

1 STATE OF MINNESOTA DISTRICT COURT  
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 STATE OF MINNESOTA,  
5 Plaintiff,

6 vs. TRANSCRIPT OF PROCEEDINGS

7 TAMIKA SUTTLES and DANIEL DRLJIC,  
8 Defendants.

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10 DISTRICT COURT FILES: 62-CR-10-1465 and 62-CR-10-1464

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12 The above-entitled matter came on for jury trial before  
13 the HONORABLE GAIL CHANG BOHR, one of the judges of the  
14 above-named court, on the 16th day of February, 2011, in the  
15 Ramsey County Courthouse, St. Paul, Minnesota.

16 \* \* \*

17 APPEARANCES

18 ELIZABETH LAMIN, of the RAMSEY COUNTY ATTORNEY'S  
19 OFFICE, 50 West Kellogg Boulevard, Suite 315, St. Paul,  
20 Minnesota 55102, appeared representing the Plaintiff.

21 JILL CLARK, of the LAW OFFICE OF JILL CLARK, P.A., 2005  
22 Aquila Avenue North, Golden Valley, Minnesota 55427,  
23 appeared representing the Defendants.

24  
25 (Whereupon, the following proceedings were duly had.)

1 THE COURT: All right. We are here on some  
2 motions for a -- postverdict motions. There is a  
3 motion for a new trial and a motion to vacate the  
4 verdict.

5 And Ms. Clark.

6 MS. CLARK: Thank you, Your Honor. We did  
7 file a written motion and so I won't review  
8 that --

9 THE COURT: Right.

10 MS. CLARK: -- orally, but I did want to make  
11 a couple of comments in response to the State's  
12 arguments. I may not address fully each argument  
13 made by the State, but I did want to make a couple  
14 of key points.

15 First of all, we believe that the issues we  
16 raised should be viewed in a cumulative context  
17 rather than each separately, and that the  
18 cumulative impact may warrant a new trial, even if  
19 one single issue did not.

20 The State contended that the defense was not  
21 prejudiced by not being told by the State that  
22 Nolan -- Witness Nolan had moved. The defense  
23 submits that, in fact, they were prejudiced. In a  
24 criminal context when there are no depositions to  
25 obtain witness testimony prior to trial, the only

1 way of obtaining that person's version of what  
2 happened is by interview. If you can't find their  
3 address, you can't interview them to prepare for  
4 trial. We also could not subpoena him to appear  
5 in our case. We viewed Nolan as a key witness.  
6 And as the Court is aware, it was one of our  
7 theories of the defense that Nolan was, in fact, a  
8 perpetrator of the crime. Therefore, what he had  
9 to say, we believe, was particularly important,  
10 and I will loop back around to that.

11 When we were not allowed to inquire at trial  
12 the name of Nolan's girlfriend, we believe that  
13 also prejudiced the defense for a couple of  
14 reasons. First of all, although the State  
15 contends that the girlfriend allegedly did not see  
16 the burglaries, we need not take at face value an  
17 argument from the State. We are entitled to  
18 evidence. So we do not know as we stand here  
19 today whether the State, in fact, knows the name  
20 of the girlfriend. If it did, it did not disclose  
21 it. But even if we learned it during trial -- I  
22 mean, as we all know from watching Perry Mason,  
23 you can send an investigator out even during trial  
24 and obtain information that can help the defense.

25 It is one theory of the defense that Nolan

1 was stealing things. And those may well have been  
2 brought to his apartment and his girlfriend may  
3 well have seen evidence of the theft. And so we  
4 believe that she could have been, in fact, a vital  
5 witness. For example, on one of the video clips  
6 of the liquor store, it shows police entering the  
7 front door of the liquor store with bottles that  
8 it was later claimed my client stole. We also had  
9 Nolan testify that there was a stairway that came  
10 down towards the street, towards that side fairly  
11 near the liquor store door that the police entered  
12 with the bottles. It is completely consistent  
13 with the defense theory of the case that those  
14 bottles were found in Nolan's apartment and that's  
15 why they were not in the liquor store and had to  
16 be brought in through the front door by police.  
17 The girlfriend may well have seen those bottles.  
18 She may well have heard conversations between  
19 Nolan and the police. And with all due respect,  
20 it is the defense theory that the police took  
21 actions to protect Nolan from criminal  
22 prosecution, whether that was to try to use him as  
23 a witness against the defense or for other  
24 reasons, such as him being a CRI -- the Court  
25 knows that we never were able to determine whether

1 or not Nolan was a CRI -- and that, in fact, the  
2 police took actions to protect Nolan and,  
3 therefore, the identity of the girlfriend may have  
4 provided not only impeachment evidence but key  
5 impeachment evidence that could have in fact  
6 affected the verdict.

7 The State's argument that we were requesting  
8 a fact which is the name of a witness or potential  
9 witness, that that is intimidation, we, with all  
10 due respect, find that to be not only a frivolous  
11 argument, but the kind of argument that makes  
12 defendants intimidated to make arguments and bring  
13 motions. The State has awesome powers,  
14 prosecutors are arms of the State, and the defense  
15 has the right to obtain facts.

16 With regard to the Menton report, as I was  
17 mentioning to my esteemed colleague before court  
18 was convened, the provision now of some  
19 self-serving, computerized printouts does not put  
20 the issue to rest. It is the defense's view still  
21 that Menton's report existed and was not produced.  
22 It is very easy to go in and delete a line from a  
23 computer and then print out a printout. And we do  
24 note that, unlike some jurisdictions where the  
25 supplements are numbered, you know, 1 through 13

1 such that we're missing No. 2 would be evident,  
2 the St. Paul Police Department does not number its  
3 supplements, and we cannot tell from the printouts  
4 whether or not Menton's report did disappear. We  
5 do have contemporaneous electronic evidence that  
6 Menton filed a report. As the Court is aware,  
7 Menton took apparently a sudden vacation, and we  
8 were unable to serve him to have him testify in  
9 court as to whether he did that.

10 Unlike civil litigation, our ability to take  
11 a deposition is very constrained. And  
12 particularly now that there is a verdict, we find  
13 it nearly impossible to investigate this issue on  
14 our own without process.

15 We did make an attempt to get a copy of the  
16 report through the St. Paul Police Department. I  
17 have never gotten a final word from them as to  
18 whether or not the report existed. There was an  
19 intermediary exchange in which I was asked some  
20 additional questions, but then I did not get a  
21 response from them. Obviously, I have no ability  
22 to make them respond to me within a particular  
23 time frame. So as I stand here today, we still do  
24 not know for sure. We will probably continue to  
25 look into it, as well. And, obviously, as the

1 Court knows, if it turns out to be Brady evidence,  
2 then there are processes in place for us to pursue  
3 that.

4 We did get a number of police reports after  
5 trial. This pointed out for the record -- and I  
6 believe that those were even filed with the Court  
7 with the State's response. This to the defense  
8 proves definitively that there was information  
9 that the State had that was not disclosed and that  
10 we ended up then tripping over or eliciting at  
11 trial.

12 With regard to the unfair access to juror  
13 information, the defense wants to note there was a  
14 request from the defense for information about the  
15 jury, and we did at some point get a letter from  
16 Your Honor indicating that the -- for the defense  
17 to obtain that information that we would need to  
18 make a request under -- and this is my  
19 recollection of it -- under the Rules of Access to  
20 Public Records of the Judicial Branch. And I'm  
21 assuming that that record is, you know, part of  
22 the file. If not, I can certainly file it. But  
23 we have two issues with this -- this also responds  
24 then to our -- some of the issues raised by the  
25 State with regard to them obtaining information

1 about potential jurors prior to the trial.

2 First of all, defendants note the double  
3 standard -- we say this with all due respect, but  
4 the double standard with regard to the Court's  
5 provision of jury information to the State and the  
6 Court's provision of the jury information to the  
7 defense. The defense is apparently being required  
8 to make a showing, which would require us to  
9 disclose strategy, possibly work product. The  
10 State, however, according to the information that  
11 we received, routinely receives a copy of the  
12 potential jurors for weeks upcoming that they then  
13 forward to law enforcement. Particularly in a  
14 case where the conduct of law enforcement is very  
15 much an issue for the defense, we find this access  
16 to be inappropriate. We did not know about that  
17 access until we were already well through voir  
18 dire.

19 But there's a second issue that I want to  
20 raise with regard to defendants in a criminal case  
21 being required to seek information through a  
22 process outlined in the Rules of Access to Public  
23 Records of the Judicial Branch. This is an issue  
24 I continue to learn about, but at least at this  
25 time, the way it appears to the defense is that



1 that body of rules is for the public to gain  
2 access as opposed to a party. Parties often have  
3 superior rights to the public. In other words, a  
4 person walking in off the street may never be  
5 entitled to a juror's address, but the defense may  
6 be entitled to it without making any showing at  
7 all. Obviously, the State got it without making a  
8 showing, without even asking for it. So that's a  
9 distinction that we'd like to draw.

10 I'm not sure if this case will go up on  
11 appeal. We don't yet know if the Court is going  
12 to provide a new trial, but it's an issue we think  
13 that deserves some appellate attention with regard  
14 to whether parties act as a member of the public,  
15 particularly criminal defendants when they have a  
16 liberty interest and heightened due process rights  
17 in the proceeding.

18 We also note respectfully that the State was  
19 apparently not able to locate any cases from this  
20 jurisdiction or anywhere -- federal jurisdictions  
21 around the country that would permit a district  
22 court to dismiss jurors during trial without a  
23 finding of misconduct. We noted that -- I did  
24 some research on that myself, and I could not  
25 locate a case in which that was authorized. With

1 kind respect to the Court, we would argue that all  
2 of the issues cumulatively would warrant a vacatur  
3 of the verdict and/or a new trial.

4 THE COURT: Ms. Lamin.

5 MS. LAMIN: Thank you, Your Honor. We can  
6 start at the end. The defense raises the issue  
7 about access to jurors' addresses. The State does  
8 not have jurors' addresses. The State did submit  
9 as an exhibit, I believe it's Exhibit 1, the  
10 information that the State had regarding all of  
11 the potential jurors. And it's clear that there's  
12 no address or contact information, and it's the  
13 State's understanding that's exactly what the  
14 defense was seeking. So we are not at all on the  
15 same plane. The defense did receive a copy of  
16 this, the same as the State. As I stated, that --  
17 on the day that we were called up and saw the  
18 jury, the defendants were able to look at it and  
19 the next day was provided with its own copy, and  
20 we didn't finish picking the jury until the  
21 following day. They had ample opportunity to do  
22 -- to search anyone's criminal record. That's the  
23 exclusive thing that this is used for, not  
24 contacting jurors and definitely not interrogating  
25 jurors.

1           In terms of dismissing of jurors during  
2 trial, in my professional experience, it's not  
3 uncommon, especially in a case where it is going  
4 on over a holiday or over a long weekend and going  
5 farther than expected, that there are jurors --  
6 that's why we have alternates -- that there are  
7 jurors who have any type of conflict. Sometimes  
8 it's discovered if a jury's going to be  
9 sequestered, for instance, that it turns out a  
10 juror actually can't be sequestered. We've had  
11 that happen routinely, and that is, in fact, why  
12 we have alternates. There's nothing typically  
13 irregular about that and shouldn't be able to even  
14 be considered as part of any cumulative error.

15           Police reports after trial, it is true the  
16 State noted that we did discover some police  
17 reports after trial, and those were disclosed to  
18 defense. What's important to note is those are  
19 not at all relevant and they are not at all  
20 prejudicial to the defense. Two of them, in fact,  
21 just indicate the convictions that the jury found  
22 the defendants guilty of. The defense has not  
23 even made an allegation that those are somehow  
24 Brady violations or at all exculpatory, which they  
25 are not. In my opinion, that would be the only

1 possible realm that the Court would even consider  
2 looking at those as some sort of error that would  
3 warrant any type of further action.

4 Discussion about this Menton report -- and  
5 it's hard to prove the negatives. The State has  
6 perpetually indicated through his testimony and as  
7 the State noted from Sgt. Strickland, there is no  
8 Menton report. The defense, my understanding is,  
9 did in fact subpoena Officer Menton and he came to  
10 court at some point; however, I do not know what  
11 happened in that context. I think it's  
12 interesting that defense has not provided any  
13 proof at all in its submissions of exactly what it  
14 has done to investigate cases that are closed,  
15 police reports that are closed, and the parties  
16 that are entitled to the police report information  
17 so they can pursue it. There is no report, so  
18 it's hard to produce something that doesn't exist.  
19 And nothing about the fact that something doesn't  
20 exist that the defendants repeatedly state that it  
21 does doesn't change the facts.

22 Thomas Nolan, again, as I noted, the defense  
23 had an opportunity to interview him. They in fact  
24 provided us a copy of an interview. It is odd  
25 that the defense now claims they didn't have a

1 chance to interview him when they did. They also  
2 had a chance -- a very, very lengthy and thorough  
3 cross-examination and, in fact, if they needed to  
4 recall him, they could have served him or asked  
5 that he be recalled. He was subpoenaed for this  
6 trial. They never requested anything like that.  
7 So they were able to fully cross-examine  
8 Mr. Nolan, and clearly it didn't -- all of that  
9 didn't affect anything in terms of the proceedings  
10 of the case, and the jury ultimately made a  
11 credibility determination and an examination of  
12 the charge of aid and abet burglary.

13 So it's aiding and abetting. The State's  
14 theory was that they aided and abetted each other  
15 and Mr. English, but it could have been -- I mean,  
16 again, there's no basis for that, but let's just  
17 take it -- so what if it was even Mr. Nolan? I  
18 mean, that's why it's not relevant, because that  
19 doesn't somehow eliminate the defendant's conduct.  
20 If there were four other people involved, that  
21 doesn't take away the fact that Mr. Drljic and Ms.  
22 Suttles were burglarizing this business. So it's  
23 completely not relevant.

24 And, Your Honor, the State doesn't believe  
25 that Your Honor -- because of that, Your Honor

1 properly ruled that questions about Mr. Nolan's  
2 girlfriend and her identity was irrelevant.  
3 Mr. Nolan testified and the officers testified  
4 that they spoke only to Mr. Nolan, he said he was  
5 the only one awake, and there is no other purpose,  
6 common sense would say, that defense was seeking  
7 this information other than to somehow intimidate,  
8 frankly, Mr. Nolan and his girlfriend, especially  
9 given the way Mr. Nolan's character was attacked  
10 with unfounded innuendos and the fishing  
11 expedition that the defense engaged in.

12 Your Honor, I believe that looking at these  
13 items, individually and/or as a whole, they amount  
14 to really not much. I mean, if you look at the  
15 rules in this area in the law, it's a pretty high  
16 burden. There has to be serious irregularities.  
17 No one has a perfect trial, but it must be fair.  
18 And without a doubt, the defense was allowed to  
19 present a very vigorous defense in this case, and  
20 it was frequently over the State's objection.  
21 They have pointed to nothing that would warrant --  
22 typically in these types of cases any -- there was  
23 no misconduct, surprise, nothing material, no  
24 newly-discovered evidence, errors of law. Clearly  
25 the evidence justified the verdict, and there is

1 nothing in the interest of justice that would  
2 warrant a new trial for these defendants.

3 So, thank you.

4 THE COURT: All right. Ms. Clark, you can  
5 have a brief rebuttal here --

6 MS. CLARK: Thank you.

7 THE COURT: -- and then we'll wrap it up.

8 MS. CLARK: Thank you, Your Honor. When I  
9 was using the example of a juror's address, I was  
10 using that just sort of as an example. Obviously,  
11 the record is what it is, but the argument of the  
12 defense has not changed.

13 And by the way, if I misspoke slightly, I  
14 apologize for that, but was attempting to use the  
15 juror address just as an example of something a  
16 member of the public may never have a right to  
17 obtain, but the parties may.

18 With regard to the juror information, the  
19 State had it -- I believe it's undisputed, the  
20 State had it for weeks, provided it to law  
21 enforcement. So they had many hands and feet  
22 doing the work, so to speak. The defense had it  
23 for one night. The defense was strapped with a  
24 brand-new complaint, a set of motions that had  
25 never been served before trial, et cetera, et

1 cetera, so too late to make effective use of it.  
2 Even if the State did not have addresses, they had  
3 the ability to check these people; however, we  
4 don't know precisely what was done.

5 And this is also stated with kind respect to  
6 the Court, but with regard to scheduling, it's the  
7 defense's understanding of procedures that the  
8 Court surely may talk to jurors during voir dire  
9 about their schedules and that it is, with kind  
10 respect, the Court's job to determine if  
11 scheduling is an issue so that we can all deal  
12 with that in open court, all armed with the same  
13 information prior to the jury being sworn.

14 It is the defense's position -- the Court  
15 knows this, I won't belabor it -- but that the  
16 delays -- i.e., numerous delays were caused by the  
17 State; getting a new prosecutor close to trial; a  
18 brand-new complaint; motions nearly every day, if  
19 not every day, that had not been served prior on  
20 defense, and that that caused a lot of delay. So  
21 the defendants feel that they got the short side  
22 of all of those different aspects of the trial.

23 I recall the Court at some point asking the  
24 prosecution if they had disclosed all of the  
25 police reports and the prosecution making a



1 commitment to the Court that they had. So we  
2 actually view it as a very serious issue. It is a  
3 Brady issue. It's a Rule 9 violation.

4 Brady and its progeny also require the  
5 prosecution to disclose impeachment evidence, and  
6 you cannot impeach a police officer who is on the  
7 stand or a witness if you don't have a record of  
8 what they have said to the State. They are  
9 allowed to change their testimony, change it as  
10 the trial progresses, and this is exactly why we  
11 believe Brady and its progeny is in place.

12 In response to the prosecution's statement  
13 that they understood that the defense did in fact  
14 subpoena Menton, after much effort we did subpoena  
15 the department, but we were told that Menton was  
16 on vacation and not available before Friday. As  
17 the Court knows, by Friday the trial was over.

18 It is true we interviewed Nolan, but we  
19 interviewed him very early in the case. When this  
20 case went to trial later, we had much more  
21 information and did need to reinterview him, we  
22 believe, in order to be effective at trial.

23 Also, it's my recollection -- and I am doing  
24 this by my memory, but it's my recollection that  
25 the Court ruled early in the trial that the

1 defense was only allowed to call witnesses that we  
2 had on our witness list and that we had subpoenaed  
3 prior to trial. Obviously, the record is the  
4 record on that.

5 The statement from the prosecution -- and I  
6 wrote this down, if it's not verbatim, it's very  
7 close -- that -- and this was in aid of its  
8 allegation that the defense wanted to intimidate  
9 Nolan or his girlfriend, and I have written down  
10 especially the way Nolan's character was attacked.  
11 This is exactly the type of statement I'm talking  
12 about. With all due respect, my clients have a  
13 due process right and they have a First Amendment  
14 right to criticize government officials. I have a  
15 duty to zealously represent my clients, which  
16 includes cross-examination of government officials  
17 and State witnesses. So, apparently, if I do my  
18 job of trying to show an alternative perpetrator,  
19 a time-honored defense, then I'm attacking  
20 someone's character. It makes it very difficult  
21 for the defense to do its job in light of these  
22 types of allegations, particularly when they were  
23 stated openly in court to the jury and during  
24 closing argument.

25 Thank you, Your Honor.

1 THE COURT: All right. Do you need to say  
2 something?

3 MS. LAMIN: Can I very briefly, Your Honor,  
4 on the last point?

5 THE COURT: Certainly.

6 MS. LAMIN: Your Honor, as State's Exhibit 7  
7 points out, there was an issue at one point when  
8 defense counsel was implying that Mr. Nolan had  
9 reviewed notes regarding his meeting with Sgt.  
10 Strickland and Rick Dusterhoft repeatedly said no,  
11 the State objected to that line of questioning,  
12 and defense counsel persisted, even though, as  
13 Exhibit 7 points out, it's clear that defense  
14 counsel knew that Mr. Nolan had not received a  
15 copy of that -- that's the context. Again, I just  
16 reiterate it's not relevant given the way these  
17 cases are charged in the context of aid and abet  
18 and it doesn't in any way exonerate the  
19 defendants' involvement in these burglaries.

20 THE COURT: Okay. I've heard your arguments  
21 and it's under advisement. I'll have my ruling  
22 out very shortly.

23 MS. CLARK: Thank you, Your Honor.

24 THE COURT: All right. And I'll see you all  
25 back here on Tuesday when we have sentencing on

1                   that day.

2                   MS. CLARK: Yes.

3                   (Whereupon, the matter was continued to 9:00  
4                   in the morning on February 22, 2011.)

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1 STATE OF MINNESOTA )  
2 COUNTY OF RAMSEY ) SS.

3 Be it known that I took the trial in the case of STATE  
4 OF MINNESOTA V. TAMIKA SUTTLES AND DANIEL DRLJIC on the 16th  
5 day of February, 2011, at Ramsey County, St. Paul,  
6 Minnesota;

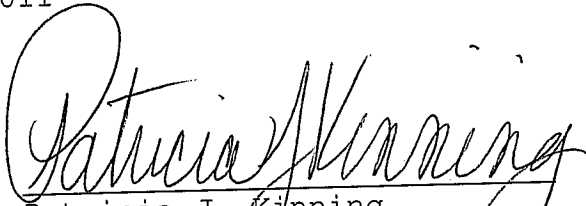
7 that the witnesses, before testifying, were first duly  
8 sworn to testify to the whole truth and nothing but the  
9 truth relative to said cause;

10 that the testimony of said witnesses was recorded in  
11 stenotype by myself and reduced to print by means of  
12 Computer-Assisted Transcription under my direction, and that  
13 the transcript is a true record of the testimony given by  
14 the witnesses to the best of my ability;

15 that I am not related to any parties hereto nor  
16 interested in the outcome of the action.

17 Dated: April 26, 2011

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