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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA,)	Dept. No. 1
)	
Plaintiff,)	Cause No. DC-14-252
)	
-vs.-)	
)	DEFENDANT'S MOTION FOR
MARKUS HENDRIK KAARMA,)	A NEW TRIAL
)	
Defendant.)	
)	

COMES NOW Defendant, Markus Hendrik Kaarma, by and through his

undersigned counsel, Nate S. Holloway, of Paul Ryan & Associates, PLLC, and hereby respectfully moves the Court, pursuant to § 46-16-702(1), M.C.A., to order a new trial in the interest of justice. Alternatively, Defendant moves the Court, pursuant to § 46-16-702(3), M.C.A., to modify or change the verdict by finding Defendant guilty of a lesser included offense, Mitigated Deliberate Homicide.

Defendant expressly reserves the right to appeal the issues addressed herein, together with all other remaining issues and/or claims.

INTRODUCTION

Defendant was deprived of a fair trial because prejudicial, inflammatory media coverage so saturated the community that an impartial jury could not be drawn and fair trial conducted. In Missoula County, over 450¹ case-related news items were disseminated. Many of the stories were highly prejudicial. Indeed, even Defendant's inadmissible criminal history was published just two weeks before trial. Roughly 56% of the jury pool responded on their questionnaires that they had already formed an opinion on Defendant's guilt or innocence. In this case, prejudice should be presumed.

Defendant also contends that instructing the jury on the affirmative defense of justifiable use of force in defense of person, over Defendant's objection, violated his

¹ Some of the articles were supplemented and republished the same day with additional information.

1 Sixth Amendment right to control his own defense. Moreover, it was unlawful for
2 the State to argue to the jury that Defendant was not in an occupied structure, and
3 that he was initial aggressor, at the time of the shooting.
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5 Finally, Movant asks the Court to amend the verdict by finding Defendant
6 guilty of Mitigated Deliberate Homicide. Mont. Code Ann. § 45-5-103. Evidence
7 at trial established that Decedent was not “baited” or “lured” into the garage. Robby
8 Pazmino even testified to that fact; namely, the fact that the garage was dark and
9 they could not see anything inside. Ultimately, evidence established that Defendant
10 was under extreme mental and emotional stress due to two recent burglaries, and the
11 reasonableness of the excuse properly establishes that, in the interest of justice, the
12 verdict should be modified to Mitigated Deliberate Homicide.
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15 FACTUAL AND PROCEDURAL BACKGROUND

16
17 On May 12, 2014, the State charged Defendant with Deliberate Homicide.
18 The twenty page *Affidavit and Motion for Leave to File Information* (hereafter
19 “*Affidavit*”) repeatedly alleged that Defendant intended to “bait” and kill kids that
20 were breaking into his garage. (Affidavit, pp. 14-16.) It also referenced “road rage”
21 incidents that were later deemed inadmissible. (Id. at 17.) The Missoulian headline
22 read, “*Charging Document: Missoula man waited up to shoot ‘kid.’*” [Exhibit, A].
23
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25 Deputy County Attorney Andrew Paul (hereafter “Mr. Paul”) was quoted in

1 the article saying “[Defendant] actually sought Dede out by essentially trapping him
2 in the garage,” adding that “every gun instructor tells students to identify the target
3 before firing.” [Id. at 3.] The article was followed with over 430 public comments.
4

5 At Defendant’s Arraignment, arguing for an increased bond, Mr. Paul stated
6 that Defendant had been acting aggressively in the days leading up the homicide;
7 that Defendant’s neighbors were scared of him; and that the State had collected
8 evidence indicating Defendant is aggressive, violent, and irrational. [Exhibit B pp.
9 5-6].
10

11 On July 18, 2014, Defendant filed his *Unopposed Motion to Seal and Close*
12 *Rule 404(b) Pretrial Proceedings and Proposed order*. In response, on July 31,
13 2014, Eagle Communications, Inc., (hereafter “KECI”), the local NBC affiliate, filed
14 its *Motion to Intervene and Objection to Defendant’s Request to Seal Pretrial*
15 *Proceedings*. In its Motion, KECI accused defense counsel of “Self-
16 Aggrandizement” and making “multiple self-congratulatory statements.” (KECI
17 Mot. to Intervene, pp. 4, 8.) KECI also argued against Defendant’s pending request
18 to change venue and stated that defense counsel had already disclosed the Rule
19 404(b) evidence to the public. (Id. at 9.) The latter was unequivocally false. In
20 short, KECI adopted a biased position against the defense.
21

22 The Court granted Defendant’s request closing Rule 404(b) proceedings. The
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1 Court found that “allowing the public and the media access to the Rule 404(b)
2 proceedings in this case and risking the media’s dissemination of inadmissible,
3 irrelevant and potentially prejudicial character evidence . . . presents a clear and
4 present danger to the fairness of [Defendant’s] trial.” (Ct. Order, pp. 4-5, September
5 15, 2014.) The Court later excluded Defendant’s criminal history and the prior
6 “road rage incidents.”
7

8
9 Concurrently, on July 18, 2014, Defendant filed his *Motion and Brief in*
10 *Support of Venue Change*. At the time, over 188 case-related news items were
11 already disseminated in Missoula County. (Mot. and Br. in Support of Venue, p. 3.)
12 Defendant referenced several published statements from government
13 representatives, to wit: (1) Democratic Senatorial Candidate, Dirk Adams stated,
14 Defendant “should be put through the wood chipper;” Missoula Mayor John Engen
15 questioned the validity of the “castle doctrine;” and (3) State Representative and
16 attorney, Ellie Hill, vocally condemned Defendant’s actions stating Defendant’s
17 actions were “premeditated.” (Id. at 9-10.)
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20

21 On August 21, 2014, the Court denied Defendant’s *Motion to Change Venue*.
22 The Court opined, in part, that Defendant failed to establish biased statements by
23 county attorneys, public outcry, inherently prejudicial publicity, or virulent and
24 inflammatory publicity. (See Ct. Order, p. 9, August 21, 2014.)
25

1 Defendant filed his *Renewed Request for Venue Change or Alternative*
2 *Remedies* on September 4, 2014. Defendant argued that the media coverage was
3 not, in truth, factual. He referenced several Missoulian articles stating: (1) “[d]o
4 laws that allow private citizens to protect their property also let them set a trap and
5 wait for someone to kill;” (2) Markus and Janelle “[i]ntentionally baited would-be
6 burglars by displaying a purse inside the garage and leaving the garage door half
7 open;” (3) that Defendant’s attorneys said students were “garage hopping;” and (4)
8 that “Slain German exchange student didn’t burgle shooter’s garage.” (*See*
9 *Renewed Request for Venue Change*, pp. 3-6.) Ultimately, Defendant’s *Renewed*
10 *Motion* was denied, but the Court allowed Defendant and the State to jointly prepare
11 and submit confidential jury questionnaires for submission to jury pool members.
12

13 On September 24, 2014, upon stipulation of defense counsel and the State, the
14 Court entered its Order stating, in pertinent part, that “[t]he defense objection to the
15 Missoula venue is preserved for the record upon stipulation of parties, and the
16 Court. It will not be necessary for the defense to, again, raise the objection for it to
17 be preserved.” [Exhibit C].
18

19 On or about September 30, 2014, jury questionnaires were sent out to the
20 approximately 300 prospective jurors. Of the 256 questionnaires returned (redacted
21 questionnaires attached hereto **to be filed under seal** as, Exhibit K), 229 (roughly
22

1 89%) of the prospective jurors knew about the case from the media, 143 (roughly
2 56%) of the prospective jurors indicated that they had formed an opinion about the
3 guilt or innocence of Defendant, and 66 (roughly 26%) of the prospective jurors
4 indicated they would not be able to set aside their opinion and render a fair and
5 impartial verdict. [Exhibit D]. Further, 109 (42.8%) of the prospective jurors stated
6 that it would be difficult to be fair and impartial in this case.
7
8

9 On November 16, 2014, the front page of the Missoulian's Sunday edition
10 read, "*Missoula man who fatally shot 'garage-hopping' teen has criminal past;*"
11 stating, in part, that Defendant has a criminal history, both in Missoula and Seattle.
12 [Exhibit E]. The article read, "[the] documents characterize the 2003 assault as
13 child abuse and domestic violence, but don't give specific details as what actually
14 happened on Jan. 9 of that year." The article detailed Defendant's sentence and
15 alleged that he had two other criminal cases in Missoula. Most importantly, the
16 article was written *after* jury questionnaires were already submitted to the Court.
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20 Rule 404(b) evidence excluded at trial; namely, prior "anger incidents" and
21 Defendant's alleged criminal history, were published by local media through no
22 fault of Defendant. This conflicted with the Court's standing evidentiary rulings.
23 As a result, Defendant filed his *Second Renewed Request for Venue Change*. His
24 request was denied.
25

1 On November 30, 2014, the day before Defendant's trial began, the
2 Missoulain again cited the *Affidavit*, writing that Defendant and Janelle Pflager set a
3 trap intended to "lure the would-be burglars inside." [Exhibit F]. The article
4 characterized the decedent, Diren Dede, as "a soccer fanatic who was beloved by his
5 classmates and received high grades during his time in Missoula." Conversely, the
6 article characterized Defendant as drunk or high on the date of the shooting, and
7 ready to fight. It also once again referred to the "road rage" incidents that were
8 previously ruled inadmissible.
9

10
11 A common theme developed in media stories leading up to, during, and post-
12 trial; specifically, articles painting Decedent in a positive light garnering sympathy,
13 while disparaging Defendant inflaming already existing prejudice.
14

15
16 Voir dire began on December 1, 2014. Defendant moved the Court to allow
17 for individual voir dire. The primary basis for this request was the recent articles
18 publishing Defendant's alleged criminal history. Defendant's request was denied.
19 Instead, defense counsel was cautioned against bringing up the content of the
20 aforementioned article due to the risk of prejudicing the jury pool. Accordingly,
21 Defendant was very limited in his ability to discern whether the prospective jurors
22 were aware of Defendant's alleged criminal history, even if select jurors were
23 individually voir dired.
24
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1 The media's coverage of the trial was continuous. Missoulian headlines told
2 a decidedly one-sided story [Exhibits G.1-G.13]:

- 3 • *Defense attorneys contend slain exchange student was part of teenage*
4 *burglary (12/2/14). "Slain" is defined by Merriam-Webster Online*
5 *Dictionary as "to kill violently."*
- 6 • *Kaarma's partner says she fantasized about catching burglars (12/4/14).*
- 7 • *Kaarma's partner changes story, says teen didn't plead for life before fatal*
8 *shooting (12/5/14).*
- 9 • *Markus Kaarma Trial: Castle doctrine under fire after shooting of exchange*
10 *student (12/7/14).*
- 11 • *Testimony resumes this morning in Markus Kaarma trial (12/8/14).*
- 12 • *State medical examiner: Dede could have survived first gunshot; second*
13 *wound was lethal (12/8/14).*
- 14 • *State medical examiner: Dede was moving away from the kitchen door when*
15 *fatally shot (12/8/14).*
- 16 • *Ecuadorian student: Lots of Missoula teens were 'garage-hopping,' but no*
17 *one expected to die (12/9/14).*
- 18 • *Missoula rallies to show support for Dede family during trial (12/10/14).*
- 19 • *Detective: Kaarma adjusted aim before firing final, fatal shot at exchange*
20 *student (12/11/14).*
- 21 • *Kaarma trial: Defense's first expert witness paid \$44k to investigate, testify*
22 *(12/12/14).*
- 23 • *Consul General: Germans softening opinion on gun-toting Montanans*
24 *(12/14/14).*
- 25 • *Defense rests in Markus Kaarma trial; jury begins deliberations Tuesday*
(12/15/14).

26 The headlines overwhelmingly reference testimony consistent with the State's
27 theory of the case. The only other message conveyed was one of sympathy and an
28 outpouring of community support for Decedent, his friends, and his family.

1 During trial, the Missoulian cited lobbyist Gary Marbut (“hereafter Mr.
2 Marbut”), president of the Montana Shooting Sports Association, who stated
3 unequivocally that Defendant was not justified in his use of deadly force. [See,
4 Exhibit G.4]. The article credits Mr. Marbut for revisions made to Montana’s
5 “castle doctrine.” He stated “I won’t work for somebody I don’t think is on the right
6 side of the law[.]” Likewise, that “he wouldn’t have worked for Kaarma’s defense.
7 Based upon what he knows about the case, he doesn’t believe Kaarma was justified
8 in using lethal force[.]” In other words, the person credited by the article as the
9 architect of Defendant’s affirmative Defense, stated Defendant was guilty while the
10 trial was still ongoing. Ms. Hill was also quoted in the article.
11

12 The Missoulian also referenced an outpouring of support for Decedent’s
13 parents, Celal and Gulcin Dede (hereafter the “Dedes”). [See, Exhibit G.9]. The
14 article discussed fundraisers, a benefit soccer game, donation jars, and a website
15 where individuals could donate money to the Dedes. According to the article,
16 donations were rolling in, many with cards and cash to offset the cost of their trip.
17 A First Interstate Bank account in the name of “Family of Diren Dede” was set up
18 allowing people to donate straight to the account.
19

20 The Missoulian also wrote about the Dedes’ appreciation for Governor Steve
21 Bullock and Mayor John Engen. [See, Exhibit G.12]. On their behalf, German
22

1 Consul General, Stefan Schluter, thanked Governor Steve Bullock and Mayor John
2 Engen for the "outpouring of empathy and compassion for the Parents of Dede."
3
4 The article stated that the Governor, who is also the former attorney general for the
5 State of Montana, was proud of Missoula and the support its citizens have shown
6 the Dedes.

7
8 While the trial was in progress, defense counsel was contacted by a Missoula
9 community member (hereafter "Informant"). Informant stated that one of the jurors'
10 wives told co-workers that she knew about the trial because her husband was on the
11 jury. Furthermore, that she told her co-workers that the jury was going to convict
12 Defendant. Upon Defendant's request, the juror was removed. Defendant also
13 discovered that the media had published a photo of the jury.

14
15 Throughout the trial, the State argued and/or elicited testimony that a
16 reasonable belief of imminent death or serious bodily harm was necessary to use
17 deadly force. For example, Officer Jacob Jones testified that in order to use deadly
18 force, you have to know you are in threat of deadly force.
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21 The State further argued that Defendant was not justified in the use of deadly
22 force because he was the initial aggressor. Similarly, that because Defendant exited
23 his front door to confront the intruder in his garage, he could no longer avail himself
24 to the affirmative defense of use of force in defense of an occupied structure.
25

1 The parties concluded presenting their cases to the jury on Monday,
2 December 15, 2014. A jury instruction conference was held that afternoon. Over
3 Defendant's objection, the State offered the affirmative defense of justified use of
4 force in defense of person. The jury was also instructed that justifiable use of force
5 was not available to Defendant if he was the initial aggressor.
6

7
8 On December 15, 2014, after two weeks of trial, it only took the jury
9 approximately nine hours to convict Defendant of Deliberate Homicide. The
10 courtroom erupted in cheers and celebration when the verdict was read.
11

12 The following day, December 15, 2014, the Dedes were given the opportunity
13 to give their victim impact statements. They arrived to the applause of spectators in
14 the courtroom. The media was then placed in the jury box, and the Dedes provided
15 their testimony.
16

17 Defendant requested Defendant's release pending sentencing. A hearing was
18 set on December 24, 2014. Several of Defendant's neighbors wrote letters to the
19 judge opposing Defendant's release. [Exhibit H]. One of neighbors, Suzanne Klise,
20 indicated in her letter that she was scared of Defendant after the shooting because
21 "her statements were made public by the *Missoulian*."
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1 jurors' actions ultimately ran counter to a presumption of prejudice." *Id.* at ¶¶ 42,
2 33.

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4 The *Sixth* and *Fourteenth* Amendments guarantee "a fair trial by a panel of
5 impartial, indifferent jurors." *Hayes v. Ayers*, 632 F.3d 500, 507 (9th Cir. 2011). In
6 order to establish presumed prejudice, a defendant must "demonstrate that an
7 irrepressibly hostile attitude pervades the jury pool or that the complained of
8 publicity has effectively displaced the judicial process and dictated the community's
9 opinion as to the Defendant's guilt or innocence." *Kingman*, 2011 MT at ¶ 32.
10 Likewise, here, the issue is whether prejudicial, inflammatory publicity about the
11 case so saturated the community as to warrant a presumption that an impartial jury
12 could not be drawn therefrom. *Id.* at ¶ 42. While this is a difficult standard to meet,
13 ultimately, courts are bound to uphold the defendant's constitutional right to a trial
14 by an impartial jury. *Id.* at ¶ 40.

15
16 Numerous factors are pertinent to a "presumed prejudice" analysis; namely,
17
18 (1) size and characteristics of community; (2) community sentiment and whether
19 community is demonstrably inflamed; (3) the nature of the publicity—whether it is
20 the type that readers or viewers could not reasonably be expected to shut from sight
21 and invites prejudgment of the defendant's culpability; (4) the amount of time that
22 elapsed between the alleged crime and the defendant's trial, and whether community
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1 passions diminished; and (5) when evaluating post-verdict whether prejudice
2 existed, whether jurors' actions ultimately ran counter to a presumption of
3 prejudice—e.g., if the defendant is acquitted of some charges. *See Kingman* at ¶ 42.
4

5 When examining potentially inflammatory publicity, factors that can be
6 considered include the nature of the offense charged, content of the media reports,
7 readership, and whether reports contain extrajudicial statements by prosecutors or
8 law enforcement that are prejudicial to the defendant. *State v. Devlin*, 2009 MT 18,
9 ¶ 24, 349 Mont. 67, 201 P.3d 791.
10

11 There are 83,979 registered voters in Missoula County. [Exhibit I]. The
12 Missoulian's circulation, as of 2010, was 66,700 on weekdays and 75,900 on
13 Sundays. (Mot. and Br. in Support of Venue, at 3.) Thus, Sunday's Missoulian
14 circulation almost totals the number registered Missoula County voters. This does
15 not include online subscriptions and readership. The Missoulian also has over
16 27,000 "likes" on Facebook and over 12,000 followers on Twitter. (Id.) From April
17 28, 2014, through January 6, 2015, the Missoulian published roughly 117 items of
18 coverage related to the instant case. (Exhibit J.1; *see also* Mot. and Br. in Support
19 of Venue, Exhibit B.)
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23 Other Missoula media outlets published the following number of news items
24 about the case:
25

1 KPAX: approximately 70 (Exhibit J.2; *see also* Mot. and Br. in Support of
2 Venue, Exhibit E.).
3 KECI: approximately 97 (Exhibit J.3; *see also* Mot. and Br. in Support of
4 Venue, Exhibit D.)
5 ABC/Fox: approximately 66 (Exhibit J.4; *see also* Mot. and Br. in Support of
6 Venue, Exhibit F.)
7 KGVO: approximately 69 (Exhibit J.5; *see also* Mot. and Br. in Support of
8 Venue, Exhibit G.)
9 930 AM: approximately 52 [Exhibit J.6].

10 Collectively, not including smaller media outlets, over 450 news items were
11 disseminated locally in Missoula County from the end of April, 2014, to the
12 beginning of January, 2015. These numbers are not surprising given the responses
13 on the juror questionnaires, indicating 89% heard about the case, 56% formed an
14 opinion, 26% could not set their opinion aside, and 43% admitted it would be
15 difficult to be fair and impartial.

16 The nature of the articles was highly inflammatory as well. Due in part to the
17 lengthy *Affidavit*, the allegations that Defendant trapped, lured, and baited Decedent
18 was wide-spread. Likewise, Defendant's alleged "road rage" incidents, and alleged
19 marijuana use, were reported as well. This information was highly prejudicial and
20 led to articles stating Defendant may have been "high" at the time of the shooting.
21 Conversely, virtually all of the articles concerning Decedent were overwhelmingly
22 positive; they characterizing him as a garage-hopping teen, unconcerned with the
23 likelihood that Decedent was committing felony burglary.
24
25

1 At trial, Robby Pazmino testified that he heard consecutive shots at the time
2 of the shooting. This was not reported in the Missoulian. [See Exhibit G.8]. The
3 Missoulian, did, however, report that another witness heard a gap in the shots in the
4 same article. Indeed, several neighbors testified otherwise, but it was not reported in
5 the article. Pazmino also stated that they could not see anything in the garage that
6 would have lured Decedent in; nevertheless, the baiting theory was never dispelled
7 by the Missoulian.
8

9
10 Most destructive, however, was the publication of Defendant's alleged
11 criminal history. Proceedings were sealed, specifically to prevent this type of
12 information from dissemination. This, of course, was after prospective jury
13 questionnaires had been returned.
14

15
16 During trial, the outpouring of emotional and financial support was published
17 tirelessly. Governor Bullock, Ms. Hill, and Mayor Engen were all cited in articles
18 supporting the Dedes. Even Gary Marbut, the lobbyist credited with Defendant's
19 affirmative defense, stated Defendant was guilty while the trial was ongoing.
20

21 Undoubtedly, the media coverage of the instant case prejudiced and inflamed the
22 community so much as to warrant a presumption that an impartial jury could not be
23 drawn in Missoula County.
24

25 In *Kingman*, the Montana Supreme Court sustained the district court's refusal

1 to change venue based on presumed prejudice. 2011 MT at ¶ 52. In that case, a
2 potentially prejudicial voicemail of the defendant's account of violently assaulting
3 the victim was at issue. *Id.* at ¶ 6. The court noted that only six largely factual
4 articles were published in the first 36 days in the *Bozeman Daily Chronicle*, and that
5 the voicemail was not broadcasted repeatedly or in depth. *Id.* at ¶ 43.
6

7
8 The defendant in *Kingman* also argued that fundraising efforts were made on
9 behalf of the victim constituting "pervasive civic involvement" and demonstrating
10 antipathy to him. *Id.* at ¶ 50. Finally, the defendant argued that the publicity's
11 pervasiveness and prejudicial effect was evidenced by the 27 out of 150 jury
12 questionnaires stating that the prospective jurors had formed an opinion. *Id.* at ¶ 51.
13

14 The Court held that the fundraising efforts on behalf of the victim were not
15 sufficiently prejudicial and there was no evidence that the media or the victim's
16 friends urged donations. *Id.* Moreover, that nearly 75% of the prospective jurors
17 had not formed opinions on the case. *Id.* Accordingly, the district court's decision
18 was upheld.
19

20
21 Conversely, here, the number of articles was overwhelming and increased
22 over time. Over 450 news items were disseminated locally in Missoula County.
23 The media consistently published articles talking about efforts made on behalf of the
24 Dedes, which included actually publishing an address where donations could be
25

1 sent. Finally, 56% of prospective jurors indicated they had formed an opinion on
2 Defendant's guilt.

3
4 In the instant case, publicity has effectively displaced the judicial process and
5 dictated the community's opinion as to Defendant's guilt or innocence. When the
6 verdict was read, the gallery erupted in cheers. Similarly, the next day in open court,
7 the Dedes were loudly applauded when they entered the Courtroom.

8
9 Further, even the State's witness was affected by the media coverage. Robin
10 Rosenquist wrote in her letter to the Court opposing Defendant's release, that
11 Defendant's "history of violence and assault would make it difficult to stay" and not
12 relocate. Susan Klise, referring to the time period following the shooting, wrote in
13 her letter to the Court, "I was very concerned with the lack of judgment Mr. Kaarma
14 displayed in shooting into his house that evening, and *the fact that my statements*
15 *were being made public by the Missoulian.*"

16
17
18 C. INSTRUCTING THE JURY ON JUSTIFIABLE USE OF FORCE IN
19 DEFENSE OF PERSON OVER DEFENDANT'S OBJECTION VIOLATED
20 DEFENDANT'S SIXTH AMENDMENT RIGHTS.

21
22 Defendant chose to invoke the affirmative defense of justifiable use of force
23 in defense of an occupied structure. At the jury instruction conference, the State
24 offered a justifiable use of force in defense of person jury instruction. Defendant
25 objected, stating he had the right to elect his own affirmative defense. The judge

1 overruled Defendant's objection.

2 The jury was also instructed on use of force by aggressor. The instruction
3 stated:
4

5 that the use of force in defense of a person or occupied structure is
6 not available to a person who purposely or knowingly provokes
7 the use of force against himself unless such force is so great that
8 he reasonably believes that he is in imminent danger of death or
9 serious bodily harm and that he has exhausted every reasonable
means to escape such danger other than the use of force which is
likely to cause death or serious bodily harm to the assailant.

10 The Sixth Amendment affords defendants the right to control one's own
11 defense. *See Faretta v. California*, 422 U.S. 806, 818-821 (1975). Likewise,
12 "[Courts] should not 'force any defense on a defendant in a criminal case.'" *North*
13 *Carolina v. Alford*, 400 U.S. 25, 33 (1970). By raising the affirmative defense of
14 justifiable use of force in defense of person, rather than occupied structure, the State
15 heightened the burden on Defendant to establish reasonable doubt at trial. This was
16 improper.
17
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19 Using deadly force in defense of person requires a reasonable belief that such
20 force is necessary to prevent imminent death or serious bodily harm. *See Mont.*
21 *Code Ann. § 45-3-102*. Conversely, use of deadly force in defense of an occupied
22 structure is justified if an unlawful entry is made into an occupied structure and the
23 person reasonably believes the force is necessary to prevent an *assault*. *See § 45-3-*
24
25

1 103. Clearly, establishing the latter is a much lower threshold than imminent death
2 or serious bodily harm.

3
4 Recently, the Washington Supreme Court held that offering an affirmative
5 defense over the defendant's objection violated his Sixth Amendment rights. *State*
6 *v. Coristine*, 177 Wn.2d 370, 300 P.3d 400 (2013). In particular, the trial court
7 instructed the jury on the affirmative defense that the defendant had a "reasonable
8 belief" that the victim in the case was not mentally incapacitated and/or physically
9 helpless. *Id.* at ¶ 4. The Washington Supreme Court reversed the trial court,
10 opining that courts must respect a defendant's right to forgo an Affirmative Defense.
11 *Id.* at ¶ 11.

14 Furthermore, under Montana law, Defendant's home, garage, and area
15 immediately surrounding one's home is part of an occupied structure. The
16 "rationale underlying the curtilage concept [is] to provide a zone of protection to
17 sleeping residents from "midnight terror" of burglary[.]" *State v. Bullock* (1995),
18 272 Mont. 361, 379, 901 P.2d 61. Here, the Jury was actually instructed that
19 Defendant's garage was an occupied structure. Nevertheless, the State argued that
20 when Defendant exited his front door, despite the fact that an intruder remained in
21 the garage, he could not avail himself to the affirmative defense of justifiable use of
22 force in defense of an occupied structure. This was unlawful and Defendant should
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1 be granted a new trial.

2 D. THE DELIBERATE HOMICIDE VERDICT SHOULD BE MODIFIED TO
3 MITIGATED DELIBERATE HOMICIDE IN THE INTEREST OF
4 JUSTICE.

5 Evidence at trial established that Defendant was under extreme emotional
6 stress at the time of the shooting. Defendant was twice burglarized within three
7 weeks and felt that his home was being targeted. Additionally, the Court has a copy
8 of Dr. Douglas Johnson's, Ph.D., report; which states that Defendant was under
9 extreme stress at the time of the shooting.
10

11 Numerous officers testified that burglaries in progress are very dangerous
12 situations. Under any circumstances, there is room for mitigation when an intruder
13 enters a person's home at night. Ultimately, Defendant respectfully contends that
14 enough evidence was presented in this case to establish the verdict should be
15 modified to Mitigated Deliberate Homicide.
16

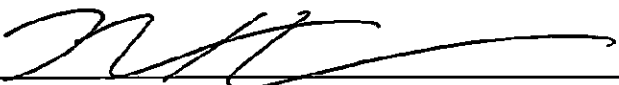
17 CONCLUSION
18

19 Defendant had a constitutional right to a fair trial and impartial jury. Given
20 the breadth, and prejudicial nature of the extensive media coverage, Defendant
21 should be granted a new trial. There was simply no way to ensure a fair trial when
22 450 local news items were published in Missoula County. That is especially true
23 when evidence already deemed inadmissible was published on the eve of trial.
24
25

1 Moreover, Defendant was entitled to control his own defense. When the State took
2 him out of his home and argued that he could not avail himself to the defense of an
3 occupied structure, the fundamental fairness of Defendant's trial was called into
4 question. For all of the foregoing reasons, Defendant respectfully moves the Court
5 to grant Defendant's Motion in the interest of justice.
6
7
8

9 Dated this 16th day of January, 2015.


11 PAUL RYAN & ASSOCIATES, PLLC

12 By 
13 Nate S. Holloway,
14 Attorney for Defendant, Markus Kaarma
15

16 **CERTIFICATE OF SERVICE**

17
18 I, the undersigned, hereby certify that a true and correct copy of the foregoing
19 was hand-delivered, this 16 day of January, 2015, to:

20 Andrew Paul
21 Missoula County Attorney's Office
22 200 West Broadway
23 Missoula, MT 59802
24
25

By 



Charging document: Missoula man waited up to shoot 'kid'



APRIL 29, 2014 11:00 AM • BY KATHRYN HAAKE

A Missoula man was charged with deliberate homicide Monday for shooting and killing a high school foreign exchange student in his garage a day earlier, allegedly after setting a trap for burglars and announcing that he was waiting up at night to “shoot some (expletive) kid.”

Markus Hendrik Kaarma, 29, appeared in Missoula County Justice Court on Monday afternoon before acting Justice of the Peace Suzanne Geer.

Kaarma allegedly fired four shots — two of which hit Diren Dede, a German exchange student who was standing in Kaarma's garage on Deer Canyon Court in the Grant Creek neighborhood.

Dede was 17 years old, an all-state soccer player and a junior at Big Sky High School. He was unarmed and, according to a witness, shouted “wait” or “hey” as Kaarma chambered a shell in the shotgun.

Two of the shots hit the boy in the head and left arm. He was taken to St. Patrick Hospital, where he was pronounced dead.

A second male was with Dede, but ran from the scene when shots were fired, police said. He has since talked with authorities about the incident.

According to the affidavit filed by Deputy County Attorney Andrew Paul, Kaarma and his common-law wife, Janelle Pflager, set up a surveillance camera and motion sensors — hoping to catch burglars who had allegedly taken phones and credit cards from them in recent weeks.

Pflager told police that she intentionally placed a purse in the garage “so they would take it,” and left the door open 5 1/2 feet. Then she placed a baby monitor in the garage and installed motion sensors outside.

At about 12:30 a.m. Sunday, Kaarma and Pflager were watching television in the living room when they heard a sensor alert indicating someone was in the driveway and then another that someone was in the garage, which is connected to the home.

EXHIBIT

A

Pflager pulled up images from the baby monitor and saw a male inside the garage, then took screen shots of the images on her phone.

Kaarma left his seat on the couch and grabbed a shotgun left near the dining room. He went out the front door of the house and walked in between a truck, which was parked in the driveway, and a car, which was parked in the garage.

"He stated he heard a noise that sounded like metal on metal and he was afraid that the intruder would exit the garage and harm him," the affidavit stated. "It was dark and he could not see into the garage.

"He stated he thought he was going to die and that the guy would try to get out of the garage, and described thinking he could act like a caged animal. ... He stated he didn't want the male to get away and that he wanted him to be caught. He stated that the police can't catch burglars in the act."

According to the charging document, Kaarma said he didn't communicate with Dede before firing four shots into the pitch-black garage.

However, Pflager allegedly told police her husband said "hey, hey" before chambering a shell in the shotgun. She then heard Dede say "hey" or "wait" before Kaarma fired the first two shots, the affidavit stated.

Pflager went to turn on the lights in the garage, but before she could her husband fired two more shots, the affidavit stated.

Kaarma allegedly told police that he aimed high to avoid hitting the car, but holes in the garage indicated that three of the four shots were low and the fourth shot was high.

"The impact marks also indicated that the gun was swept across the garage," the affidavit stated.

Pflager told police the couple had been burglarized two times in the past three weeks, and they wanted to stop the break-ins.

In addition, a hair stylist told police that during an appointment a few days earlier, Kaarma talked about staying up nights trying to catch a would-be burglar.

"I'm just waiting to shoot some (expletive) kid," Kaarma allegedly told stylists at the Missoula salon.

Said the affidavit: "He told (the stylist) that he had been burglarized a few times, that was why he was waiting up at night to catch someone and shoot them. (She) reported that the defendant was being extremely vulgar and belligerent. She asked the defendant to quit swearing and he said he could say 'whatever the (expletive)' he wanted."

On Monday afternoon, Kaarma's attorney, Paul Ryan, portrayed his client as a homeowner intent on protecting his wife and baby – and frustrated by the police department's inability to solve the recent burglaries.

"He took the steps that no one wants to take and shot," Ryan said. "It wasn't his intent to kill because he didn't know who was in there, and where the person was, and what was in the person's hands as far as weapons."

"It was a split second," Ryan said. "It happened very quickly, and unfortunately a young man lost his life."

During Kaarma's initial appearance in Justice Court, Ryan said that Pflager – who was in the courtroom with the couple's young child – held the young man in her arms while he died.

Ryan told media after the appearance that police initially indicated that they weren't going to recommend charges against Kaarma.

Citing Kaarma's right to protect himself and his home under Montana's "castle doctrine," Ryan said that he and his client are prepared to fight the charge as far as they must. "My client, without question, will enter a not guilty plea," he said.

The castle doctrine states that when a forcible felony occurs within a home, the resident of that home has a right to defend himself. However, it also states that a person who decides to use that force must believe they are at risk of serious bodily injury or death.

Prosecutors and police see no such defense for Sunday morning's shooting.

"The state doesn't believe that Kaarma identified Dede as a threat to commit a forcible felony in the garage," prosecutor Andrew Paul said in a telephone interview after the hearing. He did not speak to the boy, or even see him, before firing four times, Paul said.

"He actually sought Dede out by essentially trapping him in the garage," Paul said, adding that every gun instructor tells students to identify the target before firing.

Prosecutors requested a \$100,000 bail Monday afternoon during Kaarma's initial appearance, while Ryan argued for the man to be released on his own recognizance.

Geer set bail at \$30,000 and remanded Kaarma to the Missoula County jail.

MONTANA FOURTH JUDICIAL DISTRICT,
MISSOULA COUNTY

STATE OF MONTANA,

Plaintiff,

-vs-

MARKUS HENDRIK KAARMA,

Defendant.

Dept. No. 1

Cause No.
DC-14-252

Taken at the Missoula County Courthouse
Missoula, Montana
May 21, 2014

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Ed McLean, District Judge

A P P E A R A N C E S

ANDREW PAUL and JENNIFER CLARK, Esqs.,
Missoula County Attorney's Office, 200 West
Broadway, Missoula, MT 59802,
appearing on behalf of the Plaintiff.

PAUL T. RYAN, KATIE LACNY, BRIAN SMITH, NATE
S. HOLLOWAY and LISA B. KAUFFMAN, Esqs, 218 E.
Front St., Missoula, MT 59802
appearing on behalf of the Defendant.

Colleen Williamson
Court Reporter
Missoula, Montana 59802

EXHIBIT

B

May 21, 2014

(Whereupon, the following
proceedings were had and entered of record:)

THE COURT: Cause No. DC-14-252,
State of Montana vs. Marcus Kaarma.

MR. RYAN: Good Morning, Your
Honor.

THE COURT: Good Morning.

MR. RYAN: May I approach?

THE COURT: Please.

MR. RYAN: For the record, I'm
handing you an executed copy of an
Acknowledgment of Rights form.

THE COURT: You are Markus Kaarma?

MR. KAARMA: Yes sir.

THE COURT: Mr. Kaarma, do you have
a middle name?

MR. KAARMA: Yes, Hendrik.

THE COURT: H-e-n-d-r-i-c-k?

MR. KAARMA: No "C," sir.

THE COURT: No "C." Markus
Hendrik, H-e-n-d-r-i-k?

MR. KAARMA: That's correct.

THE COURT: The Information and the

1 pleadings are ordered amended to include Mr.
2 Kaarma's middle name.

3 You have been charged by way of
4 Information with committing the offense of
5 deliberate homicide, a felony. That carries a
6 penalty of not less than ten years in the
7 Montana State Prison and up to one hundred
8 years in the Montana State Prison without the
9 possibility of parole.

10 Do you have a copy of the
11 Information?

12 MR. KAARMA: Yes, sir.

13 THE COURT: Are you familiar with
14 the allegations lodged against you?

15 MR. KAARMA: Yes, sir, I am.

16 THE COURT: Would you like me to
17 read you the Information?

18 MR. KAARMA: No, thanks.

19 THE COURT: Mr. Ryan has presented
20 the Court with an Acknowledgment of Rights.
21 Have you gone over those rights with him?

22 MR. KAARMA: Yes, Your Honor.

23 THE COURT: You understand those
24 rights?

1 MR. KAARMA: Yes, sir.

2 THE COURT: Do you want the Court
3 to go over them with you, again?

4 MR. KAARMA: No, sir.

5 THE COURT: You are entitled to a
6 reasonable amount of time in which to prepare
7 for entry of plea, or we can proceed at this
8 time. Mr. Ryan?

9 MR. RYAN: Your Honor, he is
10 prepared to enter a not guilty plea today.

11 THE COURT: The allegation is that
12 on the 27th day of April, 2014, in Missoula
13 County, Montana, you purposely or knowingly
14 caused the death of another, Diren Dede, by
15 shooting Dede with a shotgun. How do you
16 plead to that offense?

17 MR. KAARMA: Not guilty.

18 THE COURT: Not guilty plea is
19 ordered entered. Preference for Omnibus?

20 MR. RYAN: Your Honor, if we could
21 have June 25th?

22 THE COURT: Is that agreeable with
23 the State?

24 MR. PAUL: That is, Your Honor.

1 THE COURT: June 25th, 10:30 a.m.

2 for Omnibus.

3 My understanding is that Mr. Kaarma
4 has been released on a thirty-thousand dollar
5 bail. Is there any objection to that
6 continuing?

7 MR. PAUL: There is, Your Honor.
8 Your Honor, at the time that that bail was
9 set, it was set by a substitute Justice of the
10 Peace, who really doesn't often handle cases
11 of this magnitude.

12 Your Honor, and at that time, the
13 investigation was early, early on, and we
14 didn't have a whole lot of information.

15 Since that time, we have gathered
16 recorded interviews from several witnesses,
17 including neighbors of the Defendant, who have
18 told law enforcement officers that he has been
19 a - he acted aggressively in the days leading
20 up to the homicide.

21 Not only that, we have, since then,
22 recorded interviews with people who have told
23 law enforcement that he indicated that he was
24 going to shoot a kid, and that he was going to

1 shoot some kids.

2 Judge, I think this kind of changes
3 the complexion of the case. We consider Mr.
4 Kaarma to be a danger to the community.

5 The - several, many of the
6 neighbors have contacted our office, and
7 expressed serious concerns about neighborhood
8 safety, and they are scared of him, and they
9 are concerned for not just their well-being,
10 but, also, for their kids, who are soon to be
11 out of school.

12 We've collected evidence indicating
13 that he is aggressive, violent, and
14 irrational.

15 We are asking that the Court reset
16 bail in the amount of five hundred thousand
17 dollars.

18 We believe that that's more
19 commensurate with the nature of the offense
20 charged, and we believe that it's necessary to
21 protect community safety.

22 THE COURT: Anything else?

23 MR. PAUL: No, Your Honor.

24 THE COURT: Ms. Clark, anything

1 else?

2 MS. CLARK: No, Your Honor. But,
3 we just were handed a memorandum from the
4 Defense regarding our arguments.

5 MR. SMITH: May I approach, Your
6 Honor?

7 THE COURT: Thank you.

8 MS. CLARK: And, Judge, if we
9 could have a moment to review it -

10 THE COURT: You may.

11 MS. CLARK: - and, perhaps,
12 comment, and I see stuff that we would want to
13 address.

14 Thank you, Judge.

15 THE COURT: Anything further?

16 MS. CLARK: Judge, we'll wait to
17 address after Mr. Smith has addressed the
18 Court.

19 THE COURT: Mr. Ryan?

20 MR. RYAN: Your Honor, Mr. Smith
21 will address the -

22 THE COURT: Mr. Smith?

23 MR. SMITH: Your Honor, thank you.
24 Your Honor, he is charged with deliberate

1 homicide. At his initial appearance, when
2 most people have their bail set, his bail was
3 set appropriately at thirty thousand dollars.

4 There were conditions of release,
5 that were put in place, that he has obeyed.

6 There is no indication, in this
7 case, that he would violate any Court Order.

8 The State is simply reacting to the
9 public outcry, and, this is a polarizing case.

10 We have people on one side. We
11 have people on the other. But, they are very
12 vocal.

13 Your Honor, you don't have the
14 benefit of actually being in that
15 neighborhood. But, if you drove through that
16 neighborhood, people have put ribbons on their
17 boxes, in a show of solidarity.

18 And, we understand this is a very
19 emotional issue.

20 But, those people in that
21 neighborhood have nothing to fear from Markus.
22 He is not dangerous.

23 They - this idea that they are
24 afraid isn't articulated. It's not based in

1 logic.

2 It's not based in what the evidence
3 is in this case.

4 Sure, the State has now had the
5 benefit of two or three more weeks. They have
6 interviewed some more people. We've done the
7 same thing.

8 And, there are other people that
9 would not support the State's version of the
10 events.

11 Your Honor, this is not the time to
12 go into our cases.

13 Certainly, if the Court wanted to
14 set a matter for hearing on the bond, if you
15 are inclined to do that - we, also, think
16 there's other things besides bond, that would
17 make - or alleviate some of the State's
18 concerns.

19 But, Your Honor, just increasing
20 bond doesn't make any sense in this case.

21 He will obey all the conditions of
22 the Court. He is not dangerous. He has a
23 strong defense, and we are waiting for our day
24 in court, Your Honor.

1 THE COURT: All other firearms have
2 been turned over to law enforcement?

3 MR. RYAN: Yes, Your Honor.

4 THE COURT: Bail will continue in
5 the amount previously set.

6 MS. CLARK: Judge, can we respond
7 to some of the allegations from the Defense?

8 THE COURT: You can request a bail
9 hearing if you want some - but, right now,
10 I'll honor the bail that was set by the lower
11 court.

12 All of his firearms have been
13 turned over to law enforcement. He's not
14 missed any appearances.

15 If you want a bond hearing to show
16 the Court why we need a higher bond on Mr.
17 Markus - Mr. Kaarma's case, then, you can
18 request it.

19 MR. PAUL: Judge, I would just ask,
20 if he hasn't already done so, that he turn
21 over his passport.

22 THE COURT: Do you have a passport?

23 MR. KAARMA: Yes, sir.

24 THE COURT: Would you please turn

1 that over - give it to your attorney,
2 immediately?

3 MR. KAARMA: Yes.

4 THE COURT: Would you present it
5 the County Attorney's Office, please.

6 MR. RYAN: Yes, Your Honor.

7 THE COURT: How soon do you want
8 that done?

9 MR. PAUL: Today.

10 MR. RYAN: We'll get it to them.

11 THE COURT: Okay.

12 MR. RYAN: Thank you, Your Honor.

13 (Whereupon, the proceeding duly
14 ended.)

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1 STATE OF MONTANA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF MISSOULA)

4 I, COLLEEN WILLIAMSON, Court Reporter of
5 the District Court of the Fourth Judicial
6 District, Department I, State of Montana,
7 after having been duly sworn,
8 DO HEREBY CERTIFY:

9 That the foregoing proceedings were
10 electronically recorded using an FTR
11 ReporterDeck Digital Recording System.

12 That the electronic recording has been in
13 the custody of the Court.

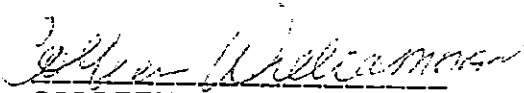
14 That the recording has not been changed
15 or altered in any way.

16 That the recording is a full, true and
17 accurate record of these proceedings.

18 That the recording has been transcribed
19 to writing by the undersigned.

20 That the foregoing pages constitute a
21 full, true and accurate transcription of the
22 above-entitled proceeding, had and taken in
23 the above-entitled matter at the time and
24 place hereinbefore mentioned.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal this 16th
day of June, 2014.


COLLEEN WILLIAMSON
Notary Public for the
State of Montana
Residing at Missoula, MT
My commission expires:
11-30-2017



COLLEEN WILLIAMSON
NOTARY PUBLIC for the
State of Montana
Residing at Missoula, Montana
My Commission Expires
November 30, 2017

1 Ed McLean, District Court Judge
Department No. 1
2 Fourth Judicial District
Missoula County Courthouse
3 Missoula, Montana 59802
Telephone: (406) 258-4780

FILED SEP 24 2014

SHIRLEY E. FAUST, CLERK
By: *Laura M. Biscell* Deputy

4
5 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA
COUNTY

6 STATE OF MONTANA,
Plaintiff,

7 vs.

8 MARKUS HENDRIK KAARMA,
Defendant.

Dept. No. 1

Cause No. DC-14-252

9 ORDER

10 Upon stipulation of the parties, the Court enters the following

11 Order :

- 12
- 13 1. Any prospective juror who is in law enforcement, or related to
anyone in law enforcement in the following manner: spouse,
14 child, or parent, will be automatically excused from the jury
panel.
- 15
- 16 2. The defense and the prosecution may stipulate to the excusal of
any prospective juror.
- 17
- 18 3. Each side will be limited to 5 days for the presentation of the
case in chief for each party.
- 19
- 20 4. Proposed instructions shall be submitted by November 20, 2014.

ORDER

COPY TO CLIENT

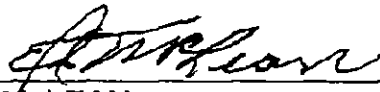
Date 9-24-14

EXHIBIT

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- 1 5. All witnesses, except experts, are excluded from the courtroom
2 after voir dire examination. Experts from both sides may observe
3 any, or all, testimony.
4
5 6. There will be a 15 minute recess immediately following the
6 defense voir dire examination.
7
8 7. The defense objection to the Missoula venue is preserved for the
9 record upon stipulation of the parties, and the Court. It will not be
10 necessary for the defense to, again, raise the objection for it to
11 be preserved.
12
13 8. The parties stipulate, and it is **HEREBY ORDERED**, that the jury
14 panel may be drawn from those jurors who have questionnaires
15 returned to the Clerk of Court.
16
17 9. Both parties have waived the right to be present during the
18 selection of the prospective jury panel. The Clerk of Court shall
19 preselect the jury panel.
20
21 10. Hearing on the Rule 404 Motion concerning prior acts shall
22 be heard on October 29, 2014 in a hearing closed to the public
23 and press.
24
25 11. Once the State has turned over any evidence to the
26 defense for examination or testing, the State is relieved from any
27 chain of evidence proof, from that point forward.

DATED this 25th day of September, 2014.


ED McLEAN.
DISTRICT JUDGE

1 c: Paul T. Ryan, Esq.
2 Brian C. Smith, Esq.
3 Katie Lacny, Esq.
4 Lisa Kauffman, Esq.
5 Andrew Paul, Esq.

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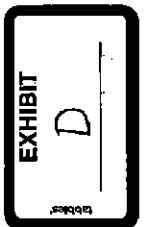
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22

ORDER

SUMMARY	Do you know anything about this case from media coverage? (#3 on Questionnaire)	Formed Opinion (#6 on Questionnaire)	Can you set opinion aside? (#7 on questionnaire)	Feel that you would have to justify the verdict to anyone after trial? (# 21 on Questionnaire)	Difficult being fair and impartial? (#22 on Questionnaire)
TOTAL potential jurors with listed response	229	143	66	38	109
Total Survey Responses	256	256	256	256	256
% of Total potential jurors with listed response BEFORE trial	89.45%	55.86%	25.78%	14.84%	42.58%



Missoula man who fatally shot 'garage-hopping' teen has criminal past



NOVEMBER 16, 2014 5:00 PM • BY KATHRYN HAAKE

MISSOULA — The man accused of fatally shooting a German exchange student in the garage of his Grant Creek home last April has a criminal record, both in Missoula and in Seattle.

According to Seattle Municipal Court records, Markus Kaarma pleaded guilty to assault in 2003. On May 12 of that year, he received a deferred sentence of two years and was required to do 72 hours of community service.

The case was revisited in 2005, when Kaarma was charged with two other criminal offenses in Missoula Municipal Court.

Missoula court officials refused to release records for those two criminal cases — CR-4-3362 and CR-4-3786 — and Municipal Judge Kathleen Jenks wouldn't divulge any information regarding the incidents.

According to Mike Meloy, a Helena-based attorney who advises the Montana media on open records issues, it's unclear why Missoula Municipal Court is withholding the criminal documents, regardless of the outcome of Kaarma's local case.

"If a criminal defendant had been given a deferred imposition of sentence for a period of time and that period has expired, the defendant can move the court to dismiss the case and 'erase' the criminal record," Meloy wrote in an email to the Missoulian. "But the documents themselves should be open for public inspection."

In September, Nate Holloway, one of Kaarma's five attorneys, filed a motion to seal the pretrial proceedings, in part to conceal Kaarma's past "bad acts" from the public eye.

"Due to concentrated media coverage, the subject matter of Rule 404(b) litigation presents a unique risk in the case *sub judice*; namely, a high likelihood that evidence, not yet deemed admissible, will be widely circulated," Holloway wrote in his motion.

The rule of evidence Holloway referred to states that past crimes or wrongdoing are not admissible to show a defendant's character or that the defendant was acting in accordance with that character when he or she allegedly committed a subsequent crime.

The rule also suggests the evidence may be admissible for other purposes, such as to prove

motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident.

The defense motion was unopposed by Missoula Deputy County Attorney Andrew Paul and was granted by District Judge Ed McLean, who quoted Holloway in his decision, stating that the "publication of the parties' Rule 404(b) briefs and/or keeping the proceedings on this issue open to the public, presents an imminent threat to trial fairness and there is no reasonable alternative, but for court intervention."

Paul Ryan, Kaarma's lead attorney said the judge's ruling prohibited him from commenting on his client's prior criminal history.

"The judge made a ruling on any prior bad acts and he did this in a sealed hearing," Ryan said. "He precluded either side from having comment on it or about talking about certain evidence in the trial. The jury pool has been selected and printing or commenting on it at all would be irresponsible and taint the jury and not allow Markus Kaarma to have the opportunity for a fair trial."

History of charges

Kaarma, 30, is accused of deliberate homicide in the fatal shooting of Diren Dede, a German exchange student who was a junior at Big Sky High School and was apparently searching for alcohol in Kaarma's partially open garage.

Kaarma's trial is set to begin on Dec. 1 and is scheduled to continue through Dec. 19.

The Missoulian requested and was granted the documents outlining Kaarma's prior criminal history from Seattle City Court. Those documents characterize the 2003 assault as child abuse and domestic violence, but don't give specific details as to what actually happened on Jan. 9 of that year.

Following the incident, Kaarma spent five days on a work crew in lieu of jail time, after initially pleading not guilty to the assault.

In May of that year, Kaarma entered a guilty plea and was given a deferred sentence of two years. The judge also required him to complete 72 hours of community service, which he did that summer with the Washington Trails Association.

The documents also note that Kaarma was in one-on-one counseling at the time of his sentencing and his mother testified on his behalf during the hearing.

However, before his probationary period ended in 2005, Kaarma apparently was charged in two other incidents in Missoula. The Seattle Court was notified of the pending case on May 5, 2005, and Kaarma was scheduled for re-sentencing on July 1.

At that hearing, his initial charge from 2003 was dismissed with prejudice and the finding was vacated.

The Missoulian interviewed one of the attorneys who helped prosecute the case, Assistant City Attorney Cindi Williams, but she wasn't able to recall the specifics of the case, including why the charge was dismissed with prejudice after Kaarma had been charged with two other

criminal counts in a different jurisdiction.

In 2013, his plea was changed to not guilty to reflect the prior court's finding.

The current case

In the current case, prosecutors allege Kaarma and his wife Janelle Pflager set a trap to ensnare would-be intruders in their garage after their home was burglarized in the weeks prior the shooting.

Defense attorneys contend Kaarma shot Dede in self defense while his home was being burglarized and his family was in danger.

Prior to the shooting, Kaarma and Pflager left their garage door partially open, installed a surveillance camera and set up motion detectors in and around their garage, according to court documents. Shortly after midnight, they were alerted to Dede's presence in the garage.

Kaarma grabbed a shotgun, opened the front door and exited his home. He turned toward the garage and fired four shots into the darkness – two of which hit and fatally wounded Dede.

In interviews with the police, Pflager allegedly told them that she heard her husband say "hey, hey" before he chambered a shell in the shotgun. She then allegedly heard a male voice say "hey" or "wait" before her husband fired the fatal shots.

Pflager then re-entered the garage through the home and turned on the garage light. It was then that the couple first saw Dede – now bleeding to death on the floor.

In the days following the shooting, police also interviewed Robby Pazmino, another exchange student who was with Dede that night but didn't enter the garage. Pazmino told police he and Dede had "garage-hopped" three or four times in the past with other friends, but they had stayed in the car during those instances, the affidavit stated.

The night of the shooting, Pazmino said Dede was looking for alcohol in Kaarma's garage.

Pazmino has since returned to Ecuador.

Several weeks later, Missoula police interviewed 18-year-old Tristan Staber and his 16-year-old accomplice, who admitted to burglarizing Kaarma's home in the weeks prior to the shooting.

Staber and his friend took marijuana, marijuana paraphernalia, cash and credit cards from the couple's vehicles and garage on April 17 – just 10 days before the fatal shooting.

Staber pleaded guilty to felony conspiracy to commit burglary and a misdemeanor trespass to vehicles in October.

Kaarma trial begins Monday in Missoula

Jury must decide if man was justified in using lethal force when he shot and killed exchange student



NOVEMBER 30, 2014 3:30 PM • BY KATHRYN HAAKE

It's been seven months since Markus Kaarma fatally shot a German exchange student who was apparently looking for alcohol in the garage of his Grant Creek home.

On Monday, Kaarma's trial begins in Missoula District Judge Ed McLean's courtroom.

The question: Is Kaarma guilty of deliberate homicide, or was he justified in taking lethal force to protect his fledgling family from intruders?

But first, defense attorneys and Missoula County prosecutors must agree on 12 jurors from area residents who were selected for the jury pool.

By Tuesday, a jury should be ready to begin hearing the circumstances of Diren Dede's death.

Prosecutors allege Kaarma and his wife, Janelle Pflager, set a trap for intruders who had burglarized their home in the weeks prior to the shooting.

According to court documents, the couple purposely placed a purse in the garage, left the garage doors partially open, and installed motion detectors and a video-monitoring system in order to lure the would-be burglars inside.

Kaarma was alerted to a dark figure in the garage by a baby monitor. Prosecutors claim he grabbed his shotgun, exited the front door and turned to face the partially open garage door. He fired four shots into the darkness.

Neither Kaarma nor Pflager saw Dede, dying on the garage floor, until Pflager went back inside the house and flipped on the garage light, court records state.

When Missoula Police Officer J. Jones arrived at the residence a few minutes later, he asked Kaarma who shot the person lying inside the garage.

"Me," Kaarma replied.

"You?" the officer asked.

"Yep," Kaarma replied.



The officer reported that Kaarma was unusually calm, given the situation.

In the week after the April 27th shooting, Missoula residents came to know Dede as a 17-year-old student at Big Sky High School – a soccer fanatic who was beloved by his classmates and received high grades during his time in Missoula.

Dede's friend, an Ecuadorian exchange student named Robby Pazmino, told police they had participated in an activity called "garage hopping" before.

"Garage-hopping" is illegal. Teenagers enter garages looking for alcohol or other substances.

Pazmino, who was with Dede the night of the shooting, said on several occasions prior to April 27 they had stayed in the car while their friends entered other open or partially open garages.

On this particular night, Pazmino and Dede were walking down the street, when Dede wordlessly slipped into Kaarma's open garage. Pazmino told police that while he stood waiting for his friend to return, he heard an unfamiliar voice say, "I see you there."

He ran away after hearing the first shot.

Pazmino left the country and returned to Ecuador shortly after the shooting.

During his initial appearance in Missoula Justice Court on April 28, Kaarma's bond was set at \$30,000 and later that day the former firefighter was released on bail.

A day later, Dede's father, Celal, arrived in Missoula with members of the German consulate to transport his son's remains to their home in Hamburg, Germany.

In the days following, the elder Dede would criticize Missoula's "gun culture" in interviews with German reporters, saying that "America cannot continue to play cowboy."

Meanwhile, Dede's friends, teachers, host family and coaches gathered to grieve over his loss at a candlelight vigil on May 2.

"We're so helpless, and you need to feel like you've done something," Kaarma's neighbor, Leslie Wozniak, explained. "Plus I just want to send a message to the family that this is not something that happens here. And that this is Missoula, Montana, right here. All this love is what we're about, not that one isolated incident of craziness."

Back in Germany, 500 people, including American diplomats, packed the memorial service held for Dede at a Hamburg mosque on May 4.

On May 12, Missoula County prosecutors filed an amended affidavit that included interviews with community members who had come into contact with Kaarma prior to the April 27 shooting.

Part of prosecutors' entrapment theory hinges on the interviews of two Great Clips stylists, who

told Missoula detectives they had cut Kaarma's hair on April 23 – four days before the shooting.

The women said Kaarma has been going to the salon for years and always seemed mad at the world. When his stylist asked how his day was going, Kaarma apparently told her that he was staying up to “kill some (expletive) kids.”

“And I am not (expletive) kidding, you’ll see this on the (expletive) news,” Kaarma allegedly said as he was leaving. “I’m going to (expletive) kill ‘em.”

According to the affidavit, several neighbors also claimed that Kaarma exhibited erratic behavior in the days leading up to the shooting, citing several incidents of road rage and outbursts in which neighbors reported he looked drunk or high.

“The witness said that the defendant appeared disheveled, sloppy and unshaven,” the affidavit stated. “It appeared that the defendant looked ready to fight.”

Kaarma's lead attorney, Paul Ryan, said the strange behavior could be attributed to the fact that his home had been burglarized recently and both he and his wife became increasingly frustrated with what they perceived as a lack of response from Missoula police.

“It just goes to show what he was driven to after he was being terrorized in his own house,” Ryan said.

Prosecutors later charged a pair of teens with burglarizing the Kaarma residence. Court documents suggest they entered the garage and stole iPhones, a jar full of marijuana, a marijuana bong, a marijuana grinder, wallets and credit cards.

Tristan Staber, 18, pleaded guilty to a felony charge of burglary. His alleged accomplice has not been named because he is a minor.

The case has sparked national and international interest – with foreign media and German dignitaries descending on Missoula last spring, and again for this week's trial.

German prosecutors told the Missoulian in May they would open their own investigation into the case, citing a German law that allows them to prosecute offenses committed against German citizens on foreign soil.

Meanwhile, the German consulate's spokeswoman, Julie Reinhardt, asked for justice in Dede's death.

“In general, it's just shocking for us to know that this could happen,” Reinhardt said. “We expect that justice will be done. An unarmed juvenile shouldn't be killed for trespassing in a garage.”

Local politicians, too, have been quick to add their two cents about Montana gun laws – specifically the castle doctrine – asking for common sense reforms.

“What the castle doctrine has done in this country is it has created a culture of gun violence and vigilante justice,” state Rep. Ellie Hill said in the days following the shooting. “And it's created a culture where it's OK to shoot first and ask questions later.”

But the language used by prosecutors and repeated in the Missoulian have sparked the defense team to request a change of venue three times, arguing a jury couldn't be selected from Missoula County because the extensive media coverage.

In the defense team's original request, attorney Katie Lacny argued that local media painted Kaarma as a "cold-blooded killer."

"The pretrial publicity has stirred up pervasive and strong passions of anger, hatred, indignation, revulsion and upset in such a manner that jurors chosen from Missoula County could not determine Markus' guilt or innocence in a fair and unbiased manner," Lacny wrote. The coverage has been inflammatory."

Kaarma also requested to keep sealed all pretrial proceedings, including his so-called "prior bad acts" – a motion that was uncontested by prosecutors and approved by Judge McLean.

McLean denied Kaarma's request for a venue change all three times. In his third and final ruling, McLean said he would watch voir dire closely during the next two days.

He also demanded that Pazmino return to the United States from his home in Ecuador to be physically present at the trial.

Kaarma's trial is slated for Dec. 1 to Dec. 19.

GRANT CREEK SHOOTING

Defense attorneys contend slain exchange student was part of teenage burglary ring



DECEMBER 02, 2014 7:00 PM • BY KATHRYN HAAKE

The wrangling between prosecutors and defense attorneys representing Markus Kaarma became increasingly contentious Tuesday afternoon, as they waded through multiple motions and hashed out what would be admissible during the Missoula man's upcoming trial.

Kaarma stands accused of murdering German exchange student Diren Dede, who entered Kaarma's garage shortly after midnight April 27, ostensibly looking for alcohol.

His friend Robby Pazmino – who was also discussed at length during Tuesday's hearing – was waiting outside the garage when Kaarma fired the fatal shots at Dede.

Prosecutors allege Kaarma set a trap for would-be burglars and baited Dede inside. But Kaarma's defense team, lead by Paul Ryan, argues the shooting was self-defense – a split-second decision to protect his family.

Among the issues brought before Missoula County District Judge Ed McLean on Tuesday, Kaarma's attorneys repeatedly revisited their theory that Dede was not simply a teen who was "garage-hopping," but in actuality part of a band of teens who participated in organized burglaries.

Lisa Kauffman, one of Kaarma's five attorneys, noted the defense had evidence of other teens waiting in the area on April 27 and even a "pickup" car. She argued that access to some of the teens' phones would prove they were in constant contact and often used the phones as "walkie-talkies" while they participated in burglaries that night.

She listed specific investigative deficiencies of Missoula police, including the fact the defense team didn't have access to Dede's computer and a surveillance video that was deemed unimportant by detectives.

Further, she argued Pazmino, an Ecuadorian exchange student who left the country a week after the incident, would have the evidence of the alleged criminal activity on his phone. That phone left the country with Pazmino.

The state's lead prosecutor, Andrew Paul, said that was "nothing but a fishing expedition," and contended there was nothing of evidentiary value in the items the defense wished to examine.

Further, he said the defense had access to Dede's phone and sent it to an expert witness who told them he couldn't analyze it.

Pazmino's potential presence and testimony at the trial continues to be a source of contention, and Kaarma's attorneys criticized the state's alleged failure to call Pazmino as a witness.

Deputy County Attorney Jen Clark said the teenager was in the process of getting his visa to come to the United States with his attorney, but it was unclear Tuesday whether Pazmino will be able to arrive in time for the trial.

After much back and forth, McLean ruled that he would allow the testimony of a Missoula police officer who apparently told Janelle Pflager, Kaarma's wife, that if a burglar entered her home, she would shoot him.

Brian Smith, one of the defense attorneys, clarified with the judge saying the officer made the statement before the April 27 incident that resulted in Dede's death.

"I don't know why we are having this argument. Mr. Smith wasn't there for the interview," prosecutor Karla Painter said. "I was."

Painter argued that Pflager didn't communicate that conversation with her husband, but Smith said the conversation contributed to the overall feeling in the house.

Kaarma's alleged marijuana use also will be inadmissible in court, McLean ruled. Burglars previously had taken marijuana and paraphernalia from the family's garage.

Earlier in the day, McLean seated a jury of eight women and four men, who will ultimately decide if Kaarma's actions were a justifiable use of force.

Prosecutors and the defense team additionally selected three alternate jurors, one woman and two men, before McLean dismissed the 15 jurors until 8:30 a.m. Thursday, when opening statements are scheduled to begin.

Dede was a junior at Big Sky High School and spent almost a full school year in Missoula away from his home in Hamburg, Germany.

His shooting has sparked international outrage and several reporters from major German media outlets were in the courtroom Tuesday covering the trial, including reporters from Der Spiegel, German national public radio, ARD and Sueddeutsche Zeitung.

Dede's parents, Celal and Gulcin, arrived in Missoula last week and were present in the courtroom Monday and Tuesday. They are accompanied by two prominent German attorneys, Andreas Thiel and Bernhard Docke.

Docke said he doesn't know if the family will file a civil lawsuit against Kaarma, but indicated that in Germany, Kaarma's actions wouldn't be considered self-defense if the evidence

supports what has been reported by law enforcement and prosecutors.

In conclusion to voir dire Tuesday morning, McLean instructed the jurors not to discuss the case with friends or family, not to conduct their own investigation, and to stay away from media coverage of the case.

"We have to make certain that Mr. Kaarma gets his fair day in court and the way to do that is not to listen to any extraneous material," McLean said.

GRANT CREEK SHOOTING

Kaarma's partner says she fantasized about catching burglars



DECEMBER 04, 2014 7:15 PM • BY KATHRYN HAAKE

The partner of a Missoula man accused of shooting an unarmed German teenager last spring told jurors late Thursday that she fantasized about catching burglars in their garage.

Janelle Pflager was the last witness on the first day of testimony in the deliberate homicide trial of Markus Kaarma in Missoula County District Court.

Kaarma is charged with the shooting death of foreign exchange student Diren Dede, who

ventured into the couple's Grant Creek garage shortly after midnight last April 27.

Within minutes, he was mortally wounded.

Kaarma's defense team claims he fired his shotgun in self-defense after his home was targeted by a ring of teenage burglars. But prosecutors say Kaarma shot Dede in cold blood after the teen wandered into the garage in search of alcohol.

Pflager took the stand about 3:30 p.m. and led Deputy County Attorney Jennifer Clark through the events that transpired after the couple was burglarized April 17.

She said once they knew they had been victimized, she called 9-1-1 and reported that burglars had taken a wallet, a key, credit cards and an iPhone. She also called the teens – who answered the stolen phone – and demanded they bring it back.

But in the days following the burglary, Pflager said police did very little to follow up, and she and Kaarma began feeling increasingly wary.

"I wanted to stop feeling victimized and start feeling safe, sure," she said. "I wanted a phone call telling me that they got these guys."

Pflager said she and Kaarma felt like they were under surveillance, but also stated that she had a wild imagination "that's like a 5-year-old's."

She said she immediately started locking their home "like Fort Knox" and installed two motion detectors. She also bought a baseball bat from Play It Again Sports, a bat that she viewed as

an extension of herself.

"Of course, I would have this whole fantasy that I was going to get someone," she said.

When she started cleaning out the garage so the burglars wouldn't have anything to take, she thought better of it.

"Initially, I thought wait a second if they come back and there's nothing here, No. 1, the only option or alternative would be she moved it inside so let's go inside and get it," she said. "Or, I wouldn't know if they were coming in and out."

She decided to place an old purse inside the garage in hopes would-be burglars would take the bag with identifying items, like an old prescription bottle. She said she wanted to catch the burglars in the act and take a photo of them.

Several days later, while Pflager was smoking a cigarette, she noticed a blue Honda Civic driving around the neighborhood slowly and jumped in her car without her shoes on to follow it out of Grant Creek and onto Reserve Street.

They pulled into a restaurant parking lot and rolled down their windows. Pflager told the court she called 9-1-1 dispatchers because the teenagers inside the car were acting like "weirdos."

"I said you guys are guilty of something, what are you doing up there?" she told the court. "Why are you acting like you just robbed a bank? This is insane."

She said she wasn't afraid of the boys and later described them as "punks" and "wieners."

The exasperated dispatcher instructed Pflager to stop following the teens and to go home, she said.

Three Great Clips hair stylists' testimonies are at the crux of the prosecution's case, contending that Kaarma premeditated Dede's murder.

The three women testified Thursday afternoon, saying they had cut Kaarma's hair in the past and that he tended to be unsociable. But on April 23 – six days after the burglary and four days before the shooting – Kaarma was "belligerent" and used profanity as he told the women he hadn't slept for three nights straight because he was "waiting up to shoot some (expletive) kids."

Tanya Colby, the stylist who waited on him, said when she asked him how his day was going, he unleashed his frustration, using profane language in a loud and repetitive fashion to get his point across.

She said he felt the police were "baiting" him to kill the burglars and that he "was going to kill them and take care of it."

"I just wanted to get him out," she said.

Her colleagues, Falene Sherbondy and Chantel Griffiths, also heard the exchange in varying

degrees, but Sherbondy said she stopped listening when Kaarma allegedly said he was going to shoot some police officers as well.

The trial proceedings started Thursday morning with Deputy County Attorney Clark pumping the shotgun used in the shooting, and the lead defense attorney pointing to an alleged burglary ring during their opening statements.

Clark told the court that Dede called out to Kaarma before he fired the weapon, allegedly saying "No, no, no" and "Wait, please."

"Diren was pleading for his life," she added.

Clark then pumped the unloaded shotgun to demonstrate the multiple actions it took for Kaarma to actually pull the trigger and fire four times. Dede was hit twice by the shots. The last shot was the fatal blow, Clark said.

Dede's mother, Gulcin Dede, let out an audible cry and sobbed while Clark finished the demonstration and sobbed again when Clark showed a photo of the blood stains on Kaarma's car, which was parked in the garage the night of the shooting.

Dede's father, Celal Dede, also cried through Clark's statement.

Kaarma's lead attorney, Paul Ryan, and the rest of his defense team emphasized the misdeeds of an alleged ring of burglars from Big Sky High School and alluded their connections to Dede and his friend Robby Pazmino, who was with him that night.

In his opening statement, Ryan began with Kaarma and his partner becoming pregnant in 2012 and moving back to Missoula, where Kaarma had gone to college, and then mentioned their son's birth.

He portrayed Kaarma as a nervous father who suffers from social anxiety to such an extent that he takes prescribed medication and self-medicates with marijuana.

Ryan pointed out deficiencies in the police investigation and alleged preferential treatment given to affluent students who were burglarizing the neighborhood. Further, he portrayed Dede as a player in the alleged web of crime involving Big Sky students.

But on the stand Thursday morning, Tristan Staber and Mykel Martin – the two teens who were charged in the April 17 burglary – said they didn't know Dede or his soccer friends.

The teens' testimony included several inconsistencies: Both teens said they drove the vehicle through the neighborhood April 17 before Martin entered Kaarma's garage and stole marijuana, a bong, credit cards and an iPhone. They also both said they answered the stolen phone when Pflager called it, but only Staber said he was threatened by her.

Martin, who is still a minor, said he felt guilty about Dede's shooting.

"I was the previous break-in and I was the only reason (Kaarma) was waiting for another person to come in," he said.

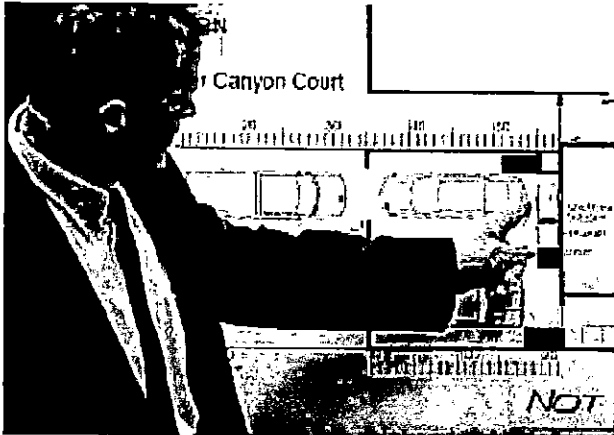
The trial resumes at 8:30 a.m. Friday.

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GRANT CREEK SHOOTING

Kaarma's partner changes story, says teen didn't plead for life before fatal shooting



DECEMBER 05, 2014 7:45 PM • BY KATHRYN HAAKE

A German teenager did not plead for his life in the seconds before he was shot to death in a Grant Creek garage, the Missoula woman who shared the home with shooter Markus Kaarma told jurors Friday.

Janelle Pflager's testimony came in direct contradiction to statements made to police on the night of the fatal shooting.

Kaarma is on trial for deliberate homicide in the shooting of Diren Dede, a foreign exchange student at Big Sky High School who lived nearby and was ostensibly looking for alcohol in Kaarma's garage last April 27.

Pflager spent most of Friday morning on the witness stand, her second day of testimony before the eight women and four men on the Missoula County District Court jury.

After a brief break, Deputy County Attorney Jennifer Clark asked Pflager if she had been assaulted by Kaarma, with whom she has a child, two years ago.

Yes, said Pflager, Kaarma assaulted her in 2012. Clark asked no followup questions about the attack.

Kaarma's records in Missoula Municipal Court have been sealed. He did plead guilty to an assault in Seattle in 2003, and was charged with misdemeanors in Missoula several years later. No details of those cases have been released.

At issue now are allegations that Kaarma and Pflager set a trap in their garage to ensnare would-be burglars after they became irate about an earlier break-in and the lack of response from law enforcement.

But Kaarma's five-member defense team argues that he shot the teen in self-defense after he and his family felt they were targeted by a ring of teenage burglars.

During her testimony, Pflager contended she didn't hear Dede plead for his life before her partner fired the fatal shots from a pump-action shotgun they kept by the door.

Prosecutors played a recording from immediately after the shooting in which Pflager told Officer Caitlin Sargent that the young man tried to stop Kaarma by crying out, "No, no, no. Wait. Please."

Pflager said she wasn't thinking clearly in the hours following the shooting, and she didn't know what she was saying. She said she was traumatized after attempting to render first aid to Dede, who bled to death on her garage floor.

Pflager reiterated Thursday and Friday that she and Kaarma were being terrorized in their home and she felt she was being watched.

"You think that you're good and you're safe," Pflager testified. "You are a good person and then stuff just starts happening. You never expect to be in a situation like this."

"Literally, it felt like being in the gynecologist in the middle of the street – you feel naked and open and out there," she said.

She said she particularly felt threatened because she was a new mother and didn't know what the burglars were capable of, or if they wanted to harm her child.

"Honestly, we didn't care that anything was taken," she said "The thing that was taken was my son's safety. It was maddening that people were affecting my safety and our security."

During her examination, prosecutor Clark played the 9-1-1 call Pflager made in the seconds after the shooting, while Pflager held her hands over her ears on the stand.

During the call, the dispatcher directed Pflager to give Dede first aid, and in doing so Pflager took out Dede's wallet and looked at his I.D.

"Oh my god," Pflager said on the call. "He's not even a U.S. citizen."

During cross-examination, Pflager told defense attorney Katie Lacny that she in no way takes the shooting or subsequent criminal charges lightly, despite her apparently cheerful demeanor.

"I was elected class clown," she testified. "When I get extremely uncomfortable and anxious, I revert to making other people feel comfortable. I will ensure you I am in no way OK."

"My heart breaks for the family," she added.

Lacny's questioning then focused on prosecutors' entrapment theory, asking Pflager about the placement of a purse in the garage. Pflager said she would never try to lure burglars into the garage, despite purposely leaving the purse there with identifying items.

Pflager also spoke at length about her installation of motion detectors and Kaarma's disapproval of the equipment.

They argued frequently about the motion detectors and Kaarma threw them out several times, but Pflager dug them out of the trash and reinstalled them, she said.

Pflager's testimony took most of the morning and ended about 11 a.m. Judge Ed McLean dismissed her, but said she could be recalled later.

The prosecution then called two additional witnesses: Mike McMillan, an employee for Tru Green Lawn Care, and Lewis Reed Richman.

McMillan testified that on April 23, he arrived at the Kaarma residence and knocked on the door several times. When no one answered, he began spraying the foundation of the house for insects, per their contractual agreement.

Within minutes, he was confronted by Kaarma pointing a shotgun at him.

McMillan said Kaarma was completely naked and raised the gun to his shoulder as if he would shoot.

"I was scared and I was frozen," McMillan said. "I stood there and just watched him."

"What the (expletive) are you doing here?" Kaarma allegedly told him.

When McMillan explained he was from the lawn care company, Kaarma apparently didn't apologize.

"(Expletive), I don't know what you are doing here, but you are lucky," Kaarma allegedly told McMillan.

McMillan said a woman, presumably Pflager, then came around to the front of the garage and apologized for Kaarma, who apparently had been awakened. She explained they were on edge because they recently had been victims of burglaries.

Richman, an 18-year-old freshman in college, testified he had been in Great Clips the same day as Kaarma.

He said Kaarma sat down next to him, despite an empty waiting room, and began to play pornography on his cellphone. He also testified that he overheard Kaarma say to his hair stylist that he wasn't sleeping at night because he was waiting up to "shoot some (expletive) kids."

Richman said Kaarma was speaking loud enough that the entire store could hear him, including the three Great Clips employees who testified on Thursday.

Testimony continued Friday afternoon with the statements of several Missoula police officers who responded after Kaarma shot Dede, including Sargent, who stayed with Pflager for the majority of the night.

"She was very friendly," Sargent said. "She seemed comfortable and calm, considering the situation."

She described Pflager's demeanor as neither nervous nor upset, but talkative and even told a joke about Kaarma's last name and the situation. She said Pflager initiated conversation for about eight hours about topics ranging from smoothies to the house she lived in and her hometown of Detroit.

She also expressed how angry she would have been had Kaarma hit one of their vehicles in the shooting, Sargent said.

Prosecutors next called Officer Jacob Jones to the stand. Jones and an officer in training were the first to arrive on scene and saw Dede on the floor in Pflager's arms breathing heavily. The pair then rendered first aid to Dede and followed the ambulance to the hospital.

During cross examination, Jones told Kaarma's attorney, Brian Smith, that he reported a parked Subaru in the neighborhood to his colleagues and then commented on several cars parked on the side of the road at the bottom of the neighborhood.

The defense team alleges the occupants of these cars, along with Dede and his friend Robby Pazmino, were part of an intricate teenage burglary ring made up of mostly Big Sky High School students.

Several more officers, including Officer Michael Kameron and Sgt. Michael Hebert, were called to testify Friday afternoon. All were on scene that night and were questioned by both the defense and prosecutors in a similar fashion.

The trial will resume Monday at 8:30 a.m.

Markus Kaarma trial: Castle doctrine under fire after shooting of exchange student



DECEMBER 07, 2014 12:00 PM • BY MARTIN KIDSTON

MISSOULA — Less than 24 hours after a German exchange student was shot and killed inside a Missoula garage, a local legislator proposed a bill changing the language of Montana's "castle doctrine," the law justifying the use of lethal force in defense of an occupied structure.

The law has been on the books for as long as Montana has been a state, dating back to territorial days and the founding of Bannack. But some believe that a 2009 rewrite of the law made it too easy to apply deadly force.

"What we have now lacks common sense," said state Sen. Ellie Hill, a Missoula Democrat who's introducing legislation to rework the law. "As it is now, it doesn't reflect 100 years of self-defense in Montana, and it doesn't make Montana families safer."

When the state's castle doctrine was reworded in 2009, the language was opposed by the Montana Association of Chiefs of Police, the Montana County Attorney Association and the Montana Sheriffs and Peace Officers Association, among other groups.

Before that revision, Hill said, Montanans still had a constitutional right to defend their home, so long as they believed lethal force was necessary to stop an intruder who was entering the residence in a "violent, riotous, or tumultuous manner."

That language was removed in 2009 at the request of lobbyist Gary Marbut, president of the Montana Shooting Sports Association. The bill was carried by Rep. Krayton Kerns, R-Laurel.

"Marbut basically changed it to shoot first and ask questions later," said Hill. "Before 2009, a person had to exhibit some sort of violent, riotous or tumultuous behavior. Now that he's removed those terms, you could shoot a wayward trick-or-treater. It lacks common sense."

Hill is looking to reinstate the terms during the 2015 legislative session. While she'll be a Democrat serving in a Republican majority, she thinks her bill can pass. It's not a partisan issue, she said, nor does it pit liberals against conservatives.

"Yes, Ellie Hill, a Missoula Democrat with three children, has a gun in the closet of her home," said Hill. "This isn't anti gun — it's common sense. The organizations that we entrust, our police, our county attorneys and our sheriffs, they've all said our current law is a bad idea."

Law changed in 2009

Marbut, who's locked in a post-election battle as an Independent candidate vying for a seat on the 2015 Legislature, disagrees with Hill's perspective and says she doesn't understand the law and its history.

Marbut says the concept behind the castle doctrine reaches back to Europe and the 1300s, and has been a part of Montana's culture since the Bannack statutes were created during territorial days.

Because of the law's history and its age, Marbut felt it was too hard to understand. Terms like "riotous" and "tumultuous" are not commonly used, he said, nor are they commonly understood by the larger community.

He wanted to simplify the language and he succeeded in 2009 when Kerns sponsored and passed his bill.

"We believe that people should be able to understand what the law says, what criteria it requires and what it prohibits," Marbut said. "We took those terms – riotous and tumultuous – out of the law so people could understand the law and know what it required them to comply with."

Marbut added that the castle doctrine doesn't permit a person to do anything inside the home that's not permitted outside the home. That was tested this year after Michael Gordon drew a gun from his pickup truck before shooting and killing Christopher Hymel in the parking lot of a Missoula strip club.

In his tearful testimony during a coroner's inquest, Gordon argued that he was in fear for his personal safety the night that Hymel punched him through the window of his truck. After several hours of deliberation, the inquest jury ruled that Gordon's use of deadly force was legally justified.

Marbut won't talk about the case, saying he doesn't have access to the investigative information. Asking him to speculate on the outcome, he said, was "as stupid as Hill making conclusions about the castle doctrine based upon what she doesn't know."

"Basic self defense allows the same thing inside and outside a structure," Marbut said. "It really doesn't allow a person to do any more than what they can do based on other laws, even outside the home."

Media attention

While the Gordon case raised questions on the use of lethal force in Montana, it's been the Markus Kaarma trial that has garnered much of the media attention this year.

Kaarma shot and killed Diren Dede, a German exchange student attending Big Sky High School, after the unarmed boy entered Kaarma's open garage in search of alcohol on an April night.

Hill and Marbut have each emerged as advocates arguing their side of the debate. Hill believes Dede was murdered and Marbut believes Kaarma erred in using deadly force. Beyond that, they don't agree on much.

Hill has been interviewed in her home by CNN, and she recently had a German television crew reporting from her lawn. She's sat for interviews with Al Jazeera and the Rev. Al Sharpton, a Baptist minister and civil rights leader.

While she's not free to discuss the Kaarma trial since she's a member of the Montana Bar Association, Hill does speak toward Montana's gun culture and its castle doctrine – something that's hard for foreign cultures to understand, she said.

"Missoula has given the international media a perception regarding our sense of gun rights and self-defense laws," Hill said. "They feel like, perhaps, there's a bit of a cowboy mentality here that has gone too far."

Representing the other side, Marbut also has been interviewed by German newspapers and television crews, along with publications on the East Coast.

"They're asking me about American gun culture and American gun laws," Marbut said. "They're asking me to explain to other cultures and other places what this is all about."

Up until recently, Marbut couldn't discuss the Kaarma case because he's often called as an expert witness in state and federal court on Montana's use of force laws.

Now free to talk, Marbut says he wouldn't have worked for Kaarma's defense. Based upon what he knows about the case, he doesn't believe Kaarma was justified in using lethal force against Dede, at least under the conditions in which he carried it out.

"I think he made a classical error, a serious error, because he couldn't visualize the target," Marbut said. "The lights were off (in the garage), and so he couldn't see or know if he was under serious threat. A gun owner is responsible when he pulls the trigger for where his bullets land."

In his self-defense classes, Marbut reminds students that if they use lethal force, they'll have to justify their actions in court and prove they met three main criteria – opportunity, ability and intent.

If the criteria are met, he said, one has to determine if the threat is imminent. If it is, he added, they must then decide if their response is proportional to the threat.

He doesn't believe Kaarma could have met those criteria when he never saw Dede before firing into the dark garage.

"I won't work for somebody who I don't think is on the right side of the law," Marbut said. "My opinion of that incident would be my opinion and the defense wouldn't want to pay me for that opinion because he (Kaarma) couldn't visualize his target."

The case is being widely watched and reported. Many observers, including Hill, believe it could have implications for the state's castle doctrine.

"The outcome of this case is going to be pretty symbolic," Hill said.

Testimony resumes this morning in Markus Kaarma trial



DECEMBER 08, 2014 5:15 AM • ASSOCIATED PRESS

Police officers who found a German high school exchange student wounded but still alive after being shot by a Grant Creek man are set to resume testifying Monday in the man's murder trial in Missoula.

Markus Kaarma, 30, is charged with baiting 17-year-old Diren Dede into sneaking into Kaarma's darkened garage early April 27 and killing him with four shotgun blasts. Kaarma insists he feared for his life and didn't know if the intruder was armed.

Testimony by prosecution witnesses last week suggested Kaarma was on edge at the time and exhibited erratic behavior due to recent burglaries of his and other Missoula homes.

A lawn care worker testified Friday that Kaarma pointed a shotgun at him four days before Dede's shooting. Michael McMillan said when he came to Kaarma's home April 23 to spray for insects, an angry Kaarma came to the front door naked, pointed a shotgun at him and asked what he was doing there.

"I was scared, frozen," McMillan said.

Three women who work at a hair care shop testified that they heard Kaarma say that same day that he had been waiting up nights to shoot an intruder. A college student at the shop said he also overheard Kaarma talk about shooting burglars but told defense attorneys he didn't believe Kaarma would actually shoot anyone.

Kaarma shot and killed Dede after being alerted by a motion detector in his garage, which was left partially open with a purse deliberately placed inside. Defense attorneys argue Montana's "stand your ground" law allows people to use deadly force when they believe they are going to be harmed.

Kaarma's girlfriend, Janelle Pflager, said in a 911 call played for jurors Friday that Dede was lying face down and "barely breathing" after Kaarma shot him. She said Kaarma did not help her as she tried to aid the mortally wounded student, who died a short time later at a Missoula hospital.

Jurors also heard audio tapes of Pflager talking with police after the shooting. She told officers that Dede had pleaded for his life, saying, "No, no, no, no, please!"

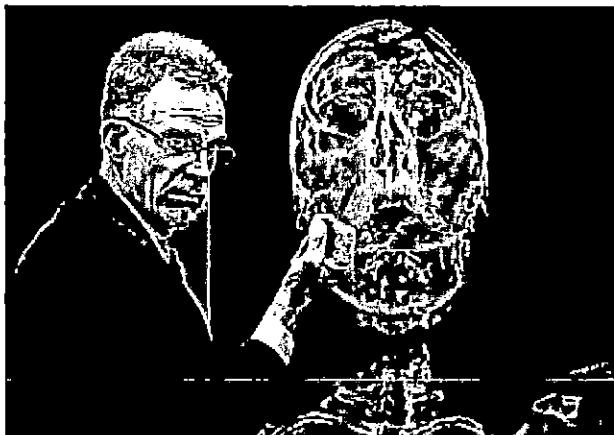
Missoula police officer Jacob Jones said he was among the first to arrive and said he asked

Kaarma who shot the victim, to which Kaarma replied, "me."

Trial is scheduled to continue through Dec. 19.

GRANT CREEK SHOOTING TRIAL

State medical examiner: Dede could have survived first gunshot; second wound was lethal



DECEMBER 08, 2014 7:15 PM • BY KATHRYN HAAKE

German exchange student Diren Dede was mortally wounded as he moved away from a door between the garage and kitchen at Markus Kaarma's Grant Creek home, the state medical examiner testified Monday.

Kaarma, 30, is charged with deliberate homicide in the shooting of Dede, who was an exchange student at Big Sky High School, in the early hours of April 27.

Kaarma's attorneys contend he shot Dede in self-defense after his family's six-bedroom home was targeted by a ring of teenage burglars who were students at Big Sky High School.

Prosecutors, however, allege Kaarma and his partner, Janelle Pflager, set a trap to ensnare intruders in their garage by leaving the door partially open and a purse out in the open.

Kaarma's trial resumed Monday morning with the testimony of several police officers. Dr. Gary Dale, the state medical examiner, and several of his colleagues from the Montana State Crime Lab testified Monday afternoon.

Dale showed the jury three photos of Dede's wounds — two of the non-lethal wounds in his left arm and one of the several fatal wounds to Dede's head. He also showed the jury an X-ray of the pellets that were lodged in the left side of Dede's brain.

Dale explained that Dede was struck first by a six-pellet cluster on his arm.

A schematic of the garage showed that Dede then moved away from the entrance to the kitchen and toward the open garage door — the only possible exit.

Dale said the first wound was not fatal and Dede could have survived it had he gotten medical attention. Dale said based on the wounds he couldn't ascertain which way Dede was facing when he was struck.

Dede was then mortally wounded by the shot to his head, with five pellets puncturing his skull, Dale said.

"He would have been brain dead upon sustaining these wounds," Dale said.

In finishing his testimony, he told jurors he ruled homicide was the manner of Dede's death.

Kaarma lowered his head for most of Dale's testimony, looking up at the medical examiner and photographs of Dede only infrequently.

Prosecutors also called state forensic toxicologist Michelle Duffus, who tested both Kaarma's and Dede's blood for narcotics or alcohol following the incident. She said Dede's blood came back clean, but Kaarma's blood tested positive for cannabis.

The trial resumed Monday morning after Missoula County District Judge Ed McLean questioned each juror in his chambers about an issue that came up over the weekend.

McLean didn't elaborate on the issue, but no jurors were replaced and the trial resumed shortly thereafter.

During Monday's testimony, the defense continually suggested police bungled their handling of the crime scene and evidence during the investigation.

Lisa Kauffman, one of Kaarma's five attorneys, directed question after question at Mitch Lang, focusing on his experience as a new detective with the Missoula Police Department.

"Whether you process a scene at 3 in the morning or 5 a.m., your goal was to do (the investigation) fully and completely, correct?" she asked. "You are not just looking to get some guy in trouble, right?"

Lang answered in the affirmative to both questions. Kauffman also noted that a purse and several other items were not collected until the afternoon, after detectives and officers conversed about the case and released the scene.

"The reason you went back in the second time was because you forgot stuff, right?" Kauffman asked.

Lang said the reason they returned to the scene was because there were several inconsistencies in Kaarma's assertion of self-defense that "didn't add up." Upon returning, they noticed the black purse had been moved from a freezer to in front of the door to the home.

The purse has been a contentious issue since the beginning of the case.

Prosecutors allege it was placed in the garage to lure would-be burglars inside, but the defense say it was simply intended as a way to positively identify burglars.

Kaarma's attorneys also claim police mistakenly didn't obtain search warrants for the cellphones of Dede and his friend Robby Pazmino, who was with them that night. They contend the phones would shed light on the alleged burglary ring and should have been analyzed for evidence.

But police say there wasn't probable cause to search the phone, and as such, a search warrant would have been denied.

Kauffman also questioned Sgt. Mike Hebert, who was one of the first officers on the scene. She asked him why he didn't draw an outline of Dede's body with chalk where he lay bleeding on the ground or at least take a photo of the scene.

Hebert responded that his first responsibility as an initial responder is to render aid to the wounded person and help medical personnel.

She also questioned Hebert about how victims feel after they've been burglarized.

"Your job is to put them at ease, right?" she asked. "You don't want them to feel like they have to take care of things themselves, right?"

"Right," Hebert responded.

"Are the rules any different for a homeowner defending his family and his home?" Kauffman asked, comparing a homeowner to a police officer.

"I would say no," Hebert said.

Under examination by Deputy County Attorney Andrew Paul, Hebert clarified by stating the rules are different when an officer uses deadly force.

"I need to know there is a threat to myself or someone else given the circumstances," he said.

"You have to see someone is actually threatening you, right?" Paul asked.

"Yes," Hebert responded.

He also said that he didn't know of any burglary rings in Missoula.

In another line of questioning, Kauffman attempted to draw parallels between the Grant Creek incident and a fatal shooting at a Missoula strip club in September, which Lang also investigated.

That drew an objection from prosecutors, which McLean upheld. In that case, a Missoula man fatally shot another man in the Fox Club parking lot after a fight. Michael Gordon claimed he shot Christopher Hymel in self-defense and wasn't charged with a crime.

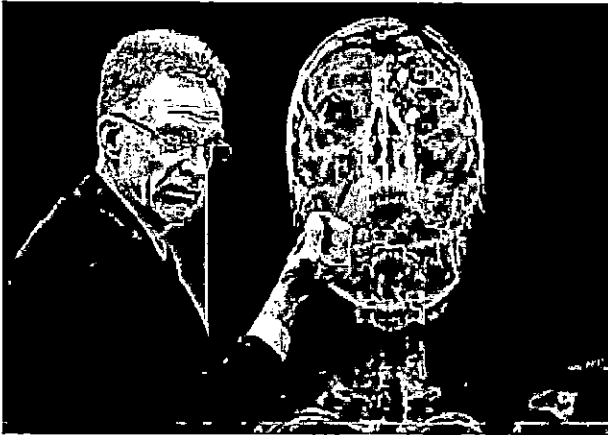
Lang also led jurors through the police video of the crime scene, pointing out gunshot holes in the walls inside the garage and in the home.

Pieces of the pellets were found inside the hallway and in the kitchen of the Kaarma home, where the couple's infant slept.

Dede's mother, Gulcin Dede, left the courtroom amid tears when Lang pointed out her son's bloodied clothing in the driveway.

The trial is scheduled to resume at 8:30 a.m. Tuesday.

State medical examiner: Dede was moving away from kitchen door when fatally shot



DECEMBER 08, 2014 7:47 PM • BY KATHRYN HAAKE

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Defense questions police

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Strip club shooting comparison

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GRANT CREEK SHOOTING

Ecuadorian student: Lots of Missoula teens were 'garage-hopping,' but no one expected to die



DECEMBER 09, 2014 7:00 PM • BY KATHRYN HAAKE

The trial of the Missoula man accused of murdering a German exchange student resumed Tuesday with Ecuadorian student Robby Pazmino testifying he was "garage-hopping" with Diren Dede the night he died.

It was a "game" they learned from Missoula teenagers, he said.

Markus Kaarma is accused of deliberate homicide for the April 27 shooting of Dede, who wandered into his garage looking for alcohol

shortly after midnight.

The boys did not believe they were doing anything bad, Pazmino told jurors, and never could have imagined the consequences.

Kaarma's defense team contends Pazmino and Dede were part of a teenage burglary ring that targeted Kaarma's six-bedroom Grant Creek home.

On the stand, Pazmino denied any involvement in organized crime and denied ever going into Kaarma's garage himself.

But Pazmino said he and Dede, who he described as his best friend, fraternized with Missoula teens who garage-hopped on three to five other occasions. Pazmino and Dede never got out of the car, while the American teenagers ran into garages and stole alcohol.

"We are not criminals," Pazmino said. "It was like a game, but we didn't know the rules. No one told us we could get shot, because we don't have those rules in our countries."

Pazmino normally stayed the weekends with Dede, and the day of the fatal shooting was a sleepy one. The boys considered going to a bonfire, but inclement weather canceled those plans and they lazed around Dede's host family's home, playing video games and watching movies.

Shortly before midnight, Pazmino and Dede decided to go for a walk. As they turned the corner to Kaarma's street, Dede picked up a cat and started petting it. That launched a conversation about mountain lion sightings in the neighborhood.

"Imagine if we see a mountain lion," Pazmino told Dede. "We would pee our pants."

When they came across Kaarma's partially open garage moments later, Pazmino told the jury Dede approached the garage wordlessly and didn't answer when Pazmino asked what he was doing.

"Diren was really brave," he said. "He wasn't afraid of anything. He was just brave."

Pazmino said he carried on down the street and was surprised when he heard a voice say "I see you there," and the first gunshot.

He said he was frightened, so he ran back to Dede's home – jumping over several fences and losing his phone in the process. Still not realizing his friend had been shot, he waited for Dede to return. He didn't call 9-1-1 because he didn't think it was possible that Dede had been harmed in the incident, he explained.

Pazmino returned to the scene with Dede's host parents, Kate Walker and Randy Smith, about 20 minutes after the ambulance had taken Dede away. That's when he learned his friend had been wounded in the garage.

He told the jury that he didn't know about garage-hopping – or what he initially called "garage-shopping" – until he moved to Missoula. He wasn't comfortable with the practice.

"I thought it wasn't good and I didn't like it, but we didn't know that if you went into a garage someone could shoot you."

During cross-examination, Kaarma's attorney Paul Ryan attempted to draw connections between Pazmino and other teenagers to support his burglary ring contention.

"You thought it was dangerous," Ryan said. "You told Diren it was dangerous and he should stop."

Pazmino explained again that the boys considered garage-hopping to be a game.

"No one told us what could happen – not the organization, not the school and not the police department," he said.

Ryan then asked him if it was acceptable to enter strangers' homes during the night in Ecuador, and asked whether Pazmino was aware that exchange students must follow Montana law to be able to stay in the country.

Ryan also asked what Pazmino was wearing that night.

He told the jury that he put on a hoodie and wasn't wearing his glasses when he and Dede left the house.

Ryan also questioned Pazmino about his social plans that night and if he went straight home to Dede's host parents when he was running away from the gunfire.

Pazmino said he ran straight back to Dede's home.

Several of Kaarma's neighbors also took the stand Tuesday morning, testifying that Janelle Pflager used the term "bait" or "baiting" in conversations describing how she and Kaarma were going to catch the burglars who were entering their garage.

On April 18, Pflager approached Robin Rosenquist, who lives across the street from the couple. Pflager told Rosenquist they had just been robbed and they were unsatisfied with the police response.

"She was upset and indignant because the officer told them to keep their doors locked and garage doors closed, and they weren't going to do that," Rosenquist said.

Pflager told Rosenquist her partner was "was pissed because his favorite pipe was stolen."

Pflager also said she called the cellphone and confronted the burglars, yelling at them to bring the belongings back, she said.

"Do you really think someone would come back again, knowing how upset they are?" Rosenquist allegedly replied.

"Oh yeah, he's coming back because we are going to bait him," Pflager allegedly said.

Rosenquist said that word really struck her because she would have just allowed the police to handle a burglary.

"She seemed really aggressive to me," Rosenquist said. "She wasn't fearful. She seemed upset and ... determined would be the word."

Another neighbor, Jessica Bracey, took the stand and told jurors that Pflager used the word "baiting" when she spoke with her about the April 17 burglary.

"The comment was 'guns were loaded' and she was going to protect her son," Bracey said.

Pflager said she didn't want to "shoot some 14-year-old kid who is breaking into the house and is stealing money for pot."

When Bracey and her husband awoke after the April 27 shooting, she remembered what Pflager had said.

"They baited them in there," she said.

On cross-examination, both neighbors said they had most of their conversations with Pflager and had very little interaction with Kaarma. In addition, Bracey said she had guns inside her home and would use them to protect herself and her family.

Neighbors' testimony continued into the afternoon with Terry Klise and several others taking

the stand.

Klise said that Pflager called him at 1 a.m. April 18 after her garage was burglarized. Pflager believed Klise's car had also been burglarized.

A Missoula police officer was taking the initial report when Klise approached. Pflager decided to call the iPhone that had been stolen from their garage. When the burglars picked up, Klise said Pflager's conversation was "jaw-dropping."

"She quickly went into a tirade," he said. "She was calling them (expletive) and calling them (expletive) and screaming at them. I remember looking at the officer and asking if this was out of line."

She then allegedly told them, "If you continue to return to our garage, you could be killed," he explained.

He said the officer raised his eyebrows, but didn't admonish Pflager for her language or behavior.

"I became incredibly uncomfortable and asked if I could leave," he said.

On the morning of the shooting, Klise said he awoke after a neighbor texted him, but police officers asked him to stay in his home as they worked on the scene.

The following morning, he and his wife Suzanne sent a text message to Pflager asking how she was doing. Pflager invited her neighbors over, but soon their sympathetic attitude toward Pflager shifted to disbelief.

"You don't have to worry about the burglaries anymore because he's dead," she allegedly told the couple.

"Her demeanor was just matter of fact," Klise told the court. "She was very cold and almost the attitude of well, we've got him. We don't have to worry about this anymore."

She gave the couple a tour of the parts of the house that were damaged by the pellets, he said. As the couple went through the kitchen and the laundry room, she asked if they would like to see the garage – now stained with Dede's blood.

"We told her we were not interested and we wanted out of there at that time," he said.

Testimony ended with the state calling neighbor and former law enforcement officer Mike Frellick to the stand.

Frellick recapped a conversation he had with Pflager after the April 17 burglary. He advised her to lock her doors and shut her garage, while offering to call friends at the Missoula Police Department.

He explained to her that the burglary was a "crime of opportunity," meaning someone was taking things that were available to take because their doors were open.

Pflager apparently told Frellick about the baby monitors she purchased and the one she installed, and said she didn't feel safe with Kaarma leaving to fight fire soon.

She then questioned Frellick about gun laws in Montana, specifically the stand-your-ground laws. In his explanation, he referenced a recent case where a man was being confronted in his home by an intruder, who had shattered his living room window to get inside the home.

Frellick said woke to several loud "bangs" on April 27 and went to his window to watch what transpired. From his home, he could see police cars and an ambulance pull up to the Kaarma residence.

"We observed them take a young man – or a person – out on a stretcher," he said. "We didn't know who it was at the time."

The trial will resume Thursday at 8 a.m. with more of Frellick's testimony.

Missoula rallies to show support for Dede family during trial

DECEMBER 10, 2014 2:55 PM • BY KEILA SZPALLER

The name Dired means to be strong, to not give up.

That's one thing Dired Dede's father, Celal, told Beth Brennan this week when she delivered gift baskets from Missoulians to the parents of the late young man who was a German foreign exchange student at Big Sky High School.

Dired Dede was shot dead at 17 after entering a stranger's garage in Grant Creek last April 27.

Now, Markus Kaarma is on trial in Missoula County District Court, accused of deliberate homicide. Celal and Gulcin Dede, Dired's parents, are sitting through the testimony.

"(We met them) at the Missoula County Attorney's Office after a long day of difficult testimony detailing Dired's death," Brennan wrote in a Facebook post. "Everyone was feeling fragile. Gulcin, Dired's mom, started crying when she came in the room.

"She and Celal hugged each of us, and Gulcin cried and cried. It was as heartbreaking as you can imagine."

Then, Brennan learned about the meaning of Dired's name and the way it gives his parents strength to endure the trial. On Tuesday, she talked with the Missoulian about how the community is reaching out to the family.

"When I said to them how courageous it was for them to be able to sit in that courtroom day after day with Kaarma there, they said, 'We do that for Dired. This is what we do,' " Brennan said. "And they talked about how much Dired loved Missoula. I think that part was pretty touching, too."

Dede entered the garage uninvited and ostensibly looking for alcohol. While Kaarma is accused of deliberate homicide, the defense team contends the shooting was justified because Dede was part of a teenage burglary ring that targeted Kaarma's home and threatened his family's security.

Brennan's son, Dylan, played soccer with Dired last spring with the U18 Missoula Strikers. Dired's death had a significant impact on the team, and early on Missoula offered support to the family, Brennan said.

"We had a benefit soccer game, and did a bake sale and put out donation jars," Brennan said. "We raised almost \$5,000 for the Dedes."

So when the trial started last week, Brennan started following it on Twitter, and she couldn't help thinking of the grief of the mother sitting through it. She wanted to act.

"I'm going to start crying again. I imagine that poor mother sitting in the courtroom hearing testimony about what happened to her son," Brennan said. "And then to be in this horrible, foggy gray place where you have no family or friends, and my heart just broke for them. So I wanted to be able to do something."

On Saturday, she placed a message on Facebook.

"Missoula friends, Diren Dede's parents are here from Germany for the trial of Markus Kaarma, the man who shot Diren last April. I'd like to let them know we're thinking of them and crying for them and remembering them as they grieve.

"Everything seems inadequate, but I think something is better than nothing. A basket of food and wine? Some gift certificates to local restaurants?

"... Please let me know in a message or comment if you can help."

The response was instantaneous. Brennan used to teach law, and one message came from a former law student, now a prosecutor.

The prosecutor offered to coordinate with the family's interpreter, and Brennan learned from her the couple would welcome the gesture.

"According to what I heard, they would love that. They would love to feel support from the community," Brennan said.

Donations started rolling in. Homemade bread. Wine. Cookies. And many cards with cash to offset the expenses of their trip.

On Monday, Brennan, her son and a Missoula mother who also lost a son delivered two full baskets to the couple.

"I met with them last night. I think I was afraid that they would think badly of Missoula, and they don't," Brennan said.

"They talked about how hard it is to sit in the courtroom with Markus Kaarma. So they certainly harbor no good feelings toward that man. But they really do believe that Missoula is a good place.

"They talked about how much Diren loved it here. They talked about how people recognize them when they're out and about and just come up to them and give them hugs. So they don't blame Missoula.

"And that was wonderful to hear. But they're brokenhearted, and I think many of us are brokenhearted with them and want to be able to do something. You can't take away the pain of a parent who has lost a child, and you don't give them things that make them not hurt, but there

are so many other things that come along with that hurt."

The expenses of the trip are one, and the community can and is helping. Those who want to donate can contact Brennan at babrennan@gmail.com or send mail to 516 W. Mountain View Drive, Missoula, MT 59802.

"There's more coming, still. It took off pretty quickly. I think it's hit a real nerve with people," Brennan said. "People are following the trial, that's for sure. But I also think maybe it's the time of year. It's the holidays. You're thinking about other people."

"And then I just think there's been a lot of attention paid to our justice system and things that are happening with young men being killed violently, and I think at least for some, this is a way of dealing with their feelings of hopelessness there, too, to do something tangible for these people, even if we can't change the outcome."

The parents have been humble and gracious in accepting the offerings from the community, Brennan said.

"They told us the meaning of Diren's name is to be strong, and to not give up," Brennan wrote on Facebook. "They told us how excruciating it is to sit in the courtroom every day with the man who killed their son, and they said they do it for Diren."

"Everyone cried. Sometimes that's all we can do — sit with people whose pain we cannot erase and listen and feel their pain. As Celal said, the pain of losing a son is the same all around the world."

The day after she put out the call on Facebook, she posted again, this time about the response.

"I cannot change what happened to Diren. None of us can fix his family's pain. But all of us are showing them that Montana can be more than the place where their son died. It can be a place where people are willing to step outside of their daily routines and offer tangible symbols of love and support to strangers who are hurting," Brennan wrote.

Detective: Kaarma adjusted aim before firing final, fatal shot at exchange student



DECEMBER 11, 2014 7:58 PM • KATHRYN HAAKE
MISSOULIAN

MISSOULA — Testimony in the deliberate homicide trial of Markus Kaarma revealed Thursday that he saw the German exchange student in his garage and shot directly at him three times, then stopped to readjust and deliver a final, fatal blow when Diren Dede stood up from behind a car.

Kaarma, 30, is on trial in Missoula County District Court for the April 27 shooting of 17-year-old Dede, who was a foreign exchange student and soccer player at Big Sky High School.

Defense attorneys argue that Kaarma shot Dede in self-defense after his home had been burglarized in the weeks preceding. But prosecutors contend that Kaarma and his partner, Janelle Pflager, baited would-be burglars into the garage to shoot them.

Thursday marked the seventh day of trial for the Missoula man. The counsel general of Germany, Stefan Schlueter, sat with Dede's parents, Celal and Gulcin Dede, during the proceedings and met with Missoula County prosecutors.

Missoula Police Detective Guy Baker took the stand Thursday afternoon and under examination by Deputy County Attorney Andrew Paul explained the cluster of pellets in the walls and appliances of the garage indicate that Dede was moving parallel to Kaarma and away from the kitchen door as Kaarma fired three rounds.

The first three rounds hit at about 30 inches off the ground, but the last cluster was five-and-a-half feet high — indicating Kaarma could see Dede while he moved, Baker said.

"At some point, Diren stood up and was facing Mr. Kaarma with Mr. Kaarma at the back of the Buick and Diren at the front of the Buick," he said. "And he was shot in the head."

The prosecution also played Kaarma's recorded interview with police. Wearing the same pajama pants he wore during the shooting, Kaarma seemed relaxed as he relayed the series of events that led to the fatal shooting.

He said Pflager left the garage door partially open because she "probably wanted to catch the

burglars."

When he and Pflager were alerted to the intruders' presence via motion detectors and video surveillance, he grabbed his loaded shotgun lying on the entryway floor and exited the front door of the house, he said.

He placed himself between the white Buick and his "strategically parked truck" with his back to the outside. He said Pflager turned on the home's exterior lights before he fired the shotgun – inhibiting his ability to see.

"When you said you were blinded, tell me what was going through your mind?" Baker asked in the video.

"I am going to die, because someone's life is about to be over," he said. "Their life is going to be not worth living, and they would probably kill to get away."

He heard a metal-on-metal sound and thought the person inside was coming after him, Kaarma told detectives. He imagined an ax or a wrench being thrown at his head.

He then told detectives he fired four shots consecutively into his garage without a pause – contradicting Pflager's initial testimony. Most of the couple's neighbors also testified there was a pause sometime after the initial two or three shots were fired.

On the stand, Baker outlined several other discrepancies between Kaarma's testimony and Pflager's initial statement. Pflager said she didn't turn the light on outside until after the shots had been fired. She also said Dede and Kaarma exchanged a few words before Kaarma shot him, while Kaarma said nothing was said.

Baker testified Thursday that Dede's blood splattered on the back bumper of the Buick indicated the teenager was crouching behind the car with his wounded arm and stood up before Kaarma shot him in the head.

As Lisa Kauffman, one of Kaarma's defense attorneys, launched into cross-examination, she took exception with Baker testifying on blood spatter analysis, calling it a "specialized field in the area of forensic science." She also asked that his testimony be stricken.

"I don't mean to disparage you sir, but you don't have a college degree, do you?" Kauffman questioned.

Baker responded that he didn't, in fact, have a college degree.

But the cross-examination was cut short by District Judge Ed McLean, who dismissed the jury for a "housekeeping" issue after Kauffman took umbrage with the judge's objection to one of her questions.

"We don't have a blood spatter analyst," Kauffman said after the jury left. "I don't know if we have experts ... that can speak to blood spatter. So I understand you are upset with me about something else, but I just wanted the record to be clear that his testimony regarding anything that has to do with blood should be stricken."

Earlier in the day, the prosecution played a recording of a jailhouse phone call Kaarma made to Pflager after he was arrested.

Prosecutors played brief excerpts of the longer recording during their examination of Missoula Police Detective Stacy Lear.

In the recording, Kaarma initially told his partner it was pitch black in the garage but later confirmed that he saw the teenager and saw he was holding something in his hand.

He also asked Pflager if she had heard him scream at all, and she confirmed that she had heard Dede yell something before he fired the first shot.

He told Pflager he didn't know what the intruder wanted and that Dede could have been aiming a weapon at their baby's crib. He said the intruder was "trapped" and was threatening him and his family.

"This guy is a felon," Kaarma told Pflager. "He was committing a felony crime in our house. He wasn't a 17-year-old kid."

"Everyone should rejoice that our neighborhood is safer, (expletive) idiots," he added.

He commiserated with Pflager about being "mentally (expletive) up" because they weren't getting sleep and felt so anxious about the security of their home. They felt they were being watched by a ring of burglars, he said.

And he repeated conversations initiated by other inmates at the jail.

"What you in here for, bro?" they allegedly asked him.

"You should see the looks on their faces when I say homicide," Kaarma told Pflager. "There are no other murderers in here."

The prosecution also called Randy Smith, Dede's host father, who gave an emotional testimony and described the teenager as a "great kid."

Smith said Dede had a midnight curfew on weekends and 11 p.m. on weekdays, and said they never had any issues or conflicts with the young man.

Smith said he and his wife, Kate Walker, initially just wanted to be a welcome family for Dede and weren't planning on hosting the entire year. But within a week, they changed their mind.

"He was just such a great kid," Smith said. "We knew maybe it would be more fun in another house with a built-in brother or sister to hang out with. We didn't want to just put pressure on Dede."

So they asked Dede's soccer coach, Jay Bostrom, to ask Dede if he would like to stay with them.

Dede, of course, chose to stay with Smith and Walker in their Grant Creek home, which sits a

street down from Kaarma's home. Smith also talked about the friendship between Dede and Robby Pazmino, the Ecuadorian who was with him the night he was shot.

"I would pick both of them up at school on Friday," he said. "They were like brothers."

On April 27, he said he woke to four loud bangs – three consecutive and one more after a pause, and then watched as police cars and emergency responders descended upon the neighborhood.

He went downstairs to check on the teens and spoke to Pazmino, who told Smith he and Dede were taking a walk and ran after they heard the gunshots. Pazmino said he didn't know where Dede was, and didn't immediately tell his host father that Dede had entered the garage.

Smith, Walker and Pazmino then returned to Kaarma's home in hopes of seeing Dede.

"I couldn't see him standing anywhere," he said. "I didn't want to barge in, but there was a female uniformed police officer. I went down to talk to her and I said I don't know what you've got going on here."

Smith explained that he was missing his charge, and the police officer told him that Dede had been injured and they needed to get to the hospital immediately.

Kaarma's trial resumes Friday at 8:30 a.m.

Kaarma trial: Defense's first expert witness paid \$44K to investigate, testify



DECEMBER 12, 2014 8:00 PM • BY KATHRYN HAAKE

MISSOULA – Prosecutors in Markus Kaarma's deliberate homicide trial on Friday attacked the defense's first expert witness, who received his doctorate from an unaccredited university that is now defunct and was paid \$44,000 to investigate the case and testify.

Kaarma, 30, is accused of fatally shooting Diren Dede, a German foreign exchange student who was searching for alcohol in Kaarma's Grant Creek garage in the early hours of April 27.

Kaarma's attorneys contend he shot the 17-year-old in self-defense after his home had been targeted by a ring of burglars; prosecutors, however, argue Kaarma and his partner, Janelle Pflager, baited would-be burglars into the garage to shoot them.

During her cross examination Friday afternoon, Deputy Missoula County Attorney Jennifer Clark focused on Dr. Ron Martinelli's experience and academic training, discrediting previous statements indicating he had pre-medical background and had experience "training doctors."

Martinelli received his doctorate from Columbia Pacific University, a distance-learning college that was never accredited and closed more than a decade after he graduated in 1983.

"It was closed because it had virtually no academic standards, correct?" Clark asked Martinelli.

In his testimony for the defense, Martinelli – who worked as a police officer before he became a law enforcement consultant – called out apparent flaws in the investigation, and said if he were investigating the case he wouldn't have recommended a deliberate homicide charge against Kaarma.

"Because based on what I saw, I felt there was much more work that needed to be done before they made their decision," Martinelli said.

He criticized the investigation of the burglary that occurred in the Kaarma residence 10 days before the fatal shooting, testifying police officers who investigated the crime should have immediately followed up on credit card charges made that night at a local Wendy's restaurant. The officer who responded also failed to photograph a wet footprint believed to be made by the burglars, later determined to be Tristan Staber and Mykel Martin, while they were in the garage, Martinelli said.

The night of Dede's shooting, Martinelli said, detectives failed to test the ambient light and should have used a more collaborative approach in gathering information.

"Every minute after a crime, you start to lose evidence," he said.

The patrol officers who first arrived on the scene should have been documenting everything that was moved or disturbed by emergency medical responders, he said.

Investigators also failed to take into account Kaarma's emotional and psychological state, Martinelli said.

In such a "high-stress event," he said, a person's hearing could be diminished and his memory could be flawed. Normally, it would take 72 to 100 hours for a person to regain 90 percent of his or her memory, indicating that Kaarma should have been interviewed at least three days after the shooting.

In summary, Martinelli argued that officers charged Kaarma too soon, then scrambled to make the evidence fit the charge.

"Detectives who have limited information or no experience, will make a faulty judgment," he said. "They start trying to wrap up the investigation around faulty theory. They try to shove a square peg into a round hole and if that doesn't work for them, they start picking out what doesn't fit."

When Clark cross-examined him, he admitted that during his 200-plus homicide investigations, he had never waited three days to interview a suspect. But he also noted that those homicides were robbery or gang-related.

The defense called several more police officers before District Judge Ed McLean adjourned the trial until Monday.

Lead investigator cross examination

Earlier in the day, defense attorneys concluded their cross examination of Missoula Police Detective Guy Baker, the lead investigator on the Kaarma case.

One of Kaarma's five attorneys, Lisa Kauffman, began her cross-examination of Baker Thursday, but was cut short after being reprimanded by the judge for her method of questioning. She continued Friday morning.

"We are going to start off the day with some things we can agree on," she told Baker.

The agreements didn't last long.

Kauffman focused her questions on discrediting Baker's background and expertise in homicide investigations.

She pointed out that Baker has no college degree, only 100 hours of homicide investigation training and no specific training on self-defense shootings.

She noted testimony from the state's ballistics expert, Travis Spinder, that indicated Kaarma may have fired the four shots consecutively and that he may have fired his shotgun from either

the hip or the shoulder.

Why, Kaufmann asked, was Kaarma was arrested and charged before the police finished their investigation?

Baker explained there was probable cause to arrest and charge Kaarma at 9 a.m. April 27 – about nine hours after the shooting.

When investigators met with the state medical examiner later that day, they concluded more evidence was needed from the crime scene and went back to Kaarma's home for that purpose.

Kauffman further noted that Baker never tested to confirm that blood splattered on the back of Kaarma's Buick was in fact Dede's blood. She suggested it could have been rust or blood from an animal, from Kaarma's game cart sitting on top of the Buick.

The trial will resume Monday at 8:30 a.m., and McLean predicted Friday the jury will begin deliberations Wednesday.

Consul General: Germans softening opinion of gun-toting Montanans



DECEMBER 14, 2014 3:00 PM • BY KATHRYN HAAKE

MISSOULA — Montana may have been perceived as the Wild West when the fatal shooting of German exchange student Diren Dede first reached European newsstands last spring, but that raucous gun-toting reputation may be fading.

That's according to German Consul General Stefan Schluter, who last week attended two days of testimony in the trial of Markus Kaarma, the Missoula man accused of murdering the German teenager in his Grant Creek garage in

April.

Schluter told the Missoulian that he was in the courtroom as a "show of support" for Dede's parents, Celal and Gulcin Dede, who have attended the trial every day since it began two weeks ago.

The diplomat met with Governor Steve Bullock and Mayor John Engen Friday during lunch, and said he wanted to thank Bullock for the "outpouring of empathy and compassion for the parents" of Dede.

He said Missoulians and Montanans have been welcoming and profuse in their kindness for the grieving parents.

"This has already played back in the German press," he said. "In the beginning, it was the German exchange student shot in the States — it was gun-toting Americans. This changed.

"It's not Montana; it's not the population; it's this one who is accused of doing that, and why was he doing this? So, this is a positive development."

Schluter said he trusts the judicial system in the United States, but wouldn't divulge details surrounding the ongoing German investigation into the shooting.

According to prosecutors in Dede's hometown of Hamburg, German law allows the state to prosecute foreign individuals who commit crimes against German citizens on foreign soil.

Schluter said Hamburg prosecutors opened the investigation and sent a questionnaire to Missoula County prosecutors, but didn't know the extent of the investigation.

Dede was a foreign exchange student at Big Sky High School when he and another exchange

student took a late-night walk through the neighborhood of Dede's host family.

At the Kaarma home, Dede ventured inside the partially open garage, ostensibly in search of alcohol. A few moments later, he was shot and killed by Kaarma.

Defense attorneys say Kaarma was protecting his family from an intruder. Prosecutors say the shooting was deliberate homicide, and that Kaarma and his partner baited would-be burglars into their garage.

German media presence

Dave Parker, communication director for the governor, said Consul General Schluter and Bullock discussed a wide range of issues Friday, but primarily Bullock was proud of Missoula and the support its citizens have shown to the Dede's.

"What (Schluter's) seeing (is) what Montana and what Montanans are really all about," Parker said. "We come together and support and help friends and neighbors in times of need, and that's the real Montana."

In the first week of the Kaarma trial, German media swarmed the courthouse – far outnumbering the local media.

Veteran German reporter Hans Holzhaider, of the *Suddeutsche Zeitungs*, has continued to cover the trial and will remain in Missoula for the final few days of testimony and deliberation.

He said he's noticed a change in German opinion, also, since he started covering the trial.

"The first impression was this is a typical case about gun-crazy Americans where everybody has a fire weapon in the house and if you just put your big toe across the line, you run the risk to lose your life," he explained Friday afternoon.

Now, after hearing the testimony of Janelle Pflager, Kaarma's partner, and watching the stoic reaction of Kaarma during the trial, he said his opinion of Missoulians and Montanans has changed.

The way Pflager and Kaarma handled the initial burglary of their garage, and then later Dede's presence there, wouldn't be a typical response for most Missoulians, he believes.

Missoula, Holzhaider said, is an extremely nice and sympathetic town. He said when he walks around town, people greet him and say "hey" or "howdy."

"It's a perfectly agreeable place and if were to send my boy – I have a 19-year-old son – this is the place I would send him," he said.

The trial of Markus Kaarma will resume Monday at 8:30 a.m. Jury deliberations are expected to begin Wednesday.

Defense rests in Markus Kaarma trial; jury begins deliberations Tuesday



DECEMBER 15, 2014 6:25 PM • BY KATHRYN HAAKE

MISSOULA — Coming to an early end, Markus Kaarma's attorneys rested their case Monday morning after showing a brief video of Kaarma crying upon learning he was accused of murder by Missoula police.

The trial resumed briefly after lunch, with prosecutors calling one rebuttal witness before District Judge Ed McLean dismissed jurors until 8:30 a.m. Tuesday, when they will hear closing arguments.

In the meantime, prosecutors and Kaarma's defense team hashed out jury instructions in closed chambers with McLean Monday afternoon.

Kaarma is charged with deliberate homicide for the April 27 fatal shooting of Diren Dede, a 17-year-old German exchange student who was looking for alcohol in Kaarma's Grant Creek garage.

Prosecutors argue the fatal shooting was premeditated, while Kaarma's defense attorneys contend he shot Dede in self-defense after his home was targeted by a ring of teen burglars.

In the video played Monday, Kaarma asked about the status and age of the man he shot, and was stone-faced as he learned Dede had died and was a teenager from a local high school. When the officer left the room, Kaarma put his head on the table and sniffled.

In the next clip, Kaarma was in the interview room with several more officers, when he learned he was going to be charged with deliberate homicide and began to cry.

The officers allowed him to make a phone call to his partner, Janelle Pflager, and he told her the news.

"They said they talked to the prosecutor, and she wants to charge me with murder," he said, tearfully. "Did you talk to my mother?"

After the phone call, he blew his nose and wiped his eyes with the tissues provided to him by police.

"How is that deliberate homicide?" he asked Detective Guy Baker.

"That's just the way the statute reads," Baker responded.

Kaarma was then handcuffed and taken away.

After playing the video, lead attorney Paul Ryan announced the defense rested its case.

The trial resumed after lunch when prosecutors called their rebuttal witness, Missoula Police Officer Ross Coyler. Coyler was on patrol with a training officer the morning of April 27 and they responded to the shooting.

They drove by a row of cars at the bottom of Grant Creek while they were following Dede's ambulance out of the neighborhood. The defense suggested that the row of cars was evidence of a teenage burglary ring that conspired with Dede and a friend to burglarize the Kaarma garage.

However, according to Coyler, the cars were actually his friends and part of his car club. He listed all of the cars by make and their owners by name.

The defense called officer Jeff Lloyd first thing Monday morning.

Lloyd stayed with Kaarma in the hour after the shooting and said Kaarma lit the wrong side of a cigarette and seemed distressed. He told Lloyd that he felt like someone had been watching him through the windows.

Kaarma also asked Lloyd if burglaries and shootings were common in the area.

On cross-examination, Deputy County Attorney Andrew Paul redirected the questions.

"Did he ask you any questions about the well-being of the person that was shot?" Paul asked.

"No," Lloyd said.

"Did he ever use the term self-defense?"

No," Lloyd said.

The defense also called expert witness Dr. Douglas Johnson, a psychologist who is employed by the Department of Defense to research the way soldiers respond under duress.

Johnson studied at the University of California in Los Angeles and Harvard and was paid \$23,000 to research and testify on behalf of the defense.

During his examination, he explained that under life and death situations, even "trained professionals make really bad tactical decisions."

"The worst thing for us is to have them shoot someone they are working with," he said.

Stressors are intensified in novel, unpredictable and uncontrollable situations, he said. And reactions to stressful situations differ for people who suffer from mental ailments, like anxiety.

Under cross-examination, Paul pointed out Kaarma doesn't have any military training and attempted to draw attention to the difference between Kaarma and the subjects Johnson studies.

"You work with elite soldiers. You are not comparing the elite soldiers with the defendant, are you?"

"No," Johnson said.

Closing statements will begin Tuesday morning and the jury is expected to begin deliberations Tuesday afternoon.

Zachary & Jessica Bracey
5647 Prospect Dr.
Missoula, MT 59808
406.360.5915 | 406.370.0251
zbracey@gmail.com | jessiblggs@gmail.com
December 23, 2014

Judge Ed McLean
Montana Fourth Judicial District Court
Missoula County Courthouse
Missoula, MT 59802

Dear Judge Ed McLean:

We are writing in regards to the bail hearing for Markus Hendrik Kaarma. We apologize but due to conflicts with our professions, we are unable to attend the bail hearing in person. We would like to go on record stating that we do not want bail allowed for Kaarma.

We have an adjacent yard to the Kaarma residence. Due to the recent guilty verdict and other aggressive behavior that Kaarma has demonstrated, we feel he is too volatile and would pose a safety threat within the neighborhood. Some examples of this aggressive behavior includes multiple instances of road rage which resulted in verbal hostility towards other neighbors and the experience the TruGreen employee had while trying to spray the lawn.

Kaarma and his partner, Janelle Pflager, have a new Great Dane that on numerous occasions has jumped the fence and into our yard. This has caused us to visit their residence and inform Pflager that their dog was on our property. Given the encounter that the TruGreen employee had with Kaarma, we would be frightened and extremely uncomfortable approaching the house knowing he may be there. This concern is escalated considering we were both witnesses for the Prosecution.

We have two young children and understand the magnitude of our request that Kaarma be denied bail. It would be difficult to not be able to spend the holidays with your young son; however, the safety of our own family is our utmost priority. Should bail be granted, we are considering relocating until the sentence is determined in Feb. This obviously would be an inconvenience for our family, but peace of mind for us is significant. Thank you for your time.

Sincerely,

Zachary & Jessica Bracey

Randy & Robin Rosenquist
2606 Deer Canyon Ct
Missoula, MT 59808

December 24, 2014

Judge Edward P McLean
Missoula County District Court
200 W Broadway
Missoula, MT 59802

Dear Judge Mclean,

We ask that you consider the safety and emotional strain allowing bail would place on a community and neighborhood just beginning to heal from this tragedy. No amount of bail is worth the pain and suffering re-living the last 237 days would cause. In truth, we fear for our families and children knowing that retribution has been a part of this man's history. Those of us close to the situation may have to relocate until sentencing, if bail is granted, to reduce the risk and exposure from a potential encounter, further disrupting our home and the lives of our children. The details of the trial, testimonies, conviction, and history of violence and assault would make it difficult to stay. Please do not allow bail, and instead allow our hearts to continue to heal and find peace.

Respectfully,

Randy & Robin Rosenquist

Jennifer Clark - Karma Bail

From: Michelle Jensen [REDACTED]
To: "jsclark@co.missoula.mt.us" <jsclark@co.missoula.mt.us>
Date: 12/23/2014 8:12 AM
Subject: Karma Bail

Good Morning

My name is Michelle Jensen and I reside at 5850 Prospect Drive. I will be traveling on Wednesday so will be unable to attend the bail hearing. I wanted to personally send you a denial request. Mr. Karma has demonstrated anger management issues that could surface again.

Thank you!

Michelle Jensen

From: Al Jensen <[REDACTED]>
To: "jsclark@co.missoula.mt.us" <jsclark@co.missoula.mt.us>
Date: 12/23/2014 7:35 AM
Subject: Kaarma bail

Hello Jen Clark,

My name is Alan B Jensen
5850 Prospect Drive

Our family is traveling for this Wednesday.

I wanted to personally send you a bail denial request.

Pre trial, two neighbors personally told me of Mr Kaarma staring them down as he very slowing drove by them in the neighborhood. Both described it as very uncomfortable.

Thank you for your hard work on this case!!

Al Jensen

Jennifer Clark - No Subject

From: [REDACTED]
To: <jsclark@co.missoula.mt.us>
Date: 12/23/2014 5:47 AM
Subject: No Subject

RE: Marcus Kaarma hearing to set bail

Ms. Clark:

As you are aware, on April 27, 2014 Mr. Marcus Kaarma purposefully took the life of a 17 year-old man. He was subsequently charged with deliberate homicide, successfully tried and convicted on December 17, 2014. Throughout the trial it was never in question as to if Mr. Kaarma was responsible for the death of Diren Dede. That was previously established and was never in question. However, arguments for his defense made assertions that Mr. Kaarma's actions were justified and in self-defense, fearing for the safety and well-being of he and his family.

While these allegations were presented by the defense, the prosecution firmly and successfully argued that his actions were not only intentional, but premeditated, planned and committed with an attitude of anticipation. The totality of the witness's testimony supported these claims. And all had the same rudimentary notion: That Mr. Kaarma's actions and public comments leading up to the homicide were those of an individual who is erratic, calculating in nature, unpredictable by reasonable standards and vengeful. This alone

The morning after the homicide my wife and I were invited into the Kaarma residence where we were told of many details of the events leading up to Mr. Dede's homicide and how he had planned and hoped to catch individual(s) who were burglarizing him.

Ten days prior to the homicide his residence was burglarized. I personally had a vehicle that was involved, reportedly by the same individual(s) who burglarized him that night. He also assumed that the individuals were the same individuals that had stolen from him previously. During this incident I witnessed comments that were made that night. As you are aware, I testified to this in his trial, along with other potentially damning testimony that potentially helped to return a guilty verdict.

Following the homicide he was charged with deliberate homicide and posted bail and was released. Reports of claims made by witnesses appeared in the media surrounding the case. And, specific witness names surfaced.

It was during this time that Mr. Kaarma would sit on his back deck facing into our back yard which is directly next door. He would remain in the same position for prolonged periods of time, watching us over our common fence, which was intimidating. If he drove by our house we were uneasy. We became highly suspicious and fearful, concerned about mind, and uncertain potential actions.

The sum of our fears resulted in two actions: First, I had a security system installed. Second, I admit to having firearms. A revolver and handgun are included in what I possess. Until this time I never stored the guns with live ammunition, as I feel it is too great of a danger to do so.

His actions and comments leading up to the event and his demeanor following the event leave my wife and I with an incredible sense of distrust, anxiety and fear about what he is capable of carrying out. Moreover, he has proven that his actions can be premeditated and calculated.

So it is with these notions that I must voice my severe objection to his release, and therefore request that he not have bail set and remain incarcerated.

Thank you for your time.

Terry Klise, DDS

Jennifer Clark - Kaarma hearing to set bail

From: <[REDACTED]>
To: <JSClark@CO.Missoula.Mt.US>
Date: 12/22/2014 8:23 PM
Subject: Kaarma hearing to set bail

Hi Jenn,

I was informed that since my family is out of town for the holidays I could send you an e-mail to be read in court regarding the potential bail for Mr. Kaarma. Please find below my concerns regarding this issue.

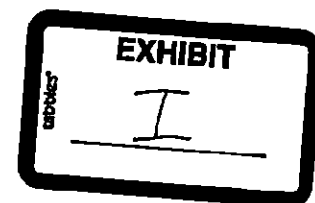
I live immediately next door to Mr. Kaarma. For several months now I have been uncomfortable and even scared having him next door in light of the irrational behavior he has proven through his actions the night of the shooting, as well as in days and weeks leading up to the shooting. One of my good friends had a run-in with him in a road rage incident, which only confirmed my uneasiness with having him next door. In addition, for a few weeks after the shooting, he would sit out on his deck with his chair facing my deck in the back yard and just stare at me if I was outside - a very uncomfortable feeling. The mere sound of his diesel pickup driving up the street has been enough to send me running into our garage from the yard in fear.

Following the shooting, I immediately purchased a home security system, not because I was worried about teens roaming the neighborhood looking for open vehicles and garages, but because I was concerned with the lack of judgment Mr. Kaarma displayed in shooting into his house that evening, and the fact that my statements were being made public by the Missoulian. He has sought revenge in the past, and now I fear he has nothing to lose in seeking further revenge - against my entire family for statements prior to and testimony given during the trial.

Despite having a security system, I do not trust Mr. Kaarma to be home next door - I view him as a "loose canon" in light of the events during the Spring of this year. I am concerned for the entire family's well-being. Based on the severity of his crime - a violent crime, with no opportunity to reverse the circumstances - I cannot fathom Mr. Kaarma being released on bail.

I thank you and Judge McClean for your consideration in this matter.

Sincerely,
Suzanne Klise



Montana Registered Voters by County

Compiled 06/04/2014 9:06:07 AM

Updated Daily

County Name	Registered Voters
Beaverhead	6,374
Big Horn	7,881
Blaine	3,827
Broadwater	4,002
Carbon	7,214
Carter	996
Cascade	50,943
Chouteau	3,587
Custer	7,063
Daniels	1,220
Dawson	5,442
Deer Lodge	4,897
Fallon	1,907
Fergus	7,895
Flathead	60,573
Gallatin	68,428
Garfield	906
Glacier	7,129
Golden Valley	598
Granite	2,106
Hill	9,359
Jefferson	7,833
Judith Basin	1,480
Lake	18,384
Lewis & Clark	41,994
Liberty	1,187
Lincoln	12,766
Madison	5,766
McCone	1,146
Meagher	1,353
Mineral	3,073
Missoula	83,979
Musselshell	2,981
Park	11,649
Petroleum	398
Phillips	2,577
Pondera	3,486
Powder River	1,240
Powell	3,428
Prairie	863
Ravalli	28,677

Richland	6,469
Roosevelt	5,622
Rosebud	4,778
Sanders	8,061
Sheridan	2,330
Silver Bow	19,320
Stillwater	5,798
Sweet Grass	2,536
Teton	3,981
Toole	2,592
Treasure	573
Valley	4,576
Wheatland	1,246
Wibaux	719
Yellowstone	94,547
Total	659,755

Provided by the Office of Montana Secretary of State Linda McCulloch

**EXHIBITS J – K NOT IMAGED
TOO VOLUMINOUS**