

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota,FELONY
Sentencing
Hearing

Plaintiff,

vs.

Brian Harry Kjellberg,

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

Transcript of the proceedings in the hearing held in the above-entitled matter came on for hearing May 31, 2023, before the Honorable Leonardo Castro, Judge of District Court, Ramsey County Courthouse, City of St. Paul, Minnesota.

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

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

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

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

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

Court Reporter: Colleen Maloney, Official Court Reporter

(651)266-8194

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P R O C E E D I N G S

THE LAW CLERK: All rise. The Honorable Leonardo Castro presiding.

THE COURT: You may be seated. All right. Calling Page 1, Line 1, State of Minnesota versus Brian Harry Kjellberg. The matter is here for sentencing. If I can have the parties please identify themselves.

MS. LEE: Makenzie Lee, on behalf of the State.

MR. TAHIR: Good afternoon, Your Honor. Hassan Tahir, Assistant Ramsey County Attorney, also on behalf of the State.

MR. GRAY: Good afternoon, Your Honor. Earl Gray, representing Mr. Kjellberg, who's behind me.

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

THE DEFENDANT: Good afternoon, Your Honor. Brian Kjellberg.

THE COURT: All right. And have the parties received a copy of the Presentence Investigation Report?

MS. LEE: Yes, Your Honor.

THE COURT: Any additions or corrections from the State?

MS. LEE: No, Your Honor.

1 MR. GRAY: Your Honor, there is one. They
2 have his address as 445 North 26th Avenue, Saint Cloud,
3 Minnesota, and that's not correct.

4 THE COURT: Yeah, I noted that as well. What
5 is his current address?

6 MR. GRAY: 1720 Seventh Street East in
7 St. Paul.

8 THE COURT: All right. We also have received
9 a motion for a downward durational departure and the
10 motions for a dispositional departure.

11 Has the State received those?

12 MS. LEE: Yes, Your Honor.

13 THE COURT: All right. And also we had a
14 group of letters of support. Did the State receive
15 those as well?

16 MS. LEE: Yes, Your Honor.

17 THE COURT: Okay. All right. As far as the
18 sequence of events for this hearing, I wanted to -- I
19 was wondering if the Defense had any -- anybody that
20 was going to speak on behalf of Mr. Kjellberg, or --
21 that was the purpose of the letters, I assume?

22 MR. GRAY: That was the purpose of the
23 numerous letters, Your Honor. There was over 70 of
24 them.

25 THE COURT: All right. Yeah, no, I noticed.

1 Is there -- do we have someone to speak on
2 behalf of the victim?

3 MS. LEE: Yes, Your Honor. It's the intent
4 that Ms. Tabatha Lewis is going make a statement;
5 however, she is running a few minutes behind so she has
6 not come in yet.

7 THE COURT: Do you want to then respond to
8 the motions for departure, or do you want the Defense
9 to start? Either way.

10 MS. LEE: The Defense can start with their
11 motions.

12 THE COURT: All right.

13 Mr. Gray?

14 MR. GRAY: Well, do you want me to sit here,
15 Your Honor, or stand over there?

16 THE COURT: Whatever is your preference.

17 MR. GRAY: Well, Your Honor, it's going to be
18 brief. As the Court had mentioned, we have filed for a
19 dispositional departure plus a motion and memorandum
20 for a durational departure. In the motion and
21 memorandum for the dispositional departure as the Court
22 mentioned, we submitted over 70 letters supporting
23 Mr. Kjellberg.

24 Mr. Kjellberg is 51, I believe. He's had no
25 criminal history as all, no arrests even. We have

1 attached to the memorandum for dispositional
2 departure -- we have his achievements through the years
3 going through the Navy, honorable discharge, college,
4 and various other medals that he received while in the
5 service, his volunteer work, and his work history.

6 More importantly than that even is -- excuse
7 me, Your Honor -- are the two letters we sent recently
8 regarding his physical and mental condition. It's
9 real. He has 100 percent disability from the Navy from
10 the government. And he is treated weekly, I believe it
11 says here, fairly certain -- problems he has physically
12 by a doctor from the Veterans Administration and also
13 his mental health. He's been treated since April of
14 2005, major depressive disorder and anxiety disorder.
15 He has weekly individual therapy as well as medication
16 management.

17 Both of these letters strongly support
18 indirectly the fact that in this case -- it's one of
19 those cases where a dispositional departure is
20 necessary. The substantial and compelling reasons to
21 overcome the presumption in favor of the guideline
22 sentence is there, Your Honor.

23 He exercised his right to go to trial. He
24 testified. He gave all of these statements before the
25 trial to law enforcement. At all times he was telling

1 the truth. I don't believe he was ever impeached on
2 anything. His thought process -- at least -- his
3 thought process was because of his prior physical
4 disability. He was -- thought he was going to die.
5 And he said that to the police when he gave his
6 statement.

7 So based on that, Your Honor, this is a
8 classic case that does not come within the guidelines.
9 And if Court would see fit, we would ask -- I ask you
10 for a dispositional departure to probation, and
11 whatever else the Court wants for conditions, we would
12 certainly be agreeable to it.

13 I'll just go on to the durational?

14 THE COURT: Okay.

15 MR. GRAY: The durational departure is a
16 little different. The durational departure is
17 justified by his conduct being significantly less
18 serious than typically involved in the commission of
19 the offense. I guess this takes into play the
20 self-defense argument that we had.

21 The Court allowed the self-defense. The jury
22 rejected it. But it would seem to me that the downward
23 departure -- it's not a classic Second Degree Murder
24 case, Your Honor. It's a case where my client thrust a
25 knife at him or the tool, and it ended up ultimately

1 killing him. But the facts of this case are
2 substantially different than almost all of the facts of
3 any other case I have ever -- have dealt with or read
4 in the years of my experience.

5 The idea of getting probation or a durational
6 departure -- the main reason is for his medical needs,
7 Judge. I've dealt with this man for over a year now,
8 and he's not faking it. He's extremely unhealthy. If
9 he ends up in any confinement, I don't think he's going
10 to live long, to be honest with you. I think -- he's
11 had difficulties the last couple of weeks. And the
12 Court can take into consideration his personal
13 background, which he -- is clear, and his present
14 physical and mental health.

15 In addition to all that, he has with him the
16 \$8,000 check -- somewhere in that area -- for
17 restitution. He's already hired an appellate lawyer
18 for the appeal. And that brings me to the last
19 subject, and that is: If the Court does sentence him
20 to confinement, that you stay it for 10 days -- stay
21 execution of that for 10 days on the condition that the
22 appeal will be filed within that 10 days. And if they
23 file that appeal within 10 days, he can remain out
24 until the appeal is decided. Hopefully the appeal will
25 be in his favor.

1 If that does not happen and he gets confined,
2 I don't think there will ever be an appeal decided
3 because from what I see, and in my experience with the
4 medical treatment at our various prisons including the
5 Minnesota prisons, I don't think he's going to last
6 long at all, Judge.

7 And those letters from the federal government
8 doctors are telling. He's had 100 percent disability,
9 and that is not easy to come by in -- when you're a
10 veteran. So -- he has a brief statement he would like
11 to make. He is remorseful. And that's all I have,
12 Judge.

13 THE COURT: All right. Thank you. Ms. Lee?

14 MS. LEE: Thank you, Your Honor --

15 MR. GRAY: Does he give the statement now, or
16 wait till the end?

17 THE COURT: I'll have him go at the end.

18 MR. GRAY: Okay. Thanks.

19 MS. LEE: Your Honor, it's the State's
20 position that Minnesota has the sentencing guidelines
21 for a reason. The Sentencing Guideline Commission has
22 taken all of these factors into consideration when
23 putting together the guidelines. A lack of criminal
24 history is factored into the grid. In this case, the
25 Defendant doesn't have a criminal history. But at a

1 zero, it still puts him at the middle of the box at 150
2 months.

3 Your Honor, Arnell Stewart's family has been
4 sentenced to a life sentence at the hands of the
5 Defendant. This all could have been avoided. To the
6 Defense's arguments for a durational departure -- the
7 State does not believe this is a case that is less
8 onerous. As I stated, it could have been avoided if
9 the Defendant would have waited inside of his house.
10 If he wanted to wait outside, he could have let
11 Mr. Stewart take his car and leave.

12 And he should not have taken his tire
13 deflater and stabbed Mr. Stewart in the heart. He
14 shouldn't have provoked Mr. Stewart, and he had a duty
15 to retreat and he did not. This was not an accidental
16 killing, Your Honor. The Defendant did put that tire
17 deflater in his pocket with the intent to use it to
18 puncture tires, and he knew what that tool was capable
19 of when he did that.

20 Again, the Defendant did not retreat, but
21 instead took that tool and stabbed Mr. Stewart in the
22 heart with it and killed him. The Defense also made a
23 motion for a dispositional departure. In that motion
24 Defense cites Trog and the factors that come from that
25 decision.

1 One of those factors is remorse. The
2 Defendant does not have remorse in this case for his
3 actions. That is evidenced by his statements that he
4 made to Probation in the Presentence Investigation.

5 Additionally, he has not been willing to
6 assume responsibility for his actions. He continuously
7 tries to argue justification for his actions and
8 victim-blames throughout this entire process and in the
9 PSI.

10 The State believes this case is about
11 punishment. The Trog factors are designed to show that
12 someone is a good candidate for treatment and
13 rehabilitation, but that's not the case here. The
14 Defendant needs to be punished for what he did and the
15 life that he took. Punishment is one of the goals of
16 sentencing. It's not that the Defendant may not be
17 likely to reoffend, but a dispositional departure will
18 essentially erase any punishment for the Defendant that
19 he should receive for the murder he committed and the
20 life that was taken.

21 Again, the Defendant has not shown remorse
22 for his actions and does not take responsibility for
23 taking Mr. Stewart's life. The Defendant continues to
24 victim-blame and tries to relitigate the case in the
25 Presentence Investigation, a case that has gone to the

1 jury and a guilty verdict has been returned. The only
2 time that he did show emotion is when he realized the
3 consequences of his actions that were forthcoming. In
4 his statement to the PSI writer, he recounts the events
5 in this case in a -- what is a disgusting way, arguing
6 that he did not do wrong. The Defendant spends five
7 pages trying to reargue his case.

8 The Defense is asking to put blame on
9 Mr. Stewart, who was the victim in this case. On
10 Page 7 of the Presentence Investigation, the Defendant
11 makes numerous statements. Quoting from that page, he
12 states that: "Mr. Stewart had THC in his blood during
13 the autopsy, which showed that the victim had no
14 problem violating the law." He states that,

15 "Mr. Stewart could have not been on drugs.
16 Mr. Stewart could have obeyed the three No
17 Parking signs. Mr. Stewart could have
18 walked away at any time if he felt that I
19 was an aggressor. Mr. Stewart could have
20 waited for the police. Mr. Stewart could
21 have stayed off my property."

22 And he concludes this portion of his
23 statement in the Presentence Investigation, by calling
24 Mr. Stewart, the victim in this case, a repetitive,
25 violent individual. Speaking ill of an individual he

1 did kill.

2 If the Defendant had just let Mr. Stewart
3 take his vehicle on the night of this incident, we
4 wouldn't be here today. Illegally parking a vehicle is
5 a petty misdemeanor and does not warrant the loss of a
6 life. The force used by the Defendant was not
7 reasonable and it was not justified and that's
8 evidenced by, again, the guilty verdict that was
9 returned by the jury and the fact that they found that
10 the Defendant was not acting in self-defense when he
11 killed Mr. Stewart.

12 Based on all of this, and the Presentence
13 Investigation, the State is asking that the Court to
14 sentence the Defendant to 150 months as recommended by
15 Probation. And additionally, we would ask the Court to
16 order restitution in the amount of \$8,248 to the Crime
17 Victims Reparations Board. Additionally, the State
18 would ask that the Defendant be taken into custody
19 today.

20 And the State does have two additional victim
21 impact statements to read into the record before
22 Ms. Lewis speaks.

23 THE COURT: You can go ahead and read those.
24 I just, you know, you read faster than you talk.

25 MS. LEE: Yeah, I know. The first statement

1 is by Ms. Kiara Coleman, K-I-A-R-A C-O-L-E-M-A-N. This
2 is Mr. Stewart's sister.

3 She says, "I do not know where to start. All
4 the fighting for a better life and better life for us.
5 My brother A.J. was like my father. He protected me.
6 He loved me so much. He was willing to sacrifice a lot
7 just to make sure that I had a good life and followed
8 my dreams.

9 "When I was a little girl, I didn't look up
10 to many people, but my brother A.J. was a God in my
11 eyes. I never seen someone with so much faith in god
12 and street agapism of watch. The day my brother died,
13 I talked to him that evening. He was talking about
14 coming back to Atlanta, and he was going to pick up his
15 car and pick up our other brothers and he was going to
16 call me back and that he loved me. In the middle of
17 the night during my show I got a sick feeling, and I
18 knew something was wrong. I don't know, but I knew one
19 of my sibilings was hurt so I called him. He didn't
20 answer. Then I called my brother Will. He said A.J.
21 was stabbed and was on the way to the hospital.

22 "I left my show and I just cried because I
23 knew my brother was gone. I just didn't want to
24 believe it. Because why would some person -- why would
25 he take my brother, father, idol away from me and my

1 family? So vicious and cruel. I battle depression.
2 My brother A.J. saved me. He brought me back with the
3 sense of love and protection, a sense of love and
4 respect. The thought of losing him made me go back
5 into the cycle.

6 "But I got paranoid, started checking under
7 my bed, looking in my closet, staying at my friend's
8 house because I didn't trust anybody or anything.
9 Because the monster that took my brother took a piece
10 of me with him. My brother is not just a victim of a
11 vicious crime, but he is an example of a hate crime.
12 And no matter how anybody tried to view my brother, he
13 was never the kind of man who judged or would hate on
14 others. I think about" or -- "I hope this man thinks
15 about my brother every night and his children that will
16 never meet him, and his mother and his siblings because
17 he ruined all of our lives, too."

18 And the second statement is by Michelle Walker,
19 M-I-C-H-E-L-L-E W-A-L-K-E-R.

20 She says, "Depression and stress kills, but the
21 evil action against a productive member of society
22 will never be forgiven in the eyes of this
23 universe."

24 THE COURT: All right. Thank you.

25 MR. TAHIR: And Ms. Lewis is here to read her

1 statement as well.

2 THE COURT: All right.

3 Ms. Lewis, if you would like to come forward?

4 THE MOTHER: It took a lot to write this.

5 The missile (phonetic) alone of why I'm even going
6 through this is beyond words. Do you have kids?

7 THE COURT: I do.

8 THE MOTHER: If -- how would you feel if this
9 was one of your kids? After seeing the videos and
10 hearing everything, especially what the -- the medical
11 examiner said? How would you feel about this person
12 sinfully taking your child's life like an animal in the
13 jungle and then lied proudly and laughed, made biased
14 and sarcastic remarks, having no remorse for what he
15 deliberately did?

16 I need you to find it in your heart and your
17 soul and see why this time that was offered is not
18 enough for this senseless act. Think of the community
19 and how long -- this has been going on before he
20 murdered my son. How -- and how after he senselessly
21 murdered my son, how has he been -- still deliberately
22 bullying the communities and civilians outside the area
23 as well? Because of this mental entitlement, he has
24 gained from what he done to my son. He admitted to
25 making the statement of being seen and heard. He's

1 tried -- he's tired of them. He's not letting him --
2 getting in that car. And Lord, did he prove how much
3 he was trying to show he's -- by breaking my son's
4 fifth rib alone and chipping it, that shows how much
5 you had in you to use that level of force. Because
6 he's tiny.

7 I'm tired. I'm tired of knowing you enjoyed
8 your motherfucking life out here. I'm tired of still
9 allowing and just being going through this period.
10 Still allowed to be the able to make decisions, make
11 memories still with your family during holidays,
12 birthdays, while you destroyed my son A.J.'s memory
13 tree. Multiple times. For what?

14 I'm having heart attack after heart attack,
15 I've had panic attacks. I can't sleep at night
16 knowing -- I can't sleep at all. It don't matter what
17 time it is. That's my first son. That's my first
18 love, my everything, and you took him for nothing. You
19 took him for no reason. You could have just went and
20 looked at your Ring system and just pushed a button and
21 said, "move." You ain't make that choice. You told
22 the 911 dispatcher what you was going to do. That's
23 premeditated. Not only have you messed my -- I'm his
24 mother -- mental.

25 While you're comfortable, enjoying your life

1 and family, my mother couldn't make it. A.J.
2 stepfather couldn't make it with this pain. They both
3 died right after this and left me here to make sure the
4 job was finished -- of how remarkable young man A.J.
5 was irregardless of you sitting here lying on his
6 character. Even though the video showed exactly how he
7 was so respectful, and he did not deserve for his life
8 to be taken away.

9 MR. GRAY: Your Honor?

10 THE COURT: Is there anything else from the
11 State?

12 MS. LEE: Your Honor, no. That's the last
13 statement from the State.

14 MR. GRAY: Your Honor, I didn't get a memo or
15 anything from them so I have to respond to what she
16 said.

17 With respect to the presentence report, she
18 quotes my client as saying "Mr. Stewart could have
19 waited for the police." What he also said is, "what a
20 reasonable person could have done." That Mr. Stewart
21 could have walked away if he felt he was an aggressor.
22 He's wrestling with these things in his mind, Your
23 Honor, but he is remorseful.

24 And you'll hear from him -- the clear test of
25 him being remorseful in taking somebody's life was the

1 video and audio of his statement. When he learned
2 that, he had tears in his eyes, and his voice cracked
3 when he learned that this man had died. He had no idea
4 that he was even injured that seriously, because he had
5 walked away, as the Court might remember the --
6 Mr. Stewart, and then he ran back down the alley, which
7 would cause anybody to believe he really wasn't injured
8 that bad.

9 So as far as being accused of laughing, he's
10 never laughed about this. Ever. And the law does
11 allow for dispositional departures. It allows for
12 durational departures. The guidelines aren't etched in
13 stone if you have a case like this, where I believe
14 that it was at least a close call as far as the case
15 goes. And the person you're dealing with is a man
16 that's supported our country for ten years, did
17 everything right up and until he got caught up in
18 waiting for the police and the tow truck.

19 But as the Court might remember, he was told
20 that they were coming out. They hadn't even
21 intended -- he was waiting there for them. They hadn't
22 intended on coming out until he made the second call.
23 The officer admitted that. Which to me -- and
24 apparently the police station isn't that far away.

25 So that's all I have to say, Your Honor, but

1 I -- there is no question the law would allow this man
2 to get a dispositional or a durational departure. This
3 is a very unique case. Thank you.

4 THE COURT: Mr. Kjellberg?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Is there anything you would like
7 to say?

8 THE DEFENDANT: Yes, sir.

9 MR. GRAY: Do you want to go up there?

10 THE DEFENDANT: It's fine right here.

11 Your Honorable Judge Castro, Ms. Lewis,
12 first, I would like to give my condolences to the
13 Stewart and Lewis families. I can only imagine the
14 pain I've caused. There has not been a moment since
15 that night that I've not thought --

16 THE MOTHER: Tell your lies to somebody else.
17 Get the fuck up out of here.

18 THE DEFENDANT: There has not been a moment
19 since that night that I have not thought about
20 Mr. Stewart. This is something that will stay with me
21 daily. I am deeply sorry. I wish I could take back
22 that whole day. I wish I could take that whole day
23 back. I am deeply sorry to Mr. Stewart's family,
24 especially his mother, Mrs. Stewart, and family, and my
25 neighbors. I'm sorry for all this pain that it has

1 caused everyone. And the last thing I want to do -- is
2 the loss of life.

3 THE COURT: All right. Well, I will say that
4 the death of Mr. Stewart was senseless, petty, and
5 certainly preventable. Both the Defendant and the
6 victim made decisions that evening that changed the
7 course of their lives forever and ended a life. A
8 mother lost her son, brothers lost their brother,
9 sisters lost their brother, many lost a friend. The
10 community lost another young man, and for what? A
11 parking spot? The tragedy of this senseless event is
12 beyond measure. There is nothing that we can do now to
13 bring Mr. Stewart back. Although I know that -- I'm
14 sure his memory lives in the hearts of many and will
15 not be forgotten.

16 Whatever happens here today does not in any
17 way reflect the value of Mr. Stewart's life. In this
18 case the jury did not believe that either the force
19 used by the Defendant was reasonable under the
20 circumstances, or perhaps they believed that the
21 Defendant instigated or provoked the incident, or that
22 the Defendant's failure to retreat and refusing to
23 allow Mr. Stewart to get into his car was unreasonable.

24 Whatever their reasoning, they concluded that
25 the State met its burden and this Court respects their

1 decision.

2 The Defendant has had excellent
3 representation throughout this process and has been
4 given every opportunity the justice system affords to
5 argue and defend his case. And we have now reached the
6 point where I get to decide what punishment should be,
7 and this has not been an easy decision. I would say
8 perhaps one of my most difficult, and I have struggled
9 in finding the correct balance of proper punishment
10 given the circumstances of this case.

11 When I think of the objectives of sentencing
12 in any case, which would include retribution or society
13 or the victim's need for the Defendant to be punished,
14 what we do in those instances is take away freedoms or
15 order monetary penalties. When we think about
16 deterrence, which we demonstrate to the public
17 generally and to the perpetrator that there are
18 consequences for committing a crime, we think about
19 incapacitation to protect the public from a person by
20 taking them out of society.

21 When we think about rehabilitation, and that
22 is helping the Defendant turn his life around and
23 rejoin society as a productive citizen. And finally,
24 we think about restitution making the victim
25 financially whole.

1 In this case, I'm only left really with
2 retribution and restitution. The other objects really
3 serve no purpose under the circumstances of this case
4 and the circumstances that the Defendant currently
5 finds himself in.

6 And we cannot be a system of justice based
7 solely on payback. Criminal sentences cannot only be
8 based on the crimes people have been convicted of but
9 also -- must also be based on whether they are deemed
10 likely to commit additional crimes in the future. And
11 the risk assessment that we have implemented is a
12 helpful predictor of that future conduct. And I have
13 been guided by the circumstances of this case, the risk
14 assessment completed by Mr. Kjellberg, all of the
15 information and the letters I have received and
16 reviewed, and my own contemplation.

17 Therefore I ask you, Mr. Kjellberg, to please
18 stand. Brian Harry Kjellberg, having been found guilty
19 by a jury of Murder in the Second Degree Without Intent
20 While Committing a Felony Offense, this Court, having
21 accepted and recorded the jury's verdict, now
22 adjudicates you guilty of that offense. It is the
23 judgment of this Court and sentence of law that you be
24 committed to the Commissioner of Corrections for a term
25 of 150 months. At least 100 of those months must be

1 served in prison and no more than 50 of those months
2 may be served on supervised release.

3 Based on the circumstances of this case,
4 however, this Court will stay execution of the sentence
5 and place you on probation to the Ramsey County
6 Corrections Department for a period of up to 10 years.
7 Your conditions of probation are as follows: That you
8 maintain contact with your probation officer as
9 directed; that you cooperate with the search of your
10 person, residence, vehicle, and other property as
11 directed by Probation; that you do not register to vote
12 or vote until after July 1 of 2023. After that time
13 you may vote if you are not incarcerated. And by
14 "incarcerated" I mean any time you are under the
15 authority of the corrections center, whether or not you
16 are temporarily released for medical release
17 appointments or other programming.

18 That you do not use or possess firearms,
19 ammunition, and explosives; that you follow all state
20 and federal criminal laws; you provide a sample of your
21 DNA as directed by Probation; that you sign releases of
22 information as directed by probation; that you tell
23 Probation within 72 hours whether you've had any
24 contact with law enforcement, whether you've been
25 charged with a new crime, or whether you have changed

1 your address, employment, or phone number.

2 The special conditions of probation are:

3 That you serve 365 days at the Ramsey County
4 Correctional Facility. You have custody credit for
5 five days. You are authorized to participate in all
6 eligible programming. In each of the second, third,
7 fourth, and fifth years of probation you must complete
8 150 hours of community work service with a nonprofit
9 organization approved by probation.

10 You must continue to participate in mental
11 health therapy and take medications as prescribed by
12 your physician. You are to pay a fine of \$5,000 plus
13 fees and surcharges, and you are to make restitution in
14 the amount of \$8,248 to the Minnesota Crime Victims
15 Reparation Board. The bond that had been posted on
16 this matter is discharged. The motion to suspend
17 sentencing pending appeal is denied. The motion for a
18 durational departure is denied.

19 This is a dispositional departure from the
20 presumptive sentencing guidelines. This Court finds
21 substantial and compelling reasons to overcome the
22 presumptive sentence. The compelling reasons for the
23 departure are: First, that you are particularly
24 amenable to probation; that the risk assessment
25 completed as part of this PSI did not identify any

1 areas of concern; that you have no criminal history or
2 no criminal record at all. That you lack any past
3 involvement with law enforcement. Also given your
4 medical conditions and your treatments, your need for
5 certain specific medications and your need to be
6 regularly medically monitored, this Court finds that
7 compelling. Your cooperation with law enforcement,
8 your full voluntary statement to police, and your
9 assistance in the Presentence Investigation are also
10 compelling.

11 Although you stand firm on your self-defense
12 claim, based on observations of you during the police
13 interview and during this trial I do believe that you
14 have remorse and take no pride or pleasure in the
15 results of that evening. You have been a productive
16 member of our society. You have been law-abiding. You
17 have served your country honorably and with distinction
18 and you have significant family and community support,
19 as evidenced by the 83 pages of supporting letters that
20 I received and reviewed in preparation for this
21 sentencing.

22 Those are the reasons for my departure. I
23 ask that the Defendant be taken into custody at this
24 time to begin his workhouse sentence.

25 MR. GRAY: Your Honor, could he go out there

1 and turn himself in in a few days?

2 THE COURT: I thought about that, and I
3 decided against it.

4 MR. GRAY: Okay.

5 THE DEFENDANT: Your Honor, I have that check
6 as well for the restitution.

7 THE COURT: And I think you're going to need
8 to work that through Probation.

9 THE DEFENDANT: Okay. Can I hand it to
10 somebody then?

11 THE COURT: I don't know if the prosecutors
12 would be willing to take it, or --

13 MR. GRAY: Give it to me. I'll take it.
14 Judge, I'll take care of it.

15 THE COURT: All right.
16 That concludes this hearing.

17 THE DEFENDANT: Thank you, Your Honor.
18 (The proceedings concluded at 2:09 p.m.)

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STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

I, Colleen Maloney, an official court reporter for the Second Judicial District, in and for the County of Ramsey, State of Minnesota, do hereby certify that the foregoing pages are a true and accurate transcript of my original stenograph notes which were transcribed into writing by computer-aided transcription, taken relative in the aforementioned matter on May 31, 2023, in the City of St. Paul, County of Ramsey, and State of Minnesota before the Honorable Leonardo Castro.

Signed this 15th day of October, 2023.

s:/ Colleen Maloney

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