay. How long did you live in San Diego?

10 A. From May of --

11 Q. Approximately.

12 A. Eight years.

13 Q. In the eight years there, what kind of -- what was your  
14 employment?

15 A. U.S. Navy.

16 Q. Oh, so you were only on the battle ships for two years,  
17 and then eight --

18 A. I was on the ships for nine year -- or sorry. Eight  
19 years.

20 Q. Okay. And how many years did you live in San Diego?

21 A. Two years after I got out of the service.

22 Q. After you got out of service?

23 A. Yes.

24 Q. Okay. So what did you do when you got out of service  
25 in San Diego?

1 A. Briefly I worked for a software company.

2 Q. Software?

3 A. Yes.

4 Q. And then you moved back to Minnesota?

5 A. Yes, sir.

6 Q. And when you moved back to Minnesota, where were you  
7 located?

8 A. East side of St. Paul.

9 Q. And have you lived there since then?

10 A. Yes.

11 Q. Now, we've heard evidence here about a firehouse?

12 A. Yes.

13 Q. And is that your residence?

14 A. Yes, it is.

15 Q. And do you live there with anybody?

16 A. Myself.

17 Q. And that's a rather large building; is that right?

18 A. Yes, sir.

19 Q. And besides living there, do you collect a lot of  
20 things in -- one of your hobbies?

21 A. Various items, yes.

22 Q. Various items. Comic books?

23 A. Some.

24 Q. And they're -- that house we have is an exhibit, that  
25 door that's broken in the front, was that broken when



1           you were arrested? At the time you were arrested that  
2           night?

3       A. No.

4       Q. And that time -- that night when you were arrested, did  
5           you, before that, give your key to that house to a  
6           police officer?

7       A. Yes.

8       Q. And did you also give your phone to a police officer?

9       A. Yes.

10      Q. Same officer?

11      A. Same officer, yes.

12      Q. How long after the police officers came did you give  
13           that phone and keys to them?

14      A. As I walked up to the vehicle.

15      Q. To what vehicle?

16      A. Police vehicle.

17      Q. All right.

18      A. He took my keys, my phone, and my wallet.

19      Q. And what about your glasses?

20      A. I don't know what happened to them.

21      Q. Okay.

22      A. I was -- I have no idea.

23      Q. But those were your glasses in that photo on the  
24           Mercedes?

25      A. Yes, sir.

1 Q. Okay. Let's back up a little here. Well, let's stay  
2 there for a minute. After you got out of where you  
3 were at, custody, did you go to your home?

4 A. Yes.

5 Q. And was that door broken in the front?

6 A. Yes, it was.

7 Q. And what did your house look like as a result of the  
8 search warrant that was done there?

9 A. Ransacked.

10 Q. Did they leave anything there for you to tell you that  
11 it was searched?

12 A. A piece of paper on the kitchen counter saying they  
13 took a couple items.

14 Q. And did you, after that, fix the ransacking of your  
15 home?

16 A. Yes, sir.

17 Q. How long did that take?

18 A. I had to wait to get the door fixed. A few weeks.

19 Q. Now, let's back up to that night, December 2nd. You --  
20 as I understand the testimony, you were going out that  
21 night to meet your girlfriend?

22 A. Yes, sir.

23 Q. And what's this girlfriend -- you don't have to give  
24 her last name, but what was her first name?

25 A. Jennifer.

1 Q. And how long had you known her?

2 A. Approximately a year.

3 Q. And would it -- you were going out with her steadily?

4 A. Yes.

5 Q. And when you went outside that night, what was the  
6 weather like?

7 A. Slightly cold. It was December.

8 Q. Was it raining or snowing?

9 A. At the time, no.

10 Q. And when you got out of your residence, what did you  
11 first observe?

12 A. A SUV parked right outside my back door.

13 Q. Okay. And by the way, that residence -- let's -- did  
14 you have no parking signs --

15 A. Yes, sir.

16 Q. -- in that area?

17 A. Yes, sir.

18 Q. And the building -- we have air views of this also, and  
19 the -- your building has in the back a paved area as a  
20 yard, correct?

21 A. Correct.

22 Q. And it also has an area that's yours in front of that  
23 door that you left; is that correct?

24 A. Correct.

25 Q. And the signs that you refer to, where was the first

1 sign?

2 A. The first sign, it was on the corner of the building.

3 I -- I believe it just said no parking. There was a  
4 sign --

5 Q. That sign there. How far was that from the driver's  
6 door of that SUV --

7 A. Two to three feet.

8 Q. -- approximately? And then the next sign, where was  
9 that?

10 A. It was directly in front of the SUV on -- heading,  
11 looking east.

12 Q. And are those signs in the photos that were introduced?

13 A. Yes, sir.

14 Q. So was there another sign also besides those two?

15 A. Yes, sir, there was.

16 Q. And where was that?

17 A. Out of the photo.

18 Q. And where was that sign at?

19 A. It would be straight south of the one that was directly  
20 east of the vehicle.

21 Q. And did that sign also say no parking?

22 A. No trespassing, I believe.

23 Q. All right. And what was the reason you had those  
24 signs? Did you put those signs up?

25 A. Actually, the signs were there when I had bought the

1 place.

2 Q. All right. And before you bought it, there was -- it  
3 was a fire station with firemen?

4 A. The fire department used it for storage, so they were  
5 there continuously just storing equipment.

6 Q. So after you moved into this place, did you have an  
7 issue with parking in your area?

8 A. Yes, sir.

9 Q. And prior to December 6 had you on occasion called the  
10 police about the parking there?

11 A. Multiple times.

12 Q. And did they come out multiple times?

13 A. No, not really. Once in a while they would, not every  
14 day.

15 Q. Besides that, had -- after you called the police a few  
16 times, had the parking in your area slowed down or  
17 ceased?

18 A. Eventually it did.

19 Q. And about how many months before December 2nd did the  
20 parking cease?

21 A. Six or seven months prior.

22 Q. So you weren't having many problems at that time?

23 A. No.

24 Q. Now, that night on December 2nd, you got out and you  
25 saw the SUV. What did you first do?

1 A. I went to -- initially I was on the phone as I was  
2 going out the door.

3 Q. You were on the phone talking to who?

4 A. I believe my friend Erik.

5 Q. Okay. I'm going to show you an exhibit.

6 A. Yes, sir.

7 Q. Exhibit 203. Is that a summary of your phone calls --  
8 from the call you just said about your friend?

9 A. Yes.

10 Q. Up and until -- that's a little bit, 8:22, 2022, what's  
11 that in ordinary language?

12 A. 8:22.

13 Q. All right.

14 MR. GRAY: And we would offer Exhibit 203.

15 MR. TAHIR: No objection.

16 THE COURT: Exhibit 203 is admitted.

17 BY MR. GRAY

18 Q. I'm going to give you a copy of that just in case you  
19 need it to refresh your memory.

20 A. Thank you, sir.

21 Q. Excuse me. Now, while you're walking out of your  
22 residence -- while you are walking out of your  
23 residence, you were talking on the phone, did you say?

24 A. Yes, sir.

25 Q. And who were you talking to?

1 A. My friend Erik.

2 Q. And on Exhibit 203, does that corroborate the fact that  
3 you were talking to him?

4 A. Yes.

5 Q. And you said your friend Erik?

6 A. Yes, sir.

7 Q. Well, if it says Daniel John Cotrineo?

8 A. I was talking to him previously. I hung up the phone  
9 and had called my friend Erik right as I was walking  
10 out the door.

11 Q. Okay. So on that -- on this Exhibit 203 -- by the way,  
12 this exhibit is a history of your cell phone that  
13 night --

14 A. Correct.

15 Q. -- is that correct?

16 A. Correct, sir.

17 Q. And these are all the calls you made between 7:10 -- or  
18 either you made or the call was made to you -- up and  
19 until, again, 8:22?

20 A. Correct.

21 Q. So the next call that you received that night, what  
22 time was that?

23 A. That was at 7:30.

24 Q. Well -- okay. We went through Daniel Cotrineo, in --

25 A. Oh.

1 Q. -- when you were leaving. We went through Erik  
2 Homegren?

3 A. Yes.

4 Q. And these are friends of yours?

5 A. Daniel is my cousin. Erik is a friend.

6 Q. And the next call after that on the exhibit is 20 --  
7 excuse me -- 7:30; is that right?

8 A. Yes, sir.

9 Q. And what call did you make there?

10 A. I was trying to call St. Paul police. I --

11 Q. Why were you trying to call the St. Paul police?

12 A. There was a vehicle in my yard that I wanted ticketed  
13 and towed.

14 Q. And that telephone number, 266-1112. Did you get ahold  
15 of them?

16 A. I did not. I had the wrong number.

17 Q. And did you then call them again?

18 A. Yes.

19 Q. And what time was that?

20 A. Less than one minute later, 7:31.

21 Q. And did you contact them at 7:31?

22 A. Yes.

23 Q. And did you talk to them?

24 A. Yes.

25 Q. And did they tell you that they would send somebody



1 out --

2 A. Yes.

3 Q. -- to ticket it?

4 A. Yes, sir.

5 Q. And we've heard that on the cell phone recording; is  
6 that right?

7 A. I -- yes.

8 Q. So what did you do after you called them at 7:31?

9 A. Sat -- just stood there and waited.

10 Q. And when was your --

11 A. -- ah --

12 Q. -- mm-hmm?

13 A. Sorry. I actually called the tow truck company.

14 Sorry.

15 Q. All right. And the next call was 7:33?

16 A. Yes, sir.

17 Q. And what was call was that?

18 A. That was a tow truck company.

19 Q. And did you get ahold of a tow truck company at that  
20 number?

21 A. Yes, I did.

22 Q. Did they turn down coming out to tow your car?

23 A. Yes. They said they do not do residential towing.

24 Q. So then a minute later did you call Budget Towing?

25 A. Yes, sir.

1 Q. And all these calls are depicted on this Exhibit 203?

2 A. Yes.

3 Q. And did -- when you talked to Budget Towing, did they  
4 agree to come out?

5 A. Yes.

6 Q. And at -- while you were out there, were -- all of this  
7 time from when you got out of your residence, were you  
8 outside by that Mercedes?

9 A. Yes.

10 Q. And you're waiting for the police officers and the tow  
11 truck?

12 A. Correct.

13 Q. After the Budget Towing call, what call was next?

14 A. The neighbor, Jimmy, had called at 7:39.

15 Q. And this neighbor, is he known in that neighborhood?

16 A. Yes.

17 Q. And what's his nickname?

18 A. East Side Jimmy.

19 Q. And is he a friend of yours?

20 A. Yes.

21 Q. And you -- did you talk to him?

22 A. Yes, sir.

23 Q. Do you remember how long that call was?

24 A. A minute or two.

25 Q. After that call, when was the next call?

1 A. 7:48.

2 Q. All right. And between the Jimmy call and the 7:48  
3 call, was that the time that Mr. Stewart -- and during  
4 that time -- that Mr. Stewart arrived at your property?

5 A. That is correct.

6 Q. Okay. And this 7:48 emergency number, that's the call  
7 you made --

8 A. Yes.

9 Q. -- while were getting hit?

10 A. Yes.

11 Q. Tell the jury, after you were waiting there, what  
12 happened with respect to Mr. Stewart from the  
13 beginning.

14 A. I was standing there. Two vehicles had left the  
15 neighbor's.

16 Q. Is that -- the neighbor you're talking about, is that  
17 1734?

18 A. I believe so.

19 Q. All right. And they backed out of there or drove  
20 forward? Do you remember?

21 A. I believe they backed out into my driveway, and a white  
22 car was sitting at the end of the alley.

23 Q. So this white car came there before Mr. Stewart; is  
24 that correct?

25 A. Correct.

1 Q. And it was parked right on the Flandrau and alley  
2 intersection, correct?

3 A. Correct.

4 Q. Did you see who was in that vehicle at all?

5 A. I did not notice who was driving. I do -- the neighbor  
6 had told me.

7 Q. Well, if the neighbor told you that afterwards that  
8 would be hearsay.

9 A. Yes.

10 Q. So don't, okay. After that vehicle stopped there, did  
11 somebody then approach you?

12 A. Yes, sir.

13 Q. What happened?

14 A. An individual, Mr. Stewart, came running down the alley  
15 towards me.

16 Q. Okay. And I know we've watched the surveillance of  
17 that, which was difficult to see.

18 A. Yes.

19 Q. But, to your best memory, what was said and what  
20 happened at that time?

21 A. I could not understand what he was saying. I did not  
22 have my hearing aid in at the time. He came up to me  
23 and said something about -- as I was yelling at him to  
24 stay off my property multiple times, he kept on saying,  
25 "I need my car. I need my car."

1 Q. When he was saying this, was he standing there or was  
2 he approaching you and your property?

3 A. He was advancing or approaching me.

4 Q. And then what happened?

5 A. I was kept -- I kept on backing up and telling him to  
6 stay off my property. As I'm reaching for my phone,  
7 trying to dial 911, he said, "What are you up to, boy?"

8 Q. Prior to that, did he use the N-word?

9 A. Yes, sir.

10 Q. And after he used the N-word, did you use it back to  
11 him?

12 A. Yes.

13 Q. And after that, did you then grab your phone?

14 A. Yes.

15 Q. Where was your phone before you grabbed it?

16 A. In my pocket.

17 Q. In your jacket pocket or pants pocket?

18 A. It was in my jacket pocket.

19 Q. And when you grabbed your phone was that with your left  
20 or right hand, if you remember?

21 A. Left hand.

22 Q. And when you were grabbing your phone, what were you  
23 intending to do?

24 A. To call for help.

25 Q. Call who for help?

1 A. 911.

2 Q. Did you make that call?

3 A. I don't know. I don't know if it went through.

4 Q. What happened when you were making the call then?

5 A. As I was making the call, Mr. Stewart decided to  
6 assault me.

7 Q. What did he do?

8 A. He lit -- he continuously punched me in my face and  
9 jaw.

10 Q. And approximately how many times -- when he was  
11 punching you, were you going forward on him or were you  
12 backing up?

13 A. I was continuously trying to back up.

14 Q. And this was away from his Mercedes?

15 A. Yes, sir.

16 Q. And we've seen in the photo that there is a rock pile  
17 on the corner of your home in your property; is that  
18 right?

19 A. Yes, sir.

20 Q. What's that about?

21 A. It was just some extra rock I had, and I had nowhere  
22 else to put it.

23 Q. What happened when you were backing up and he was  
24 hitting you?

25 A. I was terrified for my life.

1 Q. And why was that?

2 A. Two years prior I had sustained a traumatic brain  
3 injury and the doctor at the time said, "Don't get hit  
4 in the head again. You could die."

5 Q. And did that go through your mind when you were getting  
6 hit in the head?

7 A. Continuously.

8 Q. So what did you do?

9 A. At that time, I rummaged through my pockets for  
10 whatever I could. I had keys in my left hand and a  
11 tool in my right pocket.

12 Q. And that tool -- we've seen that tool -- why was that  
13 in your pocket?

14 A. When I initially had went out on the phone, when I was  
15 talking with Erik, I had went and initially --

16 Q. We are talking about the phone call with Erik Holmgren?

17 A. Yes, sir.

18 Q. Okay. Go ahead.

19 A. I was thinking about deflating Mr. Stewart's tires.

20 Q. Because he was parked there?

21 A. Yes.

22 Q. Had you ever done that before?

23 A. I had never done that before.

24 Q. And where did you get the deflater?

25 A. It was in my vehicle.

1 Q. And after you took that from your vehicle -- your  
2 vehicle is parked in the parking lot of yours, right?

3 A. Yes, sir.

4 Q. And after you took it, where did you put it?

5 A. In my pocket.

6 Q. Did you -- once you got it, did you ever consider  
7 deflating the tires?

8 A. I had considered it, but that's not who I am.

9 Q. So you wouldn't have done that?

10 A. No.

11 Q. You've never done it before, have you --

12 A. I've never done it before.

13 Q. So when he was hitting you, you said you were backing  
14 up?

15 A. Yes, sir.

16 Q. And what did you do with respect to the tool, tire  
17 deflator? Do you remember?

18 A. It was in my hand as I was backing up. I had got  
19 knocked down, and I fell into a rock pile.

20 Q. Pardon me?

21 A. I had fell down and -- into a rock pile.

22 Q. When you shoved this -- what did you do with the tool  
23 before that?

24 A. I shoved it in -- I stabbed Mr. Stewart with it.

25 Q. And do you know how seriously you had stabbed him at



1 the time?

2 A. At the time, no.

3 Q. And why did you do that?

4 A. Because he was continuously hitting me.

5 Q. And you were backing up at the time?

6 A. Yes, sir.

7 Q. And after you did that, what happened?

8 A. I'm sorry. Can you please repeat?

9 Q. Yes. After the stab, what did Mr. Stewart do?

10 A. He hit me one more time.

11 Q. He hit you again?

12 A. Yes.

13 Q. And is that when you fell into the rock pile?

14 A. That is correct.

15 Q. Now, when you fell into the rock pile, you -- in your  
16 statement told Officer Zebro that you thought you only  
17 hurt your butt; is that right?

18 A. That is correct.

19 Q. After seeing those pictures and the next day or day  
20 after that, did you realize that you also fell on your  
21 back?

22 A. Correct. I did not notice at the time, but I did  
23 notice after -- afterward [sic].

24 Q. That exhibit that we have, the picture of your back,  
25 Exhibit 221. I can use the -- Exhibit 221, the red

1 marks on the back?

2 A. Yes, sir.

3 Q. Were those -- those the result of falling into that  
4 rock pile?

5 A. I believe so.

6 Q. Had you ever fallen before that?

7 A. No.

8 Q. Within a week or two?

9 A. No.

10 Q. And I notice also there is a tattoo below by your  
11 waist?

12 A. Yes.

13 Q. What's that about?

14 A. It is a koi fish that I got while I was in the service.

15 Q. And where did you get the at?

16 A. San Diego.

17 Q. Is that your only tattoo?

18 A. I have two others.

19 Q. And where are they at?

20 A. I have one on my chest and one on my stomach. The one  
21 on my chest is a heart and rose, and the one on my  
22 stomach is a sun.

23 Q. A sun?

24 A. Yep, S-U-N.

25 Q. Okay. So after Mr. Stewart hit you the last time, and

1           you fell into the rock pile, did you get up?

2       A.   Yes.

3       Q.   What did you do when you got up?

4       A.   I tried to get my phone and my keys.

5       Q.   And did you find your phone?

6       A.   I found my phone.

7       Q.   And where was that at?

8       A.   Approximately five feet away.

9       Q.   Okay.  And was that the same phone that was in your  
10           hands before you -- when you got hit?

11      A.   Yes.

12      Q.   I'm going to show you Exhibit 204.  Is that the phone  
13           that you were just referring to?

14      A.   Yes.

15      Q.   Is that a true and accurate picture of the phone after  
16           you picked it up?

17      A.   Yes.

18      Q.   Now in this exhibit, 204, it appears that the screen is  
19           cracked in two or three places.  Was that screen  
20           cracked before you were punched by Mr. Stewart?

21      A.   No.

22      Q.   So that was the result of you getting hit?

23      A.   Yes.

24                       MR. GRAY:  We'd offer 204.

25                       MR. TAHIR:  No objection.

1 MR. GRAY: Could we put this up on the  
2 screen?

3 BY MR. GRAY

4 Q. Now, while we're waiting for Exhibit 203, do you have  
5 it in front of you?

6 A. Yes.

7 Q. What time did you make that call to the police  
8 department, the second call?

9 A. 7:31. Or do you mean it --

10 Q. No.

11 A. -- I'm sorry. I don't know what you mean?

12 Q. The call that you made when you were being punched.

13 A. Oh, sorry. 7:48.

14 Q. So that was 17 minutes; is that right? 31 from 48,  
15 yeah -- 17 minutes after, you called the police  
16 department?

17 A. Yes, sir.

18 Q. And during those 17 minutes, no police officers showed  
19 up?

20 A. No.

21 Q. Now --

22 THE COURT: Did you want to do anything about  
23 the phone?

24 MR. GRAY: Excuse me?

25 THE COURT: Did you want to say anything

1 about the phone?

2 MR. GRAY: Oh, yeah. I'm sorry. Thanks,  
3 Judge.

4 BY MR. GRAY

5 Q. This is a picture of your phone?

6 A. Yes, sir.

7 Q. Those -- the damage that we see there, is that the  
8 damage that was caused that night?

9 A. Yes.

10 Q. And was that the damage caused when you dropped the  
11 phone?

12 A. I believe so.

13 Q. Well, was it damaged before?

14 A. It was not damaged before.

15 Q. And when you picked it up, right after you were  
16 assaulted, did you notice that the phone was cracked  
17 like that?

18 A. Correct. It was cracked afterwards.

19 MR. GRAY: That's all, thanks.

20 BY MR. GRAY

21 Q. When -- after that call -- and we've heard the call,  
22 and in that call the dispatcher says, "Hello? Hello?"  
23 A couple times. Do you remember that?

24 A. Yes.

25 Q. And was that while the phone was on the ground?

1 A. Correct. That was while it was on the ground.

2 Q. And when you picked it up, the phone, there was  
3 somebody on the line, correct?

4 A. I picked the phone up and said, "I need help now."

5 Q. Excuse me?

6 A. I just picked the phone and said, "I need help now." I  
7 did not know if there was anybody on the other line  
8 actually.

9 Q. Well, you realized after you said that that there was  
10 somebody on that phone?

11 A. After they responded.

12 Q. And the transcript and the audio that we heard with  
13 that phone call, that was accurate?

14 A. Yes.

15 Q. And in that phone call you told them about your  
16 assault, correct?

17 A. Yes.

18 Q. You told them what happened, basically?

19 A. Yes.

20 Q. And at the end of the phone call you mentioned  
21 something about two people coming down?

22 A. Yes.

23 Q. Do you remember that? What was that about?

24 A. I noticed two individuals coming west -- coming --  
25 heading west down the alley towards me.

1 Q. And did you think that one of those individuals might  
2 well be Mr. Stewart?

3 A. It looked like him. I could not tell 100 percent.

4 Q. And when you -- when you saw that, what did you do?

5 A. I was in my house -- going into my -- going into my  
6 house.

7 Q. And why did you go in your house?

8 A. For my safety.

9 Q. And there was a conversation about locking the door  
10 with this dispatcher?

11 A. Yes.

12 Q. And was your door locked?

13 A. Yes.

14 Q. And what did you -- you made a comment at the time  
15 about having to go in your house for your safety. Do  
16 you remember that?

17 A. Yes.

18 Q. What were you talking about?

19 A. I did not want to get assaulted again.

20 Q. I want to back up once. When you got out -- hold on a  
21 minute. At about 7:37 on this night, you took a  
22 photograph; is that right?

23 A. Yes, sir.

24 Q. And is that the photograph you took?

25 A. That is the photograph.

1 Q. And is that a fair and accurate depiction of the  
2 photograph?

3 A. Yes.

4 Q. And the photograph is of the front of the Mercedes SUV;  
5 is that right?

6 A. Yes, sir.

7 Q. And why did you do that?

8 A. As documentation to the police or the tow truck  
9 company.

10 Q. Okay. Was there a license plate number on that?

11 A. Yes, sir.

12 Q. Can you see it in the photo?

13 A. I cannot.

14 Q. Okay. And what time was that photo taken?

15 A. That was at 7:37.

16 MR. GRAY: All right, thank you.

17 We'll offer Exhibit 201.

18 MR. TAHIR: No objection.

19 THE COURT: 201?

20 MR. GRAY: Yes.

21 THE COURT: That's admitted.

22 BY MR. GRAY

23 Q. So, what happened next after you went in your house  
24 because those guys were running down or coming down the  
25 street?



1 A. Ah, I had a phone call.

2 Q. And who was the phone call from?

3 A. That was from the tow truck company.

4 Q. And what time was that call made?

5 A. I received it at 7:56.

6 Q. And you know that because that's on the Exhibit 203  
7 here, your phone calls that night; is that correct?

8 A. That is correct.

9 Q. And the 7:56 number was from the Budget Tow?

10 A. Excuse me?

11 Q. The 7:56 call?

12 A. 7:56, they said it was from Budget Towing, yes.

13 Q. Excuse me?

14 A. They said it was from Budget Towing.

15 Q. Yeah. And that's your telephone number that you got --  
16 called there?

17 A. That is the number that called me.

18 Q. All right. And the number that called you is Budget  
19 Towing?

20 A. Correct.

21 Q. And after you got that call, what did you do?

22 A. I told them -- I gave them the information -- or no.  
23 Sorry. I'm sorry. It's -- that was telling me that  
24 they were on location and to meet the driver outside.

25 Q. Did you do that then?

1 A. I opened the door to the rear of my house.

2 Q. So you're still in your house?

3 A. Yes, sir.

4 Q. Door locked?

5 A. Doors locked.

6 Q. Go ahead?

7 A. I peeked out my door, noticed the tow truck and the tow  
8 truck driver. I mentioned, you know, there was the  
9 vehicle.

10 Q. And then what did you do?

11 A. I went back inside. I told him I needed to wait for  
12 the police, and I went back inside.

13 Q. And after you got back inside, did, at some time after  
14 that, the police show up?

15 A. I noticed -- within a couple of minutes, I had noticed  
16 red and blue lights through the window. So the police  
17 had shown -- I believe -- I had assumed that there was  
18 the police with the red and blue lights.

19 Q. Okay. So what did you do then?

20 A. I went outside and went to the first cop car in the  
21 front of my house that I had noticed.

22 Q. And what did you do once you arrived at that cop car?

23 A. The officer had me spread eagle and took my belongings  
24 and questioned me.

25 Q. What do you mean by "your belongings"?

1 A. My keys, my wallet, and my phone.

2 Q. All right. And that's the last time you saw your phone  
3 until you got it later?

4 A. I -- yes.

5 Q. And the keys, those were the keys that you --

6 A. To my residence.

7 Q. -- to your house?

8 A. Yes.

9 Q. So the cops had your keys right after they arrived?

10 A. Immediately.

11 Q. And after you did that, they put you in a squad car?

12 A. Yes.

13 Q. And do you remember Officer Brouwer interviewing you?

14 A. Yes.

15 Q. And we -- in the trial we listened to the audio of that  
16 interview; do you remember that?

17 A. Yes.

18 Q. And when you told him what happened, was that accurate?

19 A. Yes, sir.

20 Q. Was that the truth?

21 A. Yes, sir.

22 Q. Did you know at that time that you were being recorded?

23 A. I did not.

24 Q. He didn't tell you?

25 A. No, he did not.

1 Q. But everything you said was what happened --

2 A. Yes, sir.

3 Q. -- right?

4 So, after that, where did you go?

5 A. I waited in the vehicle for hours. Eventually they  
6 brought me to the police station.

7 Q. And during this time -- anybody tell you about  
8 Mr. Stewart's condition?

9 A. No.

10 Q. But after the tool incident, he walked down to the  
11 white car and then he ran down the alley to his [sic]  
12 home, correct?

13 A. Correct.

14 Q. So, you waited in the vehicle, a squad car, for a  
15 period?

16 A. Yes.

17 Q. It seemed like a long period?

18 A. Yes, sir.

19 Q. And then what happened?

20 A. They brought me to downtown and -- the police station  
21 and I got questioned.

22 Q. And was that the hour-and-10-, 15-minute interview that  
23 we saw yesterday?

24 A. Yes, sir.

25 Q. During that interview -- I believe it was a little more

1 than half time, you were told that Mr. Stewart had  
2 passed. Do you remember that?

3 A. Yes.

4 Q. Prior to that, did you have any idea at all that he was  
5 injured seriously?

6 A. No, not at all.

7 Q. And how did that affect you when you learned that he  
8 had passed?

9 A. Very much so.

10 Q. And why that?

11 A. I -- it's -- I cherish life, no matter whose it is.

12 Q. So, during the interview, at one point time Zebro told  
13 you that the officers at the scene are not seeing you  
14 getting assaulted; do you remember that?

15 A. Yes, sir.

16 Q. And what did you tell him when he said that?

17 A. I believe I had said, "I'm not lying."

18 Q. You said you weren't lying?

19 A. Correct.

20 Q. And did you say that because you knew what happened,  
21 and you knew where you were hit?

22 A. Yes.

23 Q. So after you said that, you told him that you wanted to  
24 talk to a lawyer?

25 A. He had -- he had mentioned it I believe one more time,

1 and I had said, "I need to talk to a lawyer."

2 Q. Okay. But you proceeded to give the interview?

3 A. Yes.

4 Q. And the reason you said the lawyer issue was because he  
5 was lying to you?

6 A. Correct.

7 Q. And you knew that because you were the one there at the  
8 scene? You knew what happened?

9 A. Correct.

10 Q. And so the interview continued for the next half hour  
11 or so, and they then took pictures of you?

12 A. Yes, sir.

13 Q. Later on, you got to call your girlfriend?

14 A. Eventually.

15 Q. A couple days later you went home?

16 A. Yes.

17 Q. And you found your house?

18 A. Yes.

19 Q. Thank you, sir. That's all I have.

20 A. Thank you.

21 THE COURT: Cross-examination.

22 MR. TAHIR: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. TAHIR

25 Q. Good morning. I have a couple of questions for you.

1 A. Yes, sir.

2 Q. So I want to be clear on the chronology here. Your  
3 plan was to go and visit your girlfriend, and that's  
4 why you had stepped out of your residence that night?

5 A. Yes.

6 Q. Okay. How were you going to get there?

7 A. Drive.

8 Q. Okay. Are those your two vehicles in the back that  
9 we've seen? I believe one is a 4Runner and the other  
10 is a smaller vehicle. I'm not sure what it is.

11 A. That's my mother's vehicle.

12 Q. And the larger vehicle is yours?

13 A. Yes, sir.

14 Q. Is that the vehicle that you were going to use to drive  
15 to your girlfriend's place?

16 A. Yes, sir.

17 Q. How far away does she live?

18 A. She lives in -- probably seven miles, eight miles.

19 Q. How long does take for you to get there?

20 A. Fifteen minutes.

21 Q. Okay. Your 4Runner, which was parked in your yard was,  
22 that blocked in any way by Mr. Stewart's vehicle?

23 A. Not fully.

24 Q. You could have gotten out of your yard and just gone to  
25 your girlfriend's; isn't that right?

1 A. Yes.

2 Q. Okay. I also want to ask -- at least in the video that  
3 we've seen, you're standing outside before you're ever  
4 approached by Mr. Stewart? You don't exit your  
5 residence when he runs up to you; is that true?

6 A. That is correct.

7 Q. You were standing outside. How long had you been  
8 standing outside?

9 A. Twenty minutes at least.

10 Q. Okay. And you had that tool in your pocket that entire  
11 time?

12 A. I had -- not the entire time. I had -- initially went  
13 to my vehicle to retrieve it.

14 Q. Okay. For what purpose?

15 A. Initially I was going to deflate the tires of the car.

16 Q. How were you going to do that?

17 A. Puncture the tires.

18 Q. Actually puncture them, right?

19 A. Yes.

20 Q. You were not going to go to the valve stem and try to  
21 slowly deflate them; is that right?

22 A. That is not what the tool is designed for.

23 Q. In fact, it would actually damage the valve stem if you  
24 tried to do that; isn't that true?

25 A. I don't know.



1 Q. It's a puncturing instrument, right?

2 A. It is a tool.

3 Q. Well, you were going to use it to puncture the tires,  
4 right?

5 A. Yes.

6 Q. All four tires, or how many were you going to puncture?

7 A. I had no idea. I never punctured them.

8 Q. Okay. But that's what you went and got the tool for,  
9 right?

10 A. Initially.

11 Q. And then you knew that it was in your pocket that whole  
12 time? You didn't forget, right?

13 A. I -- honestly, I don't remember.

14 Q. Okay. Well --

15 A. It's -- I was scrambling for something in my pockets.

16 Q. All right. Well, you -- how long -- how long before  
17 you had to use it on Mr. Stewart had you gone to  
18 retrieve it from your car?

19 A. I retrieved it initially when I went outside. When  
20 Mr. Stewart was arriving probably 20 minutes later, I  
21 had already forgot that it was even in my pocket. I  
22 had already realized that that is not what I do.  
23 That's not who I am.

24 Q. Okay. Sergeant Zebro asked you whether you were going  
25 to deflate the tires in that interview, did he not?

1 A. I don't remember.

2 Q. Okay. Well, is it your testimony that you did not  
3 observe him, when we watched it all together, ask you  
4 that specific question?

5 A. He may have. I don't remember. I'm sorry.

6 Q. Okay. But if it's on the video --

7 A. -- yes --

8 Q. -- you agree --

9 A. -- yes --

10 Q. -- and you would that that's what happened --

11 A. Yes, I do.

12 Q. And you would agree that you denied any intention of  
13 puncturing any of the tires or deflating anyone's  
14 tires?

15 A. I believe so.

16 Q. So on the video -- you don't dispute the accuracy of  
17 the video, do you?

18 A. No. Like I said I had changed my mind, because that's  
19 not who I am.

20 Q. That's fine. Why couldn't you wait inside the house  
21 for the police or the tow truck to arrive?

22 A. Why? It's my yard. It's my house.

23 Q. But you're waiting for the police, right?

24 A. Yes. And that way when they show up, I know that  
25 they're there --

1 Q. Okay.

2 A. -- how would I know unless I'm outside?

3 Q. They had your phone number?

4 A. They don't always call.

5 Q. Okay. So they've responded before when you've made  
6 these type of complaints; is that true?

7 A. Not all the time.

8 Q. Sometimes?

9 A. Rarely.

10 Q. Have you always waited outside each time?

11 A. Yes.

12 Q. For extended periods of time?

13 A. Until -- mostly.

14 Q. Even when you've got other places to go, things to do?

15 A. Sometimes.

16 Q. Okay. Ultimately, Mr. Stewart did come running at you  
17 and he didn't start whaling on you as soon as he  
18 approached you, did he?

19 A. No.

20 Q. In fact, there was a gap. You were telling him, "Do  
21 not step on my property. Do not step on my property."  
22 Is that right?

23 A. I believe I said that three to four times.

24 Q. Okay. And he was trying to just get to his car, would  
25 you agree with that?

1 A. (Witness shakes head.) I would agree, yes.

2 Q. He was saying -- a little unclear what the exact  
3 verbiage is -- but he's saying, "My car." "My car."  
4 We've seen that in the video. Would you agree with  
5 that?

6 A. Yes.

7 Q. And you keep repeating to him, you say four or five  
8 times, "Do not step on my property. Do not step on my  
9 property." Right?

10 A. Yes.

11 Q. You could have just let him get in his car and drive  
12 away, right?

13 A. He could have stayed off my property.

14 Q. He -- did you just say, "He could have stayed on my  
15 property"?

16 A. He could have stayed off my property.

17 Q. Okay. Well, I'm sure. But the question I'm asking you  
18 is: He could have gotten in his car and just driven  
19 away, right?

20 A. Yes.

21 Q. And that would have solved your problem?

22 A. Yes.

23 Q. But you didn't allow that to happen?

24 A. No.

25 Q. Okay. I just want to clarify one thing. What was the

1 last thing you remember Mr. Stewart saying to you  
2 before he threw the first punch?

3 A. "What are you doing, boy?"

4 Q. Not the N-word?

5 A. That was prior.

6 Q. That was prior to him saying, "What are you doing,  
7 boy?"

8 A. Yes.

9 Q. So when you told Officer Brouwer that you repeated back  
10 to him, "I am not your N-word," and then he clocked you  
11 in the face, that would be inaccurate?

12 A. Honestly, I had just gotten knocked in the head  
13 multiple times so my memory was not the best.

14 Q. Okay.

15 A. My -- it was -- I was confused at that moment. But,  
16 yes, it was said. That -- approximately time, I don't  
17 remember.

18 Q. All right.

19 MR. TAHIR: Thank you, sir. I have nothing  
20 further.

21 THE WITNESS: Thank you.

22 THE COURT: Any redirect?

23 MR. GRAY: Yes.

24 REDIRECT EXAMINATION

25

1 BY MR. GRAY

2 Q. When you were telling him to get off your property,  
3 Mr. Stewart, did he stop or did he keep coming forward  
4 on your property?

5 A. Continuously came forward.

6 Q. And did you expect that he would assault you that  
7 night?

8 A. I did not.

9 Q. And after the N-word, you took out your phone; is that  
10 right?

11 A. That is correct.

12 Q. And when it started -- after you took out your phone,  
13 Mr. Stewart said, "What are you doing, boy?"

14 A. That makes more sense, yes.

15 Q. And you were attempting to call?

16 A. 911.

17 Q. And is that when he assaulted you?

18 A. That is correct.

19 Q. And there is no question in your mind that he assaulted  
20 you, is there?

21 A. None at all.

22 Q. Prior to that assault, did you threaten him at any  
23 time?

24 A. Never.

25 Q. And by the way, between the time that you took out your

1 phone and he said, "What you doing, boy," something to  
2 that effect and the time of the rock pile -- you got  
3 knocked in the rock pile, how many seconds was that?

4 A. Split seconds, two maybe, two or three.

5 MR. GRAY: Thank you, sir.

6 That's all I have, Judge.

7 THE WITNESS: Thank you.

8 MR. TAHIR: No -- nothing further, Your  
9 Honor.

10 THE COURT: Thank you, sir. You may step  
11 down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Can you set that right here?

14 MR. GRAY: I got the real exhibit here. I  
15 keep putting them over here.

16 THE COURT: Keep stealing my exhibits?

17 MR. GRAY: Yes, Your Honor.

18 THE COURT: All right.

19 Ladies and Gentlemen, we are going to take a  
20 recess at this time -- take about 20 minutes. We'll be  
21 back at 10 till 11. Please do not discuss the case  
22 amongst yourselves. Do not discuss it with anyone  
23 else. If anyone approaches you to discuss the case,  
24 please inform me as soon as possible. Keep your  
25 notepads face down on your chair when you leave, and

1 keep your badges on at all times when you are in the  
2 building.

3 I know you're tired of hearing that, but I've  
4 got to say it, all right? Thank you.

5 All rise. The jury is excused.

6 (The jurors exited the courtroom.)

7 THE COURT: You may be seated.

8 All right. And the stipulation, by the way,  
9 we are going to mark that as a court exhibit. So  
10 wherever that falls, that's going to be marked as a  
11 court exhibit. The anticipation is when we come back,  
12 you can put on your character witnesses, Mr. Gray, and  
13 then we'll send the jury out for lunch. We'll review  
14 jury instructions. I don't think there's going to be  
15 any surprises on jury instructions, and I will have  
16 those for you at that time.

17 As I stated earlier, both the defense of self  
18 and defense of property along with the trespassing  
19 instruction will be included in the jury instructions.  
20 I don't think there was anything else.

21 MR. TAHIR: I don't think so, Your Honor.

22 MR. GRAY: No. The new self-defense? Where  
23 they say we're going to be reviewed because of that  
24 Lampkin decision or something? That's got nothing to  
25 do with this.



1 THE COURT: It doesn't, which will be -- the  
2 one that's in the JIG is what it's going to be in the  
3 instructions.

4 MR. GRAY: And we're going to get a copy of  
5 those, Judge?

6 THE COURT: You're going to get a copy before  
7 you go to lunch.

8 MR. GRAY: All right. Thank you.

9 THE COURT: We're in recess. Thank you.

10 MR. TAHIR: Thank you, Your Honor.

11 (A brief break was taken.)

12 THE LAW CLERK: All rise.

13 THE COURT: Thank you. You may be seated.  
14 All right. So I've provided the parties with a copy of  
15 the proposed jury instructions. We'll have an  
16 opportunity to review those once the Defense's  
17 case-in-chief is complete. Otherwise, is there  
18 anything else we need to address?

19 MR. TAHIR: No, Your Honor.

20 MS. MONTGOMERY: No, Your Honor.

21 THE COURT: All right. Then we're going to  
22 bring in the jurors, please.

23 MR. GRAY: Judge, you didn't put in the  
24 character instruction. We requested it. And there is  
25 a case in Minnesota, if we request it and you don't put

1 it in, it could be reversible error.

2 THE COURT: Appreciate that. That's why we  
3 review them.

4 THE LAW CLERK: All rise for the jury.

5 (The jurors entered the courtroom.)

6 THE COURT: You may be seated.

7 Ms. Montgomery, you may proceed.

8 MS. MONTGOMERY: The Defense calls Erik  
9 Holmgren.

10 THE COURT: Good morning, sir.

11 THE WITNESS: Good morning, sir.

12 THE COURT: Please raise your right hand.

13 ERIK HOLMGREN,

14 was called as a witness and, being first duly  
15 sworn, was examined and testified as follows:

16 THE COURT: Please have a seat and state your  
17 full name and spell it for us.

18 THE WITNESS: Erik Holmgren, E-R-I-K  
19 H-O-L-M-G-R-E-N.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 BY MS. MONTGOMERY

23 Q. Good morning, Mr. Holmgren.

24 A. Good morning.

25 Q. Where do you reside?

1 A. In Keystone.

2 Q. What state is that in?

3 A. South Dakota.

4 Q. Thank you. Where are you employed, if you are?

5 A. I am retired, a disabled veteran.

6 Q. And do you know Brian Kjellberg?

7 A. I do know Brian. He is a good friend.

8 Q. How do you know Mr. Kjellberg?

9 A. Brian and I have known each other through the  
10 Minneapolis V.A. medical center. Being both disabled  
11 veterans, the V.A. is quite good in organizing such  
12 people -- getting us together in a clinic.

13 So I met him through a one-week clinic  
14 through the VA where other disabled vets can spend time  
15 and hopefully find community and some sort of a  
16 brotherhood and open up to each other, and that's how I  
17 got to know Brian deeply as a good friend.

18 Q. And approximately how long have you known  
19 Mr. Kjellberg?

20 A. It's been three and a half years.

21 Q. And based on what you know about Mr. Kjellberg, do you  
22 have an opinion as to his character for peacefulness?

23 A. Peacefulness. If there is one person that -- out of my  
24 close friends that I have, Brian is the one that I  
25 would call, on the top of the speed dial list. "Hey,

1 Brian, this is what's happening. Can you help me with  
2 this?" Because he -- there is no drama. There is no  
3 questions of why or what. It's just, "Yes, I can help  
4 you with this." And there is no drama, very peaceful.  
5 In the neighborhood especially peaceful.

6 Q. And you just touched on this a little bit, but are you  
7 familiar with his representation in the community?

8 A. I am, and that's where I was going. I want to lead  
9 into that, but I -- my words can kind of ramble on  
10 sometimes. So in -- when I visited in his area in his  
11 home on the east side in the fire station -- for  
12 example -- across the street, across the side street,  
13 across Flandrau Street there is a small market. The  
14 husband and wife, I believe, are Mexican, Ecuadorian, I  
15 believe, and I speak fairly good Spanish.

16 And so I was in there one time, and I started  
17 speaking Spanish with them, and they learned that Brian  
18 was a good friend and then their faces kind of lit up.  
19 And instead of asking me about, who am I? Why am I  
20 here? They started talking about Brian next door, and  
21 what a good neighbor he is.

22 And also I was present for a garage sale in  
23 the neighborhood, and I met some of Brian's neighbors,  
24 and they -- they were -- they would just come out and  
25 greet Brian. So Brian seems like the person you know

1 on the block where you would want to go and greet and  
2 say hello.

3 Q. Okay. And lastly, do you have an opinion as to his  
4 character to be truthful?

5 A. Yes. Brian is truthful. Brian -- he's also probably  
6 one of the most calm, truthful -- close people that I  
7 know -- consistently. We've spoken in detail -- when  
8 you spend time -- a week together with another disabled  
9 vet who is going through a lot of traumatic things --  
10 and this is relating back a little bit back to your  
11 first question about when we met -- how we met in the  
12 V.A. system, the medical center.

13 You connect with other people in the military  
14 as family, automatically. Sometimes you don't always  
15 like your family, but -- and that's okay. You're still  
16 family. But when you meet another vet -- family, and  
17 you have a connection and a rapport, then you get to  
18 know them deeply quite quickly. It just happens  
19 through war experience. And in the medical center as  
20 well.

21 And that takes people to -- it can take  
22 people to a deeper level, where one believes in that  
23 bond of trust. Because you know that he has your back,  
24 or he would have your back, if you were in a conflict  
25 overseas as I was and he was, although not knowing him

1           then --

2       Q.   Sure.

3       A.   -- and that carries through into our lives later as  
4       veterans and what we go through now.

5                   MS. MONTGOMERY:  Thank you, sir.  That's all  
6       I have.

7                   THE WITNESS:  Yes.

8                   THE COURT:  Anything?

9                   MR. TAHIR:  Thank you, sir.  I have no  
10       questions for you.

11                   THE COURT:  Thank you, Mr. Holmgren.

12                   THE WITNESS:  Thank you.

13                   MS. MONTGOMERY:  The Defense calls Edward  
14       Summers.

15                   THE COURT:  Good morning, sir.

16                   THE WITNESS:  Good morning.

17                   THE COURT:  Please raise your right hand.

18                               EDWARD SUMMERS,

19       was called as a witness and, being first duly  
20       sworn, was examined and testified as follows:

21                   THE COURT:  Please have a seat, sir, and  
22       state your name for us and spell it for us.

23                   THE WITNESS:  Edward Summers, S-U-M-M-E-R-S.

24                   THE COURT:  Go ahead.

25                   MS. MONTGOMERY:  Thank you, Your Honor.

## 1 DIRECT EXAMINATION

2 BY MS. MONTGOMERY

3 Q. Where do you live, sir?

4 A. Minneapolis.

5 Q. And are you employed?

6 A. Yes, I am. Out in Edina, retail.

7 Q. And do you know Brian Kjellberg?

8 A. I do.

9 Q. How do you know him?

10 A. Twenty years. I was introduced to Brian by a former --  
11 who is deceased -- educator Charlene Birmingham.

12 Q. Can you speak into the mic a little bit?

13 A. All right. Better?

14 Q. Yes. Thank you.

15 A. Mm-hmm.

16 Q. And based on what you know of Mr. Kjellberg, do you  
17 have an opinion as to his character for being peaceful?

18 A. Yes.

19 Q. And what is that?

20 A. Brian is genuine. He is considerate, truthful, good.

21 When someone is in need of help, support, Brian  
22 generally will just drop things and attend to them.23 Q. And do you have an opinion as to his representation in  
24 the community?

25 A. Outside of the property where he's currently living,

1 I've seen him interact with neighbors who would stroll  
2 by. He's very thoughtful, genuine, caring. There is a  
3 gentleman who is -- I'll use the phrase "Dumpster  
4 diving." Brian is concerned about this individual  
5 injuring himself, cut glass, et cetera. And so he's  
6 always put a halt to something. Before you do  
7 something, just be aware. There is something very  
8 responsible about Brian that way.

9 Q. Do you have an opinion as to Mr. Kjellberg's ability to  
10 be truthful?

11 A. Very truthful. Direct.

12 Q. Thank you, sir.

13 MS. MONTGOMERY: I have nothing further.

14 MR. TAHIR: Thank you, sir. I have no  
15 questions for you.

16 THE COURT: Thank you, Mr. Summers. You may  
17 step down.

18 MS. MONTGOMERY: The Defense calls Brian  
19 Clark.

20 THE COURT: Good morning.

21 THE WITNESS: Good morning.

22 BRIAN CLARK,  
23 was called as a witness and, being first duly  
24 sworn, was examined and testified as follows:

25 THE WITNESS: Yes, sir.



1 THE COURT: Please have a seat and state your  
2 name for us and spell it, please.

3 THE WITNESS: Sure. Brian Clark, B-R-I-A-N  
4 C-L-A-R-K.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 BY MS. MONTGOMERY

8 Q. Good morning, Mr. Clark. Where do you live?

9 A. I live in Stillwater with my family.

10 Q. And are you employed?

11 A. Yes.

12 Q. Where are you employed?

13 A. I work for a large Fortune 500 company as a senior  
14 marketing manager.

15 Q. Do you know Brian Kjellberg?

16 A. Yes, I've known Brian for years. Since seventh grade  
17 we've been friends.

18 Q. And based on what you know of Mr. Kjellberg, do you  
19 have an opinion as to his character for peacefulness?

20 A. Brian's one of the most even-tempered people I know. I  
21 mean he is -- he's -- I've never seen him angry. I've  
22 never seen him get upset. He's gotten frustrated, but  
23 he's even-tempered, one of the most I've ever  
24 encountered.

25 Q. Do you have an opinion as to his representation in the

1 community?

2 A. I understand it's good. I mean, he helps his neighbors  
3 when he can. I've heard him -- do stuff for his  
4 neighbors, plumbing, because that's what -- some of the  
5 expertise that he has, and so I believe it's in good  
6 standing.

7 Q. And do you have an opinion as to Mr. Kjellberg's  
8 character to be truthful?

9 A. Yes.

10 Q. And what is that?

11 A. He's always told the truth.

12 MS. MONTGOMERY: Thank you, sir.

13 MR. TAHIR: Thank you, sir. I have no  
14 questions.

15 THE WITNESS: Okay.

16 THE COURT: Thank you, Mr. Clark. You may  
17 step down.

18 MS. MONTGOMERY: Your Honor, the Defense  
19 rests.

20 THE COURT: Anything else from the State?

21 MR. TAHIR: No, Your Honor.

22 THE COURT: Ladies and Gentlemen, now all of  
23 the evidence has been introduced in this trial and now  
24 the attorneys and I will take an opportunity to review  
25 the jury instructions, and we'll give them an

1 opportunity to prepare to make final arguments to the  
2 jury.

3 You know, at the beginning of this trial, I  
4 anticipated it would take more than a week. It clearly  
5 has not. And so it's moved a lot faster than we  
6 thought, which I'm sure on your part is a good thing.

7 But what I'm going to ask you now is to take  
8 an early lunch so that we can review these matters and  
9 give them an opportunity to prepare. And if you can  
10 return back at 1:00 and -- for you to return back to  
11 the jury room. And then when we're ready to proceed,  
12 we'll call you back in. All right?

13 Again, do not discuss the case amongst  
14 yourselves. Do not discuss it with anyone else. Maybe  
15 I can have one of you repeat that? No. Leave your  
16 badges on at all times when you are in the building and  
17 your notepads face down when you leave, and please  
18 don't do any research about the case. Thank you.

19 All rise. The jury is excused for lunch.

20 (The jury exited the courtroom.)

21 THE COURT: You may be seated.

22 Okay. So we've identified that we need to  
23 include now the instruction regarding character. That  
24 will be added on Page 4 after impeachment. And then  
25 I'd like to go page by page and make sure that we have

1 everything that we need for the instructions, starting  
2 with Page 1. I want to make sure I don't misspell  
3 anyone's name or --

4 MR. TAHIR: Looks fine, Your Honor.

5 MS. MONTGOMERY: Looks correct, Your Honor.

6 THE COURT: All right. That was the cover  
7 page. As to Page 1, we have instruction, we have  
8 duties of the Judge and jury, we have presumption of  
9 innocence, and proof beyond a reasonable doubt.  
10 Anything with Page 1?

11 MR. TAHIR: Nothing from the State.

12 MR. GRAY: No, I have nothing.

13 THE COURT: All right. As to Page 2, we have  
14 the instructions on direct and circumstantial evidence  
15 and how to use the direct and circumstantial evidence.  
16 I included an instruction on the tool or weapon -- that  
17 it will not be going back to the jury. If it does --  
18 if they request the tool, we'll take it in there with  
19 the deputy, and they can review it. And then when  
20 they're done reviewing it, without deliberating, return  
21 it and continue their deliberations.

22 There is the ruling on objections. There's  
23 the instruction that should be considered as a whole.  
24 And then there are the statements of the Judge and the  
25 attorneys. Anything on Page 2?

1 MR. TAHIR: Nothing from the State.

2 MR. GRAY: Nothing, Your Honor.

3 THE COURT: On Page 3, we have how they  
4 should evaluate testimony and expert witness testimony.  
5 Anything on Page 3?

6 MR. TAHIR: No, Your Honor.

7 MR. GRAY: No, Your Honor.

8 THE COURT: And then on Page 4, we have the  
9 impeachment instruction and the character instruction,  
10 which I will add. Anything on 4?

11 MR. TAHIR: No, Your Honor.

12 MR. GRAY: Nothing here, Your Honor.

13 THE COURT: On Page 5, we begin with the  
14 instruction of the charge of Murder in the Second  
15 Degree Without Intent to Kill but While Committing a  
16 Felony Assault. It provides you the elements of the  
17 charge. Included within the elements, of course, is  
18 the elements also of Assault in the Second Degree.  
19 Anything on Page 5?

20 MR. TAHIR: Nothing from the State.

21 MR. GRAY: No, Your Honor.

22 THE COURT: On Page 6, that continues with  
23 the elements, and I have included the instruction of  
24 self-defense and defense of property.

25 MR. TAHIR: Nothing from the State, Your

1 Honor.

2 MR. GRAY: Could we take a look at this more  
3 a minute, Judge?

4 THE COURT: Yes. Anything on 6 from Defense?

5 MR. GRAY: Um, Page 6, three paragraphs up,  
6 you've got, proving beyond a reasonable doubt -- that  
7 at least one of the requirements of this defense has  
8 not been met. I would move to strike the "at least"  
9 part and just put that, one of the requirements of this  
10 defense has not been met. The "at least" part means  
11 that -- infers that more than one has been met.

12 THE COURT: Any objection that?

13 MR. TAHIR: I'd ask that we use the language  
14 as it is in the patterned instruction, Your Honor.  
15 That's my position.

16 THE COURT: I'm going to exclude the "at  
17 least." I think it's extra verbiage and not necessary.  
18 Anything else on 6?

19 MR. GRAY: I have nothing.

20 THE COURT: And on 7, again, we continue with  
21 the defense of property instruction to include the  
22 trespass and also the instruction on definition of  
23 words.

24 MR. TAHIR: Nothing from the State.

25 THE COURT: I'll eliminate the word "she" in

1 the third paragraph.

2 Anything on Page 7?

3 MR. GRAY: No, I have none.

4 THE COURT: All right. With Page 8? Final  
5 instructions after closing arguments are completed,  
6 notes taken by jurors, how they should act during  
7 deliberations. We'll read out the two verdict forms.  
8 Have you been provided with a copy of the verdict  
9 forms?

10 MR. TAHIR: Yes, Your Honor.

11 MS. MONTGOMERY: Yes.

12 THE COURT: Any objections to the verdict  
13 forms?

14 MR. GRAY: No, Your Honor.

15 MR. TAHIR: None.

16 THE COURT: And then it continues on on  
17 Page 9. How they should act with some closing  
18 instructions and then informing them that the exhibits  
19 will be provided to them in the jury room. And that  
20 any viewing of audio or video material that they would  
21 like to listen to or watch would have to be in open  
22 court.

23 MR. TAHIR: That's fine, Your Honor.

24 MR. GRAY: So they can't watch it in the  
25 courtroom -- or in the jury room?

1 THE COURT: They can't. I understand  
2 Hennepin has a pilot that allowed them to do that and  
3 the rule is changed, but it's not effective yet. And  
4 so based on the reading of the current rule, it  
5 specifically states that it should be watched in open  
6 court.

7 MR. GRAY: We can't waive that rule and have  
8 them look at it in there?

9 THE COURT: We can't.

10 MR. GRAY: It's a long walk to First Bank.

11 THE COURT: Stay close by.

12 MR. GRAY: Okay.

13 THE COURT: Because I anticipate they may  
14 want to watch some video, okay?

15 All right.

16 MR. GRAY: Does that go with the audio, too,  
17 Your Honor, or not?

18 THE COURT: That goes with the audio as well.  
19 So if there is nothing else, then we will be  
20 back here at 1:00. I'll make those changes and get  
21 these to you. If you wait 10, 15 minutes we'll get  
22 these to you right away, and then we will begin  
23 closings.

24 MR. TAHIR: Thank you, Your Honor.

25 MR. GRAY: Thank you, Judge.



1 THE COURT: All right. Thank you. We're in  
2 recess.

3 (A brief break was taken.)

4 THE LAW CLERK: All rise.

5 THE COURT: You may be seated. Thank you.  
6 All right. We made a few amendments to the jury  
7 instructions based on information I was provided by the  
8 Defense I had not included. Again on Page 4, the  
9 character evidence instruction that has now been  
10 included and under the impeachments, the prior  
11 conviction for impeachment had been excluded so I added  
12 that. I hope there is no objection to that.

13 MR. TAHIR: No objection.

14 THE COURT: All right. If there is nothing  
15 we need to address, I'll bring in the jurors.

16 MR. GRAY: No, Your Honor.

17 THE COURT: All right.

18 THE LAW CLERK: All rise for the jury.

19 (The jurors entered the courtroom.)

20 THE COURT: You may be seated.

21 Ladies and Gentlemen, the evidence has now  
22 been concluded and the attorneys will be making their  
23 summations and presenting their respective points of  
24 view shortly.

25 It is now my duty to instruct you on the law

1 that applies to this case, and it is your duty as  
2 jurors to follow the law as it is stated to you. I ask  
3 that you listen carefully to what I'm about to tell  
4 you. It would be helpful to know what the law is, and  
5 what your duties are, before you hear the final  
6 arguments of the attorneys.

7 I ask that you try not to take notes during  
8 my instructions. You will be given a written copy of  
9 these instructions to take with you to the jury room so  
10 that you may refer back to them if you need to. Please  
11 listen to and concentrate on what I'm about to tell you  
12 so that you have an overall framework and understanding  
13 of the law to help you understand the attorneys'  
14 arguments.

15 It is your duty to decide the question of  
16 fact in this case. It is my duty to give you the rules  
17 of law you must apply in arriving at your verdict. You  
18 must follow and apply the rules as I give them to you  
19 even if you believe the law is or should be different.

20 Deciding questions of fact is your exclusive  
21 responsibility. In doing so, you must consider all the  
22 evidence you have heard and seen in this trial, and you  
23 must disregard anything you may have heard elsewhere  
24 about this case.

25 I have not, by these instructions nor by any

1 ruling or expression during the trial, intended to  
2 indicate my opinion regarding the facts or the outcome  
3 of the case. If I have said or if I have done anything  
4 that would seem to indicate such an opinion, you are to  
5 disregard it.

6 The Defendant, Brian Kjellberg, is presumed  
7 innocent of the charges made. This presumption of  
8 innocence remains with him until and unless the  
9 Defendant has been proven guilty beyond a reasonable  
10 doubt. That the Defendant has been brought before this  
11 Court by the ordinary processes of the law should  
12 not -- and is on trial -- should not by you -- be  
13 considered by you in any way as suggesting his guilt.  
14 The burden of proving his guilt is on the State. The  
15 Defendant does not have to prove his innocence.

16 Proof beyond reasonable doubt is such proof  
17 as ordinary, prudent men and women would act upon in  
18 their most important affairs. A reasonable doubt is a  
19 doubt based on reason and common sense. It does not  
20 mean a fanciful or capricious doubt, nor does it mean  
21 beyond all possibility of doubt.

22 A fact may be proven by either direct or  
23 circumstantial evidence or by both. The law does not  
24 prefer one form of evidence over the other. A fact is  
25 proven by direct evidence when, for example, it is

1 proven by witnesses who testify to what they saw,  
2 heard, or experienced, or by physical evidence of the  
3 fact itself.

4 A fact is proven by circumstantial evidence  
5 when its existence can be reasonably inferred from the  
6 facts proven in the case. You should consider both  
7 kinds of evidence. The law makes no distinction  
8 between the weight to be given to either the direct or  
9 circumstantial evidence. It is up to you to decide how  
10 much evidence to give -- I'm sorry. How much weight to  
11 give any kind of evidence.

12 A tool described as a weapon has been  
13 introduced and admitted into evidence. It will not be  
14 given to you during deliberations. If you would like  
15 to see it and examine it, it will be provided to you  
16 with the escort of a deputy sheriff. If you make the  
17 request at any time during your deliberations, it will  
18 be brought to you, in by the deputy, for your  
19 examination. The deputy will remain in the room until  
20 you have completed your examination, then it will be  
21 retrieved. You are not to discuss the case or conduct  
22 any deliberations while the deputy is in the room.

23 During this trial, I have ruled on objections  
24 to certain testimony and exhibits. You must not  
25 concern yourself with the reasons for the rulings

1 because they are controlled by the rules of evidence.  
2 By admitting into evidence testimony and exhibits as to  
3 which an objection may have been made, I did not intend  
4 to indicate the weight to be given to such testimony  
5 and evidence.

6 You are not to speculate as to possible  
7 answers to questions I did not require to be answered.  
8 And you are to disregard all evidence I have ordered  
9 stricken and have told you to disregard.

10 You must consider these instructions as a  
11 whole and regard each instruction in light of all the  
12 others. The order in which I give the instructions is  
13 of no significance. You are free to consider the  
14 issues in any order you wish.

15 Attorneys are officers of the court. It is  
16 their duty to make objections they think are proper and  
17 argue their client's case. However, the arguments or  
18 other remarks of the attorneys is not evidence.

19 If the attorneys or I have made or make any  
20 statement as to what the evidence is which differs from  
21 your recollection of the evidence, you should disregard  
22 the statement and rely solely on your own memory. If  
23 an attorney's arguments contain any statement of law  
24 that differs from what I gave you, you are to disregard  
25 that statement.

1           You are the sole judges of whether a witness  
2           is to be believed and the weight to be given to a  
3           witness's testimony. There are no hard and fast rules  
4           to guide you in this respect, and in determining the  
5           believability of testimony. You may take into  
6           consideration the witness's interest or lack of  
7           interest in the outcome of the case, the witness's  
8           relationship to the parties, their ability and  
9           opportunity to know, remember, and relate the facts,  
10          their manner, their age, their experience, their  
11          frankness and sincerely or lack thereof, the  
12          reasonableness of their testimony in light of all of  
13          the other evidence in the case, and any impeachment of  
14          that witness's testimony. And frankly any other factor  
15          that bears on the believability and weight of that  
16          testimony. You are to rely in the last analysis upon  
17          your own experience, your own good judgment, and your  
18          own common sense.

19                A witness who has special training,  
20                education, or experience in a particular science or  
21                occupation is allowed to express an opinion as to  
22                certain facts. In determining the believability and  
23                weight to the given such opinion evidence, you may  
24                consider the education, training, experience,  
25                knowledge, and ability of that witness, the reasons

1 given for the opinion, the sources of the information,  
2 and factors already given to you on evaluating the  
3 witness's testimony. Such opinion testimony is  
4 entitled to neither more nor less consideration by you  
5 than any other evidence.

6 In deciding the believability and weight to  
7 be given the testimony of the witness, you may consider  
8 evidence that that witness has been convicted of a  
9 crime. You may consider whether the kind of crime  
10 committed indicates the likelihood the witness is  
11 telling or not telling the truth. You may also  
12 consider evidence of the witness's representation for  
13 truthfulness and also consider evidence of a statement  
14 by or conduct of the witness on some prior occasion  
15 that is inconsistent with present testimony.

16 Evidence of any prior consistent statement or  
17 conduct should be considered only to test the  
18 believability and weight of the witness's testimony.  
19 However, in the case of the Defendant, evidence of any  
20 statement he may have made may be considered by you for  
21 all purposes.

22 In this case, you have heard evidence of the  
23 Defendant's character for peacefulness, truthfulness,  
24 and representation in the community. You should  
25 consider such evidence with all of the other evidence

1 in the case in determining whether or not the  
2 Prosecution has proven the Defendant's guilt beyond a  
3 reasonable doubt.

4 The Defendant in this case is accused of the  
5 following crime -- Murder in the Second Degree, Without  
6 Intent to Kill but While Committing a Felony Assault.

7 Under Minnesota law, a person causing the  
8 death of another without intent to cause the death of  
9 any person while committing or attempting to commit a  
10 felony offense is guilty of the crime of Murder in the  
11 Second Degree.

12 The elements of Murder in the Second Degree,  
13 each of which the State must prove beyond a reasonable  
14 doubt are: First, the death of Arnell Stewart must be  
15 proven. Second, the Defendant caused the death of  
16 Arnell Stewart. "To cause" means to be a substantial  
17 causal factor causing the death. The Defendant is  
18 criminally liable for all of the consequences of his  
19 actions that occur in the ordinary and natural course  
20 of events, including those consequences brought about  
21 by one or more intervening causes, if such intervening  
22 causes were the natural result of the Defendant's act.

23 The fact that other causes contributed to the  
24 death does not relieve the Defendant of criminal  
25 liability.



1           However, the Defendant is not criminally  
2           liable if a superseding cause caused the death. A  
3           superseding cause is a cause that comes after the  
4           Defendant's acts, alters the natural consequences of  
5           events, and produces a result that would not have  
6           otherwise occurred.

7           The third element is: That the Defendant at  
8           the time of causing the death of Arnell Stewart was  
9           committing or attempted to commit the felony offense of  
10          Assault in the Second Degree.

11          It is not necessary for the State to prove  
12          the Defendant had an intent to kill Mr. Stewart, but it  
13          must prove the Defendant committed or attempted to  
14          commit the underlying felony.

15          And the elements of that underlying felony of  
16          Assault in the Second Degree are: First, that the  
17          Defendant assaulted Arnell Stewart. And the term  
18          "assault" as used in this case is the intentional  
19          infliction of bodily harm upon another. Bodily harm  
20          means the physical pain, injury, or illness or  
21          impairment of a person's physical condition.

22          And "intentionally" means that the actor  
23          either had a purpose to do the thing or cause the  
24          result specified or believed that the act performed by  
25          the actor, if successful, will cause the result. In

1 addition, the actor must have knowledge of those facts  
2 that are necessary to make the actor's conduct criminal  
3 and that are set forth after the word "intentionally."

4 And second, that the Defendant in assaulting  
5 Arnell Stewart used a dangerous weapon. A dangerous  
6 weapon is any device designed as a weapon and capable  
7 of producing death or great bodily harm, or any other  
8 device or instrumentality that, in the manner it is  
9 used or intended to be used, is calculated or likely to  
10 produce death or great bodily harm.

11 And finally, the State must prove that the  
12 Defendant's act took place on December 2, 2021, in  
13 Ramsey County.

14 If you find that each of these elements has  
15 been proven beyond a reasonable doubt, the Defendant is  
16 guilty. If you find that any element has not been  
17 proven beyond a reasonable doubt, the Defendant is not  
18 guilty.

19 The Defendant has asserted the defense of  
20 self-defense. No crime is committed when a person uses  
21 reasonable force to resist another in an offense  
22 against the person if such an offense was being  
23 committed or the personal reasonably believed that it  
24 was.

25 An "offense against the person" means an

1 offense of a physical nature with the intention to  
2 cause bodily harm, and bodily harm means physical pain,  
3 injury, and impairment of any physical condition.

4 It is lawful for a person who is resisting an  
5 offense against his person or who has reasonable  
6 grounds to believe that bodily injury is about to be  
7 inflicted to defend from that attack. In doing so, the  
8 person may use all force and means that the person  
9 reasonably believes to be necessary and that would  
10 appear to a reasonable person in such circumstances to  
11 be necessary to prevent an injury that appears to be  
12 imminent.

13 The kind and degree of force a person may  
14 lawfully use in defense of self is limited by what a  
15 reasonable person in the same situation would believe  
16 to be necessary. Any use of force beyond that is not  
17 reasonable.

18 The legal excuse of defense of self is  
19 available only to those who act honestly and in good  
20 faith. A person may use force in defense of self only  
21 if the person was not the aggressor and did not provoke  
22 the offense. The Defendant has a duty to retreat or  
23 avoid the danger if reasonably possible, except the  
24 Defendant has no duty to retreat when acting in defense  
25 of his home. The Defendant is not guilty of a crime if

1 he acted in defense of self as authorized by law.

2 To prove guilt, the State has the burden of  
3 proving beyond a reasonable doubt that one of the  
4 requirements of this defense has not been met. The  
5 Defendant has also asserted the justifiable use of  
6 force in defense of property. It is lawful for a  
7 person in lawful possession of real or personal  
8 property to use reasonable force to resist trespass  
9 upon or other unlawful interference with their  
10 property.

11 In doing so, the person may use all force and  
12 means the person reasonably believes to be necessary  
13 and that would appear to a reasonable person in similar  
14 circumstances to the necessary to resist trespass upon  
15 or other unlawful interference with that property.

16 The kind and degree of force a person may  
17 lawfully use is limited by what a reasonable person in  
18 the same situation would believe to be necessary to  
19 resist trespass upon or other unlawful interference  
20 with that property.

21 And any use of force beyond that is not  
22 reasonable.

23 Trespass is the intentional entry into  
24 another -- onto property of another, and without claim  
25 of right, refused to depart the property on the demand

1 of the lawful possessor.

2 The legal excuse of defense of property is  
3 available only to those who act honestly and in good  
4 faith. A person may act in defense of property only if  
5 the person was not the aggressor and did not provoke  
6 the trespass or the unlawful interference with the  
7 property. The Defendant has a duty to retreat or avoid  
8 the danger if reasonably possible, except the Defendant  
9 has no duty to retreat from the home when acting in  
10 defense of property.

11 The Defendant is not guilty of a crime if he  
12 acted as authorized by law in resisting trespass -- or  
13 upon or other unlawful interference with his property.

14 To prove guilt, the State must prove beyond a  
15 reasonable doubt that at least one of the requirements  
16 of the defense of property has not been met.

17 During these instructions, I have defined  
18 certain words and phrases. You are to use those  
19 definitions in your deliberations. If I have not  
20 defined a word or a phrase, you should apply the  
21 common, ordinary meaning of the word or phrase.

22 Counsel, any additions or corrections?

23 MR. GRAY: No, Your Honor. I have none.

24 MS. MONTGOMERY: No, Your Honor.

25 THE COURT: You may proceed.

1 MS. LEE: The Defendant did not like the  
2 riffraff coming into his neighborhood. He purchased  
3 his property with the intent to clean up the  
4 neighborhood. Mr. Kjellberg had been living at this  
5 firehouse for six to seven years, continuously having  
6 issues with people parking on his property, making him  
7 angrier and angrier. He was fed up. As he waited for  
8 police and the tow truck to arrive on December 2nd of  
9 2021, his anger continued to grow. Defendant had a  
10 tire deflater in his pocket, and he was ready to use  
11 it.

12 Arnell Stewart spent the day of December 2nd,  
13 2021, hanging out with his friends. They played Xbox,  
14 they talked, they might have smoked a little weed, not  
15 a big deal. It was a normal day. But later in the  
16 day, he learned that his car was parked in the wrong  
17 area, and he went to move it. All Mr. Stewart wanted  
18 to do was get in his car and leave. He was not looking  
19 for a fight.

20 Mr. Kjellberg was not going to just let  
21 Mr. Stewart go. The Defendant wanted to teach someone  
22 a lesson, and he went about it aggressively. "I'm  
23 sorry, sir," Mr. Stewart said. "Do not come on my  
24 property," Mr. Kjellberg yelled. We will now watch the  
25 surveillance video again.

1 (Exhibit 95 played in open court.)

2 We see Mr. Kjellberg standing outside  
3 waiting. We see Mr. Stewart approach the property to  
4 move his vehicle. We hear Mr. Stewart say, "I'm sorry,  
5 sir, that's my car." And Mr. Kjellberg start yelling  
6 right away, "Do not come on my property. Stay off my  
7 property." Mr. Kjellberg advances towards Mr. Stewart,  
8 and Mr. Stewart attempts to reach his vehicle. More  
9 words are exchanged as they continue to move.  
10 Mr. Stewart is talking about, "that's my car," "my  
11 car," "I want to move" -- and Mr. Kjellberg continues  
12 to tell him, "Do not come on my property. Stay off my  
13 property." Mr. Stewart asks Mr. Kjellberg to move away  
14 from his car. Mr. Stewart says, "What are you doing,  
15 shorty?" Mr. Kjellberg uses the N-word with the hard R  
16 to Mr. Stewart. A scuffle occurs which can be heard,  
17 not really seen.

18 A short time later we see Mr. Stewart walk  
19 slowly to the alley where his friend is in his car  
20 before running back to 1734 for help.

21 The State has the burden of proof in this  
22 case. As the Judge has said, it is proof beyond a  
23 reasonable doubt. You will receive all of the specific  
24 instructions, as the Judge said, when you reach  
25 deliberation. But proof beyond a reasonable doubt is a

1       doubt -- proof as ordinary men and women would use in  
2       their important affairs. A reasonable doubt is based  
3       upon common sense. It does not mean beyond any  
4       possibility of doubt.

5               The Defense in this case is exerting the  
6       defense of defense of self. "It is lawful for a person  
7       who is resisting an offense against his person and who  
8       has reasonable grounds to believe that bodily injury is  
9       about to be inflicted to defend from an attack. In  
10      doing so the person may use all force and means that a  
11      person reasonably believes to be necessary and that  
12      would appear to a reasonable person in similar  
13      circumstances to be necessary to prevent injury that  
14      appears to be imminent."

15              The kind and degree of force a person may  
16      lawfully use in defense of self is limited by what a  
17      reasonable person in the same situation would believe  
18      necessary. Any force beyond that is not reasonable.  
19      The Defendant was not acting in honesty or good faith  
20      on the night of December 2, 2021. If he was, the  
21      Defendant was would have let Mr. Stewart get in the his  
22      car and move it. He did not do that.

23              Before Mr. Stewart had arrived, the defendant  
24      went to his vehicle and grabbed a tire deflater that he  
25      intended to use to damage Mr. Stewart's tires. He



1 later changed his mind, but that tool was placed into  
2 his pocket as he waited. Twenty minutes later,  
3 approximately, Mr. Stewart arrives. And by the end,  
4 the Defendant has stabbed Mr. Stewart with that tire  
5 deflater.

6 The legal excuse of defense of self is  
7 available only to those who act in honestly and in good  
8 faith. A person may not use force in defense of self  
9 if the person was -- can only use defense of self if  
10 the person was not the aggressor, and did not provoke  
11 the offense.

12 In this case, the Defendant was the initial  
13 aggressor. He immediately yelled at Mr. Stewart, "Do  
14 not come on my property. Stay off my property," as  
15 Mr. Stewart approached wanting to move his vehicle off  
16 the property.

17 The Defendant provoked Mr. Stewart. Yelling  
18 is provoking, using the N-word with a hard R is  
19 provoking, especially to a young black man when it  
20 comes out of the mouth of an older white gentleman.  
21 Mr. Stewart was not looking for a problem that night.  
22 It's hard to controvert after watching the video that  
23 Mr. Stewart only wanted to move his car. Mr. Stewart  
24 approached politely. He said, "I'm sorry, sir." He  
25 asked to move his car. He apologizes. He didn't know.

1 He just wanted to move his car.

2 Mr. Stewart was met with aggression from  
3 Mr. Kjellberg, who yelled at him the entire time.  
4 Mr. Kjellberg used unreasonable force. The Defendant  
5 intentionally put the tool in his pocket. He admitted  
6 in his testimony that he grabbed this puncturing device  
7 with intent to damage Mr. Stewart's tires. He knew it  
8 was in his pocket. The force used by Mr. Kjellberg was  
9 unreasonable. He did not push or shove Mr. Stewart.  
10 The Defendant had means of force that were reasonable  
11 that were available to him and chose not to use them.

12 Mr. Stewart was described by the Defendant in  
13 his interviews in his statements to police as a thin,  
14 5'7" young man. The Defendant is noticeably big.  
15 You've seen him here in court. You saw him as he  
16 approached the witness stand today. Mr. Sonsalla  
17 described the Defendant as a big individual, yet he did  
18 not shove or push Mr. Stewart away, who was a thin,  
19 5'7" individual.

20 In one interview the Defendant says,  
21 "Stabbing him is better than shooting him." But it's  
22 not better than the reasonable options he chose not to  
23 employ on that night. Retrieving a tool from his  
24 pocket and stabbing Mr. Stewart is unreasonable.  
25 Stabbing with so much force that the tool pierced

1 Mr. Stewart's skin, fractured his rib, and punctured  
2 his heart is unreasonable.

3 Defense may say it was reasonable in a  
4 split-second decision to take the tool and shove it at  
5 Mr. Stewart. However, the reasonable options that were  
6 skipped over would have taken less time than rummaging  
7 through his pockets, grabbing the tool, and shoving it  
8 at Mr. Stewart. Shoving, pushing, punching, those  
9 would have been quicker, and reasonable force to use.

10 The Defendant has a duty to retreat or avoid  
11 the danger if reasonably possible, except the Defendant  
12 has no duty to retreat when acting in defense of self  
13 in his home. In this case, he was not in his home. He  
14 had a duty to retreat or avoid the danger.

15 His car was in the lot. He didn't go into  
16 his car and leave. He waited outside. He continued to  
17 advance towards Mr. Stewart as Mr. Stewart approached  
18 him. He did not attempt to retreat. The defense of  
19 property elements match up with the defense of self  
20 elements. For all of the reasons I've gone through,  
21 defense of property does not apply in this case.

22 The Defendant did not act honestly or in good  
23 faith in the situation. He did not retreat. He used  
24 unreasonable force. And for all those reasons, this  
25 defense and self-defense do not apply in this case.

1           What the Defendant is charged with is Murder  
2           in the Second Degree Without Intent While Committing a  
3           Felony. Under Minnesota law, a person causing the  
4           death of another without intent to cause the death  
5           while committing a felony offense is guilty of the  
6           crime of Murder in the Second Degree.

7           Here are the elements. First, the death of  
8           Arnell Stewart must be proven. Mr. Stewart's death was  
9           proven. Dr. Froloff testified that he died in the  
10          hospital operating room. He then later performed an  
11          autopsy. His death was ruled a homicide due to a stab  
12          wound.

13          Second, the Defendant caused the death of  
14          Arnell Stewart. This has been proven. The Defendant  
15          admits that he stabbed him. But for the Defendant  
16          stabbing Mr. Stewart, he would not have died.  
17          Dr. Froloff came in and testified about the  
18          circumstances surrounding his death, why he ruled it a  
19          homicide, what it looked like inside of his body.

20          "To cause" means to be a substantial causal  
21          factor in causing the death. The Defendant is  
22          criminally liable for all consequences of his actions.  
23          As I said, Mr. Kjellberg stabbing Mr. Stewart was the  
24          cause of his death. If that had not happened at that  
25          time, the Defendant [sic] would not have died

1 surrounding those circumstances.

2 Dr. Froloff also testified that when he  
3 examined the body, he did a full exam and there were no  
4 other things that stuck out to him. There was no other  
5 cause of death besides the stab wound that was caused  
6 by Mr. Kjellberg.

7 Third, Defendant, at the time of causing the  
8 death of Arnell Stewart, was committing or attempting  
9 to commit the felony offense of Assault in the Second  
10 Degree. It is not necessary for the State to prove the  
11 Defendant had the intent to kill Mr. Stewart, but it  
12 must be proved the Defendant committed or attempted to  
13 commit the underlying felony.

14 The elements of Assault in the Second Degree:  
15 First, the Defendant assaulted Arnell Stewart. We know  
16 this. It's been proven. He admitted stabbing him.  
17 The term "assault" as used in this case is the  
18 intentional infliction of bodily harm upon another.  
19 The stabbing, it caused harm. He intentionally  
20 inflicted that bodily harm. Bodily harm means physical  
21 pain or injury. We saw the wound. Dr. Froloff  
22 explained what that wound would do to the body, the  
23 blood being expelled from the heart with every pump.

24 "Intentionally" means "the actor either had a  
25 purpose to do the thing or cause the result specified

1 or believes that the act performed by the actor if  
2 successful will cause the result." Mr. Stewart -- the  
3 Defendant knew the tool he had in his pocket was a tire  
4 deflater. He knew that it was used to puncture tires.  
5 He knew that if he hit Mr. Stewart with it, it would  
6 cause bodily harm.

7 Second, Defendant, in assaulting Arnell  
8 Stewart, used a dangerous weapon. A dangerous weapon  
9 is any device designed as a weapon and capable of  
10 producing death or great bodily harm or any other  
11 device or instrumentality that, in the manner that it's  
12 used or intended to be used, is calculated or likely to  
13 produce death or great bodily harm.

14 As I said, this tire deflater was sharp. It  
15 was made to puncture and damage tires. Hitting someone  
16 in the chest with it, it is known that that would cause  
17 bodily harm -- great bodily harm. It produced a wound  
18 that was around eight centimeters deep. It went  
19 through the skin, through the ribs, into the heart.  
20 That element is also met.

21 The last element is that the Defendant's acts  
22 took place on or about December 2nd, 2021, in Ramsey  
23 County. We've heard testimony from law enforcement,  
24 from the Defendant, we've seen video that proves that  
25 this did take place on December 2, 2021, in the area of

1 Seventh Street and Flandrau, which is in St. Paul,  
2 which is located in Ramsey County, Minnesota. This  
3 element has also met.

4 The Defendant lives on the east side of  
5 St. Paul and bought this property to clean up the  
6 neighborhood. He believes he's surrounded by riffraff.  
7 He's angry because he hasn't received the help that  
8 he's been asking for for years. He's called the police  
9 multiple times, and they haven't always showed up.

10 The Defendant testified that he started  
11 yelling at Mr. Stewart as he approached. He testified  
12 that he intentionally put that tool in his pocket, and  
13 he intended at some point to use that tool to deflate  
14 tires -- although in his Miranda interview he tells  
15 Sergeant Zebro that he never intended to use it to  
16 deflate tires. It just happened to be in his pocket  
17 when he left the house that day, which we know is not  
18 true based on the Defendant's testimony here in Court.

19 He did -- he went to his vehicle to retrieve  
20 the tool. He later changed his mind, but he knew he  
21 had it in his pocket the entire time. He testified  
22 that it was maybe 20 minutes between the time he  
23 grabbed the tool and the time he used it.

24 When the scuffle ensued, he said it was a  
25 couple-second, a split-second decision, but he had the

1 time to rummage in his pocket and find the tool and  
2 shove it at Mr. Stewart, stabbing him. There should be  
3 two sides to this story, but there is only one, and  
4 that's the Defendant's side because he killed  
5 Mr. Stewart and he's not here today.

6 Here is what we know: Mr. Stewart approaches  
7 the property to move his vehicle. It's an easy fix to  
8 the issue. His vehicle is not impeding Mr. Kjellberg  
9 leaving his property. He had room to get in his car  
10 and leave. The Defendant says in his interview, if  
11 Mr. Stewart had been personable, he would have let him  
12 take the car. He says, if he would have said, "Oh,  
13 sorry. My mistake," he would have let him take the  
14 car. Mr. Stewart did say that. We saw it in the  
15 video. The first thing he says when he approaches is,  
16 "I'm sorry, sir." We hear later -- he says, "I  
17 apologize." He didn't know.

18 And the Defendant did not let him leave.  
19 There was a struggle between the two parties and the  
20 Defendant killed Mr. Stewart. He stabbed him with such  
21 great force that in Stewart's rib was fractured and his  
22 heart was punctured. The State of Minnesota asks you,  
23 Ladies and Gentlemen of the jury, to find the Defendant  
24 guilty and hold him accountable for his actions on  
25 December 2nd of 2021. Thank you.



1 THE COURT: You may proceed.

2 MR. GRAY: Good afternoon, Ladies and  
3 Gentlemen. I'm going to talk with you about this case.  
4 I'd like to clear up a couple issues first. His Honor,  
5 Judge Castro, told you what you hear and see is the  
6 evidence in this case. It's not what the lawyers say.  
7 When the prosecution says, "He moved in to clean up the  
8 neighborhood," I don't remember hearing that. I don't  
9 remember him ever being involved in cleaning up this  
10 neighborhood.

11 When the prosecution says, "He got angrier,  
12 and angrier standing out there waiting for the  
13 vehicle" -- or excuse me, "the squad." I don't hear  
14 any evidence of that. Anybody say he got angrier and  
15 angrier? When he said Kjell-- when she argued that  
16 Kjellberg was aggressive? Well, all he said was, "Stay  
17 off my property." And this fellow ignored that.

18 And I didn't hear -- and you can listen that  
19 video all you want, and you'll never hear, "I'm sorry,  
20 sir." As a matter of fact, there wasn't a transcript  
21 of it because that was not legible [sic] because it  
22 wasn't said. "Sir" is heard but nothing else. And  
23 "sir" was said right before he went on Mr. Kjellberg's  
24 property.

25 So, remind -- rely on your own memory and the

1 exhibits and the evidence that you remember and that  
2 you feel is reasonable. Don't listen to me actually,  
3 but I'm going to try my best not to misquote any of the  
4 evidence in this case.

5 One more absurd -- is why didn't  
6 Mr. Kjellberg get in his car and go? What kind of  
7 reason and logic is that? A man has to leave his own  
8 property, his parking lot, because somebody wants his  
9 car? And get in his car and leave? That's not what  
10 this country is made of. You -- that's your property.  
11 And you listen to the law that the Judge gives you --  
12 that he's already given you, excuse me.

13 Trespass, you tell somebody to stay off your  
14 property, the law is you stay off his property. And in  
15 this case all the way through -- when you talk about  
16 good faith, he had called the police, Ladies and  
17 Gentlemen, twice. And the first time we learned they  
18 weren't intending to come anyway, but they told him  
19 they were going to come. And the second time he called  
20 the police, he had been beaten by Mr. Stewart, the  
21 friendly Mr. Stewart. Well, let's go back. That's my  
22 response to argument of evidence that didn't exist.

23 I'm going to give an argument now and argue  
24 the evidence that I believe exists, and the direct  
25 evidence which is what you see and hear, and the Judge

1 has told you that, and circumstantial evidence that you  
2 can reasonably infer something else from.

3 And before I get there, however, there's  
4 something that the Judge has told you I think three or  
5 four times now: That my client is presumed innocent.  
6 And Ladies and Gentlemen of the jury, I can't  
7 remember -- I don't believe any of you have been on a  
8 jury before.

9 Presuming somebody innocent is something  
10 you've never done before, because when you read the  
11 paper or are going through life and they've arrested  
12 Sam or Joe, you believe, "Oh, good. They've got the  
13 guy. Thank God." But in this courtroom, under our  
14 system of justice, you have to presume that they didn't  
15 get the guy -- that the government, the State, is  
16 wrong. And that presumption lies with my client until  
17 and if the State proves its case beyond a reasonable  
18 doubt.

19 Beyond a reasonable doubt is if -- you would  
20 act upon in your most important affairs of your life.  
21 And make no mistake about it, this is Mr. Hallberg  
22 [sic] 51 year old, retired, 100 percent disabled. This  
23 is his -- most important in his life, and it should be  
24 yours.

25 And that presumption of innocence and proof

1 beyond a reasonable doubt is a constitutional right  
2 that we all have. What the main right after that --  
3 that you all should appreciate is your right to a jury.  
4 When you -- when the State goes after their -- federal  
5 or State, the government goes after you, you have a  
6 right to your peers to decide whether or not the  
7 government, the State, had gotten it right. And in  
8 doing that, you enforce the two other constitutional  
9 rights, the presumption of innocence and proof beyond a  
10 reasonable doubt.

11 And you may ask yourself, "Well, why is  
12 that?" Well, think about it over -- just think about  
13 this case. This guy -- his statement. He comes out  
14 his -- comes to his house two days later, and his house  
15 is trashed. His door is broken down, and who did it?  
16 Law enforcement, search warrants. Would he -- his  
17 glasses were there on that car. What happened to them?  
18 We don't know. The police officer lies to him, and  
19 we'll get to that. But he stood up for his rights on  
20 that.

21 So what you're doing by applying the  
22 presumption of innocence and proof beyond a reasonable  
23 doubt is equaling in the field, leveling the field. So  
24 that a citizen of our country can have the right to a  
25 fair and just trial. And that's why you were picked as

1 jurors, because you appeared to be fair and just and  
2 reasonable, and we would expect you to enforce the  
3 constitution.

4 Presumption of innocence is very important.  
5 You have to presume in this case that Mr. Kjellberg had  
6 the right to self-defense, and you have to presume that  
7 until and if the State proves beyond a reasonable  
8 doubt -- and that's the most important affairs in your  
9 life -- you have to presume that until and if the State  
10 proves that.

11 And Ladies and Gentlemen, in this case they  
12 simply haven't proved it. On the evidence that we have  
13 here, they've proved that my client used reasonable  
14 force throughout this evening.

15 I'm going back to -- that he moved into this  
16 neighborhood to clean it up. You've heard neighbors --  
17 you've heard people testify about Mr. Kjellberg.  
18 You've seen him there; you've seen him on the stand.  
19 Does he appear to be the kind of guy that you wouldn't  
20 want as a neighbor? Yes, you'd want him as a neighbor.  
21 That's a character assassination that should have never  
22 occurred in this courtroom. In any event, there is  
23 another character -- piece of character evidence that  
24 you have: That three witnesses took the stand, and  
25 those three witnesses knew my client -- our client,

1 Mr. Kjellberg, for years.

2 And what do they say? They say he's honest,  
3 he's peaceful, and he's a gentleman. And the Judge has  
4 told you in his instructions you can consider that in  
5 deciding whether or not Mr. Kjellberg reasonably used  
6 self-defense. That's part of this case. That's part  
7 of the evidence.

8 On the other hand -- at the same time, the  
9 McMath brothers, they both have felony convictions.  
10 Mr. Stewart, he was ordered to not violate the law by a  
11 court what, seven years -- seven days before this  
12 incident? Wouldn't you think that would stop him from  
13 assaulting my client, beating him, a 51-year-old man?

14 And this idea that he's bigger than  
15 Mr. Stewart, the autopsy -- Mr. Stewart was 171 pounds  
16 and 5'11. And you've seen him in the video. He isn't  
17 a small man. He's average size. So that idea that  
18 he's short and weak doesn't fly.

19 So what do we have? We have an instruction  
20 by the Judge that's extremely important, and I'm not  
21 going to talk about the crime itself and the elements  
22 like the State did because it's not necessary. The big  
23 issue in this case -- the big issue in this case is:  
24 Did Mr. Kjellberg have the right under our law, reason,  
25 and common sense to use the defense of self-defense?

1           And when you decide that, the Judge gives you  
2           the instruction and that instruction is extremely  
3           important. That instruction says, "It is lawful for  
4           any -- "for a person who is resisting an offense  
5           against his person" -- well, let's see. It's not  
6           disputed by the State that my client was hit three or  
7           four times. You saw the bruise, you see the back, you  
8           see on that video him being knocked into the rock pile.

9           Somebody did that, and that was Stewart. And  
10          when he did that, when he assaulted him, he said to my  
11          client, "What you doing, boy?" That you can hear. And  
12          then hit my client and knocked his phone right out of  
13          his hand. Hit him again, hit him again while Kjellberg  
14          was backing up, and that's the evidence. That's what  
15          my client said, that's what he said to the police  
16          officer at the scene, and the body camera vid-- audio  
17          that he didn't know what was going on, he said it there  
18          and he said it later, for an hour and 15 minutes to  
19          Zebro, that that's what happened. Where is the  
20          evidence that that didn't happen? None. And they have  
21          the duty to prove beyond a reasonable doubt. They  
22          haven't proved it at all. But let's go further.

23          Reasonable grounds to believe that bodily  
24          injury is about to be inflicted to defend from an  
25          attack. Well, we can change that. He had reason to

1 believe because he was being assaulted when this  
2 happened. When he was hit by Stewart two or three or  
3 four times is when he took the tool out and shoved it  
4 forward.

5 "It is unlawful for a person who is resisting  
6 an offense," which is an assault, "against his person  
7 and believes that bodily injury is about to be  
8 inflicted," which it was. It was inflicted, "to defend  
9 from an attack." And what was this? Ladies and  
10 Gentlemen, it was an attack. It was an attack by a  
11 30-year-old man attacking a 51-year-old out-of-shape  
12 man who doesn't like to fight, who has 100 percent  
13 disability, who was told by a doctor that he should not  
14 get hit in the head again three years ago, two and a  
15 half years ago when he had a traumatic brain injury.  
16 And all of that is in his head while he's backing up  
17 trying to defend himself from a guy that's assaulting  
18 him. And it says in this instruction, "In doing so,  
19 the person may use all force" -- all force. It means  
20 "that the person reasonably believes to be necessary."

21 We'll stop there. What would a reasonable  
22 person -- and you're reasonable jurors. That's why you  
23 were picked. But what would a reasonable person do in  
24 an alley like that being knocked backwards with his  
25 disabilities, knowing that he shouldn't get hit in the



1 face anymore? Not knowing when it's going to stop,  
2 what can you do? He's got one defense. Pull out the  
3 tool and try to shove it into him and hope he goes  
4 away. And he did that. He did that.

5 And when that happens it's not sitting here  
6 in this courtroom and saying, well, he shouldn't have  
7 done that. I'm sure he wishes he hadn't, but the --  
8 seconds -- when you see that phone light fly in the  
9 video and the scuffle that you saw, that was what, two  
10 three seconds? And what does a person, a reasonable  
11 person during -- it's not sitting back watching over  
12 something. It's right there. You're in it. I think  
13 some of you had mentioned you've been in fights before.  
14 They only last a couple seconds.

15 In this one he was pummeling my client. My  
16 client was backing up, as he should not have done. He  
17 should not have been required to. He's backing up,  
18 being hit. He's -- defends himself with the tool and  
19 then he's hit again, and he's knocked in the rock pile.  
20 And you see that part of it on that video. They don't  
21 shy away from that. They go, "Oh yeah. Mr. Stewart  
22 hit him in the face but that's all right because he's  
23 Kjellberg and he's helping clean up the neighborhood  
24 and he's angrier and angrier." That's not all right.  
25 That's not all right for a guy who is ordered by a

1 Judge to behave himself, to come on property and not  
2 wait for the police. When Mr. Kjellberg said, "I'm  
3 calling the police. I've called the police," is when  
4 this assault started. Because Stewart said, "What you  
5 doing, boy?" And that's when the assault started.

6 Is it reasonable? "In doing so, the person  
7 may use all force and means that the person reasonably  
8 believes to be necessary," that the individual does,  
9 Mr. Kjellberg, "reasonably believes to be necessary and  
10 that would appear to a reasonable person in similar  
11 circumstances to be necessary to prevent an injury that  
12 appears to be imminent."

13 So, this instruction you're getting is "in  
14 similar circumstances." Well, the reasonable person is  
15 going to have to be 51, out of shape, 100 percent  
16 disability, and just suffered within three years a  
17 traumatic brain injury and been told by a doctor he  
18 didn't -- shouldn't get another one. He shouldn't get  
19 hit in the head. All that is going through his mind in  
20 that two seconds in that alley in the back.

21 And how does he save himself? The only save  
22 he had on him was that tool, and he shoved it out at  
23 him, and he came running -- he was on him. He could  
24 have backed up if he saw it. We don't know. But we do  
25 know this, he walked away or he ran away. And he ran

1 down to a white car that was one of the McMaths at the  
2 corner, and then he ran all the way back to his house.  
3 So, as far as Mr. Kjellberg knew -- he didn't know how  
4 badly he was hurt. How would he know that? He thought  
5 he was back at his house.

6 "The kind of force a person may lawfully use  
7 in defense of self is limited to what a reasonable  
8 person in the same situation would believe to be  
9 necessary." Well, what would a reasonable person --  
10 put the reasonable person out there in that alley, and  
11 he's trying to call the cops and somebody boom, boom,  
12 boom hits him and he's backing up? On his own  
13 property. Backs up towards a rock pile and gets  
14 knocked into the rock pile right after he shoved a tool  
15 at him. What would a reasonable person do in that  
16 case? And the other part of that, the excuse of  
17 defense of self is available only to those who act  
18 honestly and in good faith.

19 Well, I ask you, Ladies and Gentlemen of the  
20 jury: Did Mr. Kjellberg act honestly and in good  
21 faith? My goodness. He called the police, and then he  
22 called the police again right before he was assaulted.  
23 That's being in good faith. You're not trying to get  
24 by with anything. You want the police there.

25 And when he called the police the second

1 time, the phone was on the ground broken, you saw it,  
2 which is circumstantial evidence, that phone being  
3 cracked, that this wasn't a friendly situation -- that  
4 when he got hit that phone flew, and he got hit hard.  
5 The bruise on his face is a bruise. And the other --  
6 chin, you don't bruise your chin much. And he said he  
7 was hit in other places, too. And you saw the redness  
8 of his back that he realized later -- after his  
9 interview with the investigator at the police  
10 station -- he realized he did injure his back.

11 So, did he act honestly and in good faith?  
12 The State surely did not prove beyond a reasonable  
13 doubt that he did not, and that's what they have to  
14 prove. He did not. He acted honestly in good faith.  
15 He called the police. From the beginning he called the  
16 police. Why in the world did they tell him they were  
17 coming and they didn't come? He waited over  
18 20 minutes. He was acting in honesty -- and good  
19 faith.

20 "A person may use force in defense of self  
21 only if the person was not the aggressor." Well, was  
22 he the aggressor? No. He was calling the police. How  
23 can the State with a straight face argue to you that he  
24 was the aggressor? It wasn't -- listen -- remember the  
25 evidence. Look at the video. He wasn't the aggressor.

1 This man wouldn't have gone out and tried to hit  
2 Mr. Stewart. He just wanted the police to come.  
3 That's all he wanted. Stewart didn't want it. Stewart  
4 wanted his car. He wanted to get out of there. So  
5 what does he do? He starts pummeling Mr. Kjellberg.

6 So he wasn't the aggressor. Even though --  
7 there is no evidence that he was the aggressor because  
8 he wasn't and he didn't provoke the offense. You  
9 cannot provoke the offense by calling the cops, can  
10 you? You only provoke the offense when you call the  
11 cops when you have some person next to you that doesn't  
12 want the cops called, and who would that be?

13 Mr. Stewart.

14 And the most important part is that there is  
15 still a presumption of innocence. And he's presumed  
16 innocent of this crime. In other words, the State has  
17 to go over that burden of presumption of innocence and  
18 then prove the case -- the lack of self --  
19 reasonable -- the lack of reasonable -- beyond a  
20 reasonable doubt. The kind of proof -- the kind of  
21 proof you would act upon in the most important affairs  
22 of your life. Think about it for a minute. Place a  
23 reasonable person in that position and that alley. I  
24 don't think it's that difficult to decide. The State  
25 didn't prove its case beyond a reasonable doubt.

1           The defense of property -- it's interesting.  
2           The Judge has instructed you about trespass. You know,  
3           this -- Mr. Stewart -- my client said, "Stay off my  
4           property." Why didn't he? The instruction says that  
5           if you're told to stay off somebody's property, you  
6           can't go on it. That's the law. That's the law that  
7           we live by. That's the law that protects all of us.  
8           And when that law is violated it's a crime. Because he  
9           ignored it. He may have said, "sir," but he kept  
10          walking. He kept walking and my client kept backing up  
11          and he said, No, I'm calling the cops.

12                 And by the way, as far as him -- Stewart  
13          saying that he was -- or that the State, I'm sorry,  
14          said that Stewart said, "I'm sorry, sir," coming up  
15          there, which you don't hear. You hear "sir", but you  
16          don't hear "I'm sorry." My client said in a statement  
17          to the police, Zebro, that if he had said that, that he  
18          was sorry, he probably would have let him get the car.  
19          So what other evidence is there that I'd like to call  
20          the evidence of innocence? Go over the evidence and  
21          why it's the evidence of innocence.

22                 The Judge has instructed you already. So the  
23          first one, of course, I've already mentioned is the  
24          character -- and I might be a little longer than the  
25          State, because they get to come back up here and argue

1 again. It's called rebuttal. They're not supposed to  
2 say anything except something that I said that they  
3 didn't cover, and I suspect that they will rebut  
4 something. But I guarantee you, if there was a  
5 surrebuttal, I'd be able to -- whatever they say,  
6 answer it.

7 Now, a corroboration of -- as to what  
8 Mr. Kjellberg was thinking -- there's a lot in the  
9 consistent statements he made, and we'll go over those  
10 rather quickly. First of all, the 911 calls. He made  
11 a 911 call -- first, he didn't make a 911 call. He  
12 called to have the police come out. And we learned in  
13 this trial that the police were not intending to come  
14 out that night. He didn't know that. It might have  
15 been nice to be told. So he's standing there, and  
16 he -- he's waiting for the police to come and that  
17 would be the first call.

18 The second call he's going to start calling  
19 911, and it's knocked out of his hand -- circumstantial  
20 evidence proves that because of the broken phone, which  
21 wasn't broken before, and also what the dispatcher  
22 said. Because there was a space there where he was  
23 getting beat and it [sic] said "Hello? Hello, sir?"  
24 If you remember that.

25 And then the body camera at the scene, when

1 Mr. Kjellberg went to meet the police -- they didn't  
2 tell him this, but they recorded what he told them.  
3 And what he told them was clearly totally consistent  
4 with what happened.

5 A couple inconsistencies, maybe, but he had  
6 just been pummeled and he was shook up. He told you  
7 that. The main statements were completely consistent.

8 Now, we go to the police station. And by the  
9 way, he never asked for a lawyer at the body camera --  
10 which he didn't know was being recorded. But we go to  
11 the police station. And what does he tell Zebro? He  
12 says, I've had medical issues, and he quit work because  
13 of it. He told them he had three signs up out there.  
14 Accurate. He said he had made calls before, but he  
15 said also that in the last six months, there hasn't  
16 been much activity. And then he says -- and it's  
17 important that he told Zebro when he was hit, he did  
18 not know what was happening when he was knocked to the  
19 ground. He said that, to Mr. Zebro. And he was  
20 concerned about -- he told Mr. Zebro that he suffered  
21 from a traumatic brain injury, and he was concerned  
22 about the repetitive blows to the head.

23 Take that instruction and what would a  
24 reasonable person be concerned about in his condition?  
25 The repetitive blows to his head. He had to stop it.



1       What would have happened, and he says it here. He's  
2       trying to back away. He loses his phone, his glasses.  
3       He'd picked up the phone when it was on the ground and  
4       he said, "We need help right away." That's what he  
5       told Zebro and that's exactly what he said to law  
6       enforcement. He's being honest. He had to defend  
7       himself, he told Zebro. He did not want another  
8       concussion. He told him he was 100 percent disabled,  
9       which he is. And they expect -- the State expects him  
10      to what, to fight this man?

11             The officer said, well, you've got a  
12      legitimate complaint. Says he completely understands  
13      what Mr. Kjellberg is telling him. But then, in the  
14      middle of this statement or a little bit before the  
15      middle, Zebro tells him, well, there is [sic] people at  
16      the house that aren't seeing what you say.

17             And now think about this. Mr. Kjellberg is  
18      told that. By somebody -- by Zebro and he knows it's a  
19      lie because if they saw what happened, he knows what  
20      happened. So what does Mr. Kjellberg say? He says,  
21      "You're lying." That's what he says. And Zebro, [sic]  
22      he said, "Don't accuse me of lying." And Zebro backed  
23      off because he realized that that little trick to say,  
24      "well, we saw it differently" didn't change  
25      Mr. Kjellberg's position that this was what happened.

1           Why does he know that? He was the one there.  
2           He was there. He knew that Zebro was not telling the  
3           truth, and we know that from our common understanding  
4           of law enforcement on TV and what -- that they  
5           sometimes stretch the truth in an attempt to get a  
6           statement.

7           He -- he says again, "I didn't want to get  
8           assaulted." He "didn't know he was going to hit me."  
9           "I didn't know he was going to hit me. I didn't want  
10          to get assaulted." He doesn't like to fight.  
11          Page 40 -- are we to defend ourselves -- defend  
12          yourself or just take it? You are getting punched,  
13          this is what he's telling Zebro. Defend myself or just  
14          take it? Are you required to take it because the guy  
15          doesn't want to wait for the cops? Just take it when  
16          you get attacked.

17          And then he says something very interesting.  
18          Mr. Kjellberg says, "I don't know how long he is going  
19          to attack me," and he didn't. And then he says, "I  
20          could be dead." Well, that's what was going through  
21          his mind, Ladies and Gentlemen. When you're assaulting  
22          somebody that has -- is in his condition and his mind  
23          is thinking, if I get another one of these traumatic  
24          brain injuries, I might die. He had to do something.  
25          And what he did was reasonable -- and similar

1 circumstances, remember that. In similar circumstances  
2 would be Mr. Kjellberg at that rock pile.

3 He then says, "I have a TBI. I value my  
4 life." And then he says, "I stabbed him to protect  
5 myself from getting assaulted further." At that point,  
6 Zebro pops it on him, "Well, Mr. Stewart's dead. He  
7 passed." And you see, as far as honesty and good faith  
8 and compassion for mankind -- you see Mr. Kjellberg  
9 react totally differently. You see -- he puts his head  
10 down. He wipes his eyes. He's shook up. So our next  
11 period of time he's crying, he's got his eyes -- tears  
12 and his voice is cracking.

13 He cooperates about his phone. Gives him  
14 that. The police get search warrants. He gives them  
15 their [sic] keys, but they get search warrants anyway.  
16 Break his door down. Ransack his house.

17 Ladies and Gentlemen of the jury, this is a  
18 two-second incident and you cannot use hindsight to  
19 determine Mr. Kjellberg's guilt or innocence. You have  
20 to take the seconds, two seconds he said -- he thought  
21 two or three seconds this whole thing happened, that's  
22 what he testified to. And he had the right to defend  
23 himself, or he would be dead. His own words.

24 And he's -- what would a reasonable person do  
25 in a similar situation? And besides common law,

1 criminal law, and self-defense and all that, how about  
2 some reason and common sense? Think about it. Reason  
3 and common sense tells you, you've got to do something  
4 when you're getting pummeled and you've just had a  
5 traumatic brain injury a couple of years before that.  
6 And this -- seconds -- I'll be done in a couple  
7 minutes, but the seconds -- that this occurred, think  
8 about this for a minute. This was a quote from an  
9 individual a while ago.

10 "In looking at the reasonableness in a  
11 situation like this, you must embody the allowance for  
12 a split-second judgment. In circumstances as in this  
13 case that are tense, uncertain, rapidly evolving in  
14 determining the amount of force you should use and  
15 whether you should retreat." Well, he was retreating.  
16 With -- the amount of force he used was a split-second  
17 decision, and it was reasonable. It -- clearly,  
18 clearly the State did not prove beyond a reasonable  
19 doubt that it was unreasonable.

20 Ladies and Gentlemen, I'm done. They will  
21 now talk to you, and, rebut what I've said but rely on  
22 your own memory. And if you do that and you apply the  
23 law that the Judge gives you, the only verdict in this  
24 case can be not guilty. Thank you.

25 THE COURT: Is there any rebuttal?

1 MS. LEE: Briefly, Your Honor.

2 THE COURT: All right. Just to correct any  
3 statements of law or fact?

4 MS. LEE: The Defense made a statement that  
5 the Defendant shouldn't need to get in his car and  
6 leave his own property. He didn't need to get in his  
7 car and leave, but he could have simply waited inside  
8 of his car until the police arrived. The Defense has  
9 asked you to use your common sense. "What you doing,  
10 boy?" Or "What you doing, shorty?" Whatever was said  
11 by Mr. Stewart is in response to letting -- to the  
12 Defendant not letting him get to his car. You can use  
13 common sense.

14 The State is not conceding that the Defendant  
15 was punched. You can't see what happens on the video.  
16 You can hear a scuffle. The only statement that we  
17 have is from the Defendant, who has the highest  
18 interest in the outcome of this case.

19 The Defense asked that you consider the  
20 character in this case. He brought up Mr. Larry and  
21 Marcel McMath. I want you to remember that Shawna  
22 Edwards came in to testify. She told us that she was a  
23 close friend of the Defendant. She had known him for  
24 many years, but she also told us that the McMaths and  
25 Ms. Marie Gagnon, who lived at 1734, she knew as nice

1 decent people. Remember that.

2 Lastly, in order to prove guilt, the State  
3 has the burden of proving beyond a reasonable doubt  
4 that one of the requirements of self-defense has not  
5 been met. As you go into deliberations keep that in  
6 mind as well. Thank you.

7 THE COURT: Ladies and Gentlemen, you have  
8 been allowed to take notes during the trial. You may  
9 take those notes with you to the jury room. You should  
10 not consider those notes as binding or conclusive,  
11 whether they are your notes or those of another juror.  
12 The notes should be used as an aid to your memory and  
13 not as a substitute for it. It is your recollection of  
14 the evidence that should control. You should disregard  
15 anything contrary to your recollection that may appear  
16 on your notes or the notes of a fellow juror.

17 You should not give greater weight to a  
18 particular piece of the evidence solely because it is  
19 referred to in a note taken by a juror.

20 When you deliberate, there are certain things  
21 that you must not consider, and these are as follows:  
22 The necessity, advisability, or desirability of the  
23 prosecution of this alleged crime. These are matters  
24 that are not properly the concern of the jury.

25 The consequences of your verdict. The matter

1 of punishment if the Defendant is found guilty is  
2 solely the concern of the Court, and you are not to  
3 speculate on it or consider it in any way in your  
4 deliberations. And feelings of prejudice, bias, or  
5 sympathy for either the Defendant or the State. You  
6 are to take a neutral position and decide the case on  
7 the evidence and the law.

8 During your deliberations, you should  
9 consider, examine, and weigh with care, calmly and  
10 objectively, all of the evidence in this case. You  
11 should subject the evidence to the scrutiny of your  
12 judgment as persons of experience and common sense and  
13 you should draw from that evidence such conclusions as  
14 you believe to be fair and reasonable.

15 When you reach a verdict it must be agreed  
16 upon by all of you. In other words, your verdict must  
17 be unanimous. You will be given two verdict forms.  
18 These are the guilty and not guilty forms for Murder in  
19 the Second Degree, without Intent While Committing an  
20 Assault. You should use whichever form is appropriate  
21 to your verdict. I will read the forms to you. Do not  
22 draw any conclusions from the order in which I read  
23 them.

24 And the forms read: State of Minnesota,  
25 District Court, County of Ramsey, Second Judicial

1 District, State of Minnesota, Plaintiff, versus Brian  
2 Harry Kjellberg, Defendant. Verdict of Not Guilty.  
3 That being Court File 62-CR-21-6868. We, the jury,  
4 find the Defendant not guilty of the charge of Murder  
5 in the Second Degree. There is a line for the  
6 presiding juror to sign and to date.

7 The other form is: State of Minnesota,  
8 District Court, County of Ramsey, Second Judicial  
9 District. State of Minnesota, Plaintiff, versus Brian  
10 Harry Kjellberg, Defendant. Verdict of Guilty. Court  
11 File Number 62-CR-21-6868. We, the jury, find the  
12 Defendant guilty of the charge of Murder in the Second  
13 Degree. There is a line for the presiding juror to  
14 sign and to date.

15 When you reach a verdict, the presiding juror  
16 should sign and date the appropriate verdict form. The  
17 first thing you should do when you retire to the jury  
18 room is select one of your members of the jury to  
19 preside over your deliberations. When all of you are  
20 in agreement on a verdict, you will return to the  
21 courtroom where your verdict will be read in open court  
22 in the presence of the Defendant and the attorneys.  
23 Please return all of the verdict forms, including the  
24 one you did not use.

25 I suggest that when you retire to the jury



1 room you conduct your deliberations in a conscientious  
2 and business-like manner and that you give respectful  
3 and attentive consideration to the views of your fellow  
4 jurors. Each of you has a duty to consult with one  
5 another and to deliberate with a view toward reaching  
6 an agreement if you can do so. Each of you must, of  
7 course, decide the case for yourself, but only after an  
8 objective consideration of the evidence with your  
9 fellow jurors. No juror should hesitate to reexamine  
10 his or her own view and to change their opinion if they  
11 are persuaded that their opinion is wrong or  
12 inaccurate.

13 On the other hand, no juror should surrender  
14 his or her honest judgment solely because of the  
15 opinions of their fellow jurors or merely for the  
16 purpose of returning a unanimous verdict. Your  
17 deliberations should be conducted only when you are all  
18 present. During breaks, do not discuss the case.  
19 Following breaks, do not discuss the case until all  
20 members are present and are able to participate in the  
21 discussions.

22 The final test of the quality of your service  
23 will be in the verdict which you return to this Court.  
24 And as I told you at the beginning of the case, this is  
25 an extremely important matter for both the Defendant

1 and the State. I am sure you will keep that in mind  
2 throughout your deliberations. Your function is the  
3 most important and difficult one in the entire justice  
4 system, namely that of reaching a fair and just  
5 verdict. It is essential to the faithful performance  
6 of that function that you act impartially and you  
7 devote whatever time is necessary to reach a fair and  
8 unhurried verdict.

9 You are an essential part of this justice  
10 system, and you have pledged yourselves to perform your  
11 duties honestly and conscientiously, without fear or  
12 favor, basing your verdict only on the evidence  
13 received in court, on the fair and reasonable  
14 conclusions that can be drawn from that evidence, and  
15 on the law as I have given it to you.

16 The exhibits will be provided to you in the  
17 jury room. However, any jury review of audio or video  
18 material must occur in open court. If you would like  
19 to review audio or video materials, please inform the  
20 deputy.

21 Counsel, any additions or corrections?

22 MR. GRAY: No, Your Honor.

23 MS. LEE: None, Your Honor.

24 THE COURT: All right.

25 And at this time, I have the unpleasant job

1 of dismissing the alternate jurors. And those would be  
2 Juror Number 32, Jennifer Thue; and Juror Number 33,  
3 Melissa Shugarman. I want to thank you -- before you  
4 jump out of your seats. I want to thank you for your  
5 time and for your service on this jury. Of course, if  
6 someone would not have been able to come to court --  
7 one of the other jurors because of an accident or  
8 because they were sick or for whatever reason, one of  
9 you would have stepped in.

10 So again, thank you very much. You can leave  
11 the notepads face down on your chair. You don't have  
12 to wear the juror badges anymore. You can't take them  
13 as souvenirs, okay? So you can leave them. And if you  
14 have any personal property that's in the jury  
15 deliberations room, make sure you grab that. If you  
16 need proof that you were a juror, go down to the jury  
17 management office and they will provide that for you.  
18 All right? So thank you both very, very much. You are  
19 excused from service.

20 All right. Let's swear in the deputy.

21 THE LAW CLERK: You do swear that you will  
22 keep the jurors separate from all other persons and  
23 that you will not allow anyone to communicate with them  
24 or overhear their deliberations, that you will not make  
25 any comment to them about the law or facts in this

1 case, and that you will not disclose to anyone except  
2 this Court anything which you may learn from their  
3 deliberations, so help you God?

4 THE BAILIFF: I do.

5 THE COURT: Ladies and Gentlemen, I'll leave  
6 you in the competent hands of the deputy, and we'll be  
7 delivering the evidence to you shortly along with  
8 copies of the instructions. All right.

9 THE BAILIFF: All rise for the jury.

10 THE COURT: The jurors are excused. Please  
11 take your notepads with you.

12 (The jury exited the courtroom.)

13 THE COURT: You may be seated. All right.  
14 If you could provide my law clerk with your contact  
15 information. I recommend you stay close. I'm not  
16 going to keep them past 5:00 today. I'll bring them  
17 back tomorrow.

18 MR. GRAY: Is Gallivan's still open?

19 THE COURT: It's been named seven things  
20 since Gallivan's.

21 In any event, that's where we're at.  
22 Anything from the State?

23 MR. TAHIR: No, Your Honor.

24 MR. GRAY: No, Your Honor. I'll give him my  
25 number, but -- and we'll wait around awhile because we

1 have a long walk in the cold.

2 THE COURT: All right. We are in recess.

3 (A brief break was taken.)

4 THE LAW CLERK: All rise.

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

6 Good evening, everyone. It appears that we've been  
7 informed by the deputy that the jury has reached a  
8 verdict.

9 So is there anything we need to address  
10 before we bring out jury?

11 MR. TAHIR: Nothing from the State.

12 MR. GRAY: No, Your Honor.

13 THE COURT: All right. Let's go get the  
14 jury.

15 THE DEPUTY: All rise for the jury.

16 (The jurors entered the courtroom.)

17 THE COURT: You may be seated.

18 And Ladies and Gentlemen, we've been informed  
19 that you've reached a verdict; is that correct?

20 JURY FOREPERSON: That is correct.

21 THE COURT: All right. And I see that  
22 Mr. Fulton is holding the envelope. If you would just  
23 hand the envelope to the deputy, please. And  
24 Mr. Fulton, you are the jury foreman?

25 JURY FOREPERSON: Yes, Your Honor.

1 THE COURT: If Mr. Kjellberg would please  
2 stand. In State of Minnesota, Plaintiff, versus Brian  
3 Harry Kjellberg, Defendant. We, the jury, find the  
4 Defendant guilty of the charge of Murder in the Second  
5 Degree. The form -- the Verdict of Guilty form is  
6 signed by the presiding juror, and it is dated this  
7 30th day of March, 2023, St. Paul, Minnesota.

8 You may be seated, sir. At this time we're  
9 going to set the matter on for sentencing. We will  
10 pick a date. Do we have a date?

11 THE LAW CLERK: We could do May 17th in the  
12 morning or afternoon, or May 16th is a Tuesday in the  
13 afternoon?

14 MR. TAHIR: Both of those work for the State,  
15 Your Honor.

16 THE COURT: Does that work for Defense?

17 MR. GRAY: Um, I don't have my appointment  
18 book, but I think it does.

19 THE COURT: All right. And if you need to  
20 change it just call our chambers, and we will find a  
21 date that's convenient for everyone.

22 MR. GRAY: Okay.

23 THE COURT: All right. So, Mr. Kjellberg,  
24 you'll be required to cooperate with a Presentence  
25 Investigation Report or notify probation that --

1 they'll contact you as it relates to a probation  
2 investigation and interview with you, and they'll  
3 provide me with what we call a Presentence  
4 Investigation Report --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: -- prior to sentencing.

7 Is there any objection to leaving  
8 Mr. Kjellberg under the conditions of release that he's  
9 previously been under?

10 MR. TAHIR: The State is moving the Court to  
11 have Mr. Kjellberg held without bail pending  
12 sentencing.

13 THE COURT: All right.

14 MR. GRAY: Well, he's got \$500,000 bail  
15 posted, Your Honor, and he's made all of his court  
16 appearances. I'd ask that the Court release him on his  
17 bail.

18 THE COURT: The Court is going to release  
19 Mr. Kjellberg on the bail that he's previously posted  
20 and with the assurance that he'll appear for  
21 sentencing.

22 MR. GRAY: Yes, he will.

23 THE COURT: All right. That concludes this  
24 matter.

25 Ladies and Gentlemen, I'm going to ask you to

1 remain seated as I excuse everyone else so I can have  
2 just a few words with you before you're excused from  
3 service.

4 So thank you, everyone. This matter is  
5 concluded, and I will ask everyone to please clear the  
6 courtroom.

7 (The proceedings concluded at 4:23 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 March 30, 2023, in the City of St. Paul, County of Ramsey, and State of Minnesota before the Honorable Leonardo Castro.

Signed this #TH day of Month , year.

**s:/ Colleen Maloney**

Colleen Maloney  
State Official Court Reporter  
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