

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI  
Honorable Rex M. Burlison, Judge**

**STATE OF MISSOURI,**

Plaintiff,

vs.

**ERIC GREITENS,**

Defendant.

)  
)  
) Cause No. 1822-CR00642  
)  
)

**TRANSCRIPT OF MOTION HEARING**

March 21, 2018

**HON. ROBERT DIERKER  
MS. KIMBERLY GARDNER**

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**JENNIFER A. DUNN, RPR, CCR #485  
OFFICIAL COURT REPORTER  
CITY OF ST. LOUIS CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT**

1 (The following proceedings were had in open  
2 court:)

3 THE COURT: Court calls Cause Number  
4 1822-CR00642. State of Missouri versus Eric Greitens.

5 I became aware sometime yesterday that we had a  
6 hearing today. I'm not sure who noticed this up.

7 MR. GARVEY: Judge, it was us. Just for  
8 housekeeping, just to set out what's what and where where.  
9 Today we would like to have a hearing on our motion to  
10 advance the trial date. On Monday we have set for a hearing  
11 our motion to dismiss based on the misinstructing of the  
12 Grand Jury, our motion to disqualify the special prosecutor,  
13 although I don't know whether that's necessary any more, we  
14 understand that he might have removed himself from the case.  
15 So if that's the case, there will be no hearing on that.

16 And then that's -- those are the motions that will  
17 be heard on Monday.

18 THE COURT: Okay.

19 MR. GARVEY: Today it's just the motion to  
20 advance the trial date.

21 THE COURT: And there was a motion regarding  
22 waiver of jury, is that a Monday item you say?

23 MR. GARVEY: I think we notified the Court he  
24 is going to waive his right it a Grand Jury, the governor  
25 will, and we will, if the Court would like, whatever the

1 Court's schedule, he would be appearing to waive the jury  
2 trial, we're planning on doing that on just whatever day the  
3 trial is, the bench trial, and then you can put him on the  
4 record to waive it.

5 THE COURT: And there's been a filing by the  
6 State in that regard?

7 MS. GARDNER: Yes, there has, your Honor.

8 THE COURT: Are the parties prepared to hear  
9 that today?

10 MR. GARVEY: We can set that on Monday,  
11 Judge.

12 MS. GARDNER: We're prepared to hear that  
13 today, the motion to the waiver of jury trial and the motion  
14 for shortened time. I think we're prepared to hear that  
15 today.

16 MR. GARVEY: Judge, we haven't responded to  
17 their objections to the motion to waive a jury trial.

18 THE COURT: I'm not sure the State has a  
19 right to object to that.

20 MR. GARVEY: That's the thing, Judge.

21 THE COURT: I'm not sure your client has an  
22 absolute right to waive a jury.

23 MR. GARVEY: That is correct, Judge.

24 THE COURT: As long as we know that the  
25 Court's going to have the final say in that. I don't care

1 if we hear it today or Monday, but neither side has an  
2 absolute -- I don't think the State has a right to object,  
3 and I don't think your client has an absolute right to  
4 waive.

5 MR. GARVEY: We understand, Judge. We would  
6 like Monday then to argue that motion.

7 MS. GARDNER: Your Honor, I'm asking today  
8 because also we have issues with deposition notices being  
9 served on potential witnesses yesterday without notice, and  
10 we're trying to shorten time for motion to quash subpoenas  
11 because we had original dates that were set in preparation  
12 for trial, and I think this issue needs to be spoken to  
13 today. We cannot wait for that.

14 So I think the motion for shortened trial, as well  
15 as a motion to waive a jury trial needs to be addressed  
16 today, not Monday.

17 MR. GARVEY: Judge, our client is going to --  
18 is going to present himself in front of the Court to have a  
19 hearing and you will inquire to him whether or not he has  
20 been adequately informed and adequately advised that he can  
21 waive his right to a jury trial. The State has no standing  
22 to challenge that.

23 However, the Court does have a huge role in  
24 deciding whether or not he can waive his right to a jury  
25 trial. They have filed this response, frankly, we haven't

1 even really given it any time because we didn't think they  
2 had any standing to challenge it at all.

3 We're not prepared today to argue that motion. We  
4 will be prepared on Monday to argue that motion.

5 THE COURT: Well, as we speak this matter is  
6 set for trial by jury, and all subpoenas and all actions  
7 should be directed towards the present status of this case.  
8 I will give the defense until Monday to present whatever  
9 evidence that the defense wants to present in light of Rule  
10 27, which makes all criminal cases triable by a jury.

11 But as we proceed from now until the Monday  
12 hearing, I would suggest all parties to assume this is a  
13 trial by jury.

14 MR. GARVEY: Thank you, Judge.

15 THE COURT: So we'll finish hearing that on  
16 Monday when you all are prepared. Yes, sir.

17 MR. DIERKER: Your Honor, the circuit  
18 attorney alluded to the need to hear a motion to quash  
19 subpoenas and deposition notices on the victim and another  
20 witness, and we have filed a motion to shorten time, so we  
21 did notice that up for Monday morning, and I wanted to be  
22 clear that I did tell counsel we were going to be ask to be  
23 able to present those motions on Monday.

24 THE COURT: The motion to quash, I assume  
25 Mr. Simpson's here on that.

1 MR. DIERKER: Right.

2 THE COURT: Today.

3 MR. SIMPSON: I am not here specifically on  
4 that motion, Judge. I am here for when the Court takes up  
5 the request to advance the trial setting to be heard on that  
6 issue.

7 THE COURT: Well, if this motion, I assume  
8 the one you're talking about was just handed in chambers.

9 MR. DIERKER: Right.

10 THE COURT: Okay. 9 o'clock Monday.

11 MR. DIERKER: That's what we're requesting.

12 MR. BENNETT: No problem.

13 THE COURT: Okay. So that leaves us to  
14 moving up the trial date.

15 MR. GARVEY: Yes, Judge.

16 THE COURT: Okay.

17 MR. GARVEY: If I may, Judge. I appreciate  
18 the Court taking the time on this issue. I know this is an  
19 extraordinary --

20 THE COURT: Hang on a second. I'm sorry.

21 MR. GARVEY: We're aware this is an  
22 extraordinary request to make of the Court, especially after  
23 a scheduling order has been entered for the May 14th trial  
24 date.

25 However, I think the Court will agree this is an

1 extraordinary case never seen before. We have a lot of  
2 parts moving in this case. We start off, first, with the  
3 House is moving along with their investigation. We feel it  
4 best a quick resolution of this case here in the city will  
5 help the House and the State of Missouri and the citizens of  
6 this state to get moving on and get the business of Missouri  
7 moving on.

8           Second, we have what is going on down here. There  
9 will be absolutely no prejudice to the parties if this trial  
10 date is moved up. We will be ready on the date we are  
11 requesting, April 2nd. The State, at most, has three  
12 witnesses that they are going to call. It's going to be a  
13 very brief and short trial.

14           In addition, the deposition of Mr. Tisaby was  
15 taken this week. Now, some background is necessary here.  
16 Mr. Tisaby is the chief inspector and the chief investigator  
17 on this case. Frankly, he's the only investigator on this  
18 case. He has been signed up by the Circuit Attorney's  
19 Office to investigate this case. He reports only to circuit  
20 attorney, Ms. Gardner, in this case.

21           When his deposition was taken, he admitted and  
22 told us under oath a lot of things that shows that the State  
23 is ready for this trial in that they don't have much for  
24 this trial.

25           On page 64 of his deposition, and I have a full

1 copy of it here for the Court so you can follow along.

2 Mr. Tisaby is asked:

3 But you have not seen any alleged picture?

4 "ANSWER: No, I have not. I don't think  
5 anybody has.

6 "QUESTION: And you did complete a thorough  
7 investigation and have not found anybody that has seen any  
8 alleged picture?"

9 Correct. That was his answer.

10 He was also asked:

11 "QUESTION: So your testimony is you're  
12 unaware of anybody that has made any effort to locate any  
13 alleged photograph?

14 "ANSWER: Not that I know of."

15 He's not aware of anyone looking for this photo.

16 "QUESTION: Are you aware of anybody else who  
17 is making any efforts to locate any alleged photograph?"

18 Personally I do not.

19 He was asked: How about not personally?

20 I mean, I am not sure what you mean by  
21 personally, I do not.

22 I'm asking for any knowledge you have at all.  
23 Have you heard that anybody is trying to locate the  
24 photograph that allegedly was taken?

25 "ANSWER: I have not.



1                   "QUESTION: Have you heard -- have anybody  
2 who is trying to find a transmission of the alleged  
3 photograph?

4                   "ANSWER: I have not.

5                   "QUESTION: Have you talked to any witness  
6 that has told you that any alleged picture was transmitted  
7 as alleged in the indictment?"

8                   His answer was: Neither K.S. or J.W. have  
9 told me as such.

10                  "QUESTION: Are you aware of any evidence  
11 that there is any picture that was transmitted as alleged in  
12 the indictment?

13                  "ANSWER: Am I aware of any?

14                  "QUESTION: Yes. Are you aware of any  
15 evidence?

16                  "ANSWER: Not that I know of.

17                  "QUESTION: And finally, okay, and so you  
18 never found evidence of a photograph, correct?

19                  "ANSWER: No, sir."

20                  Now, Judge, the reason I went through all that is  
21 that is the case there. The Court is aware of the elements  
22 in this case. Mr. Tisaby, the only investigator, the chief  
23 inspector in this case, testified under oath that's what  
24 they have in this case. Which is virtually nothing.

25                  They have no expert ready to testify. They have

1 nothing ready to go in this case, which will make this a  
2 very short case to try, and a bench trial will make it even  
3 shorter, cutting down the resources of this Court to be  
4 used.

5           There is no prejudice to either side in moving up  
6 this court date to April 2nd.

7           We respect the Governor of Missouri, and we feel  
8 very strongly that this case needs to be ended, especially  
9 in light of the lack of evidence that has been testified to  
10 by Mr. Tisaby. Thank you.

11           THE COURT: All right. Thank you,  
12 Mr. Garvey. Chief.

13           MR. DIERKER: Your Honor, you're aware of a  
14 glitch in the filing of the memorandum in opposition, so I'm  
15 going to re-file that with some revisions so that we avoid  
16 unnecessary issues.

17           You know, the defense strategy throughout this  
18 case has been to try to abort the case on some kind of quasi  
19 summary judgment basis and have the Court make a ruling on  
20 the facts of the case without a trial.

21           And, you know, the case is -- there is, at a  
22 minimum, a strong circumstantial case that the defendant is  
23 guilty, and the State is entitled and is indeed obligated to  
24 continue to review the facts of the case to ensure that it  
25 is proceeding with a case that is meritorious.

1           And I would add that the scheduling order on which  
2 the State has relied sets a deadline for disclosure of  
3 experts, the engagement of experts is ongoing, and given  
4 that the defendant had exclusive control of the best  
5 evidence in this case for three years, the State's task is  
6 made that much more difficult.

7           So I think that the efforts of the defense, and  
8 while I understand their efforts to abort a trial by  
9 irregular means are ingenious, they're without merit, and I  
10 don't intend to give an opening statement in the guise of  
11 responding to their motion to expedite the trial.

12           The Court expedited the trial as it was, and the  
13 State was put to quite a bit of pressure to respond to the  
14 May setting, and I think that the public interest and  
15 importance of this case warrants at least some deliberation  
16 in preparation and we agreed to a scheduling order and the  
17 Court entered it, and now the defense thinks it's to their  
18 advantage to throw that overboard, and I can understand why  
19 they think that, but I don't think that would be  
20 appropriate.

21           And I would also say they represent the Governor  
22 of the State of Missouri. We represent the People of the  
23 State of Missouri. And we think the People and the victim  
24 are entitled to a trial that is presented carefully and  
25 deliberately. So we see absolutely no reason to expedite

1 the trial on the basis they're suggesting.

2 THE COURT: Thank you, Chief. Response.

3 MR. GARVEY: Judge, it was their  
4 investigator, their only investigator, who has been put in  
5 charge of this case to seek out that evidence. He is  
6 admitting under oath and on the record that's it. That's  
7 all they have.

8 And with that in mind, then we're ready, and I  
9 believe the State is ready to proceed, and we should be able  
10 to advance this case in light of those admissions made by  
11 their investigator.

12 THE COURT: All right.

13 MS. GARDNER: Your Honor, can I respond to  
14 that?

15 THE COURT: Sure.

16 MS. GARDNER: Your Honor, when we talk about  
17 this investigation, Mr. Tisaby was hired to do specific  
18 things on this case, as well as other issues that I cannot  
19 discuss in open court.

20 So, on this case, he was tasked with finding two  
21 individuals; the victim in this case, and other witnesses in  
22 this case, and that is it. And Mr. Tisaby, that was his  
23 only task, and those witnesses and victims went into the  
24 Grand Jury and presented testimony that was enough to secure  
25 an indictment on the invasion of privacy felony offense as

1 charged.

2           So, you know, when the other side talks about what  
3 evidence I have, they don't know what evidence I have. They  
4 know right now what I've turned over, and we'll continue to  
5 turn over discovery as needed as we get it. So I think when  
6 you talk about the investigator, the investigator had a  
7 specific purpose, the investigator was not in Grand Jury.  
8 He was to find people and that was his job in this task, but  
9 we have a victim here and the victim has -- needs their day  
10 in court, and I think we have to look at an expedited trial  
11 date affects the victim. There is a victim.

12           THE COURT: Ms. Gardner, I am not going to  
13 make a decision of trial setting based on substantive  
14 evidence in this case that has been presented in a motion.  
15 So your point's well taken.

16           Mr. Simpson, did you have -- want to be heard on  
17 this?

18           MR. SIMPSON: Briefly, your Honor, Scott  
19 Simpson, and I represent the victim in this case. The  
20 points I would like the Court to consider when moving up  
21 this trial setting is that my client is a full-time student,  
22 employed full time, as well as a single mother, and she --  
23 if the trial is moved into April, she will be in a position  
24 where her school will be in its last full month as they lead  
25 into finals. Adding the trial and the deposition and all of

1 those on an expedited fashion I think would impose a  
2 hardship upon her, and she has rearranged her schedule and  
3 her life to make sure that this May trial date works.

4           So we would ask the Court to consider the hardship  
5 on the victim as it makes its decision. Thank you.

6           THE COURT: Thanks, Mr. Simpson.

7           MR. GARVEY: Judge, if I may, just two  
8 things. Ms. Gardner said we don't know the evidence she  
9 has. That's very disturbing because we should know.

10           THE COURT: Mr. Garvey, at this point, as I  
11 say, I'm not going to make decisions on trial settings based  
12 on the degree and weight of evidence that is known at this  
13 point. That's just not -- that's just not going to go into  
14 the forum.

15           MR. GARVEY: Judge, that is not forwarded to  
16 you on the basis to argue the merits of the case, but only  
17 to show their evidence in this case. It's a subterfuge to  
18 say they need more time. We're ready, they're ready. There  
19 is really no reason to delay this case. And under the  
20 extraordinary circumstances of who our client is, that's  
21 what we're asking for.

22           I did not mean to invade the province of the Court  
23 and argue this case on this case, they were examples of how  
24 they are ready.

25           Mr. Tisaby has testified. In the deposition, Ms.

1 Gardner has never instructed me as far as what investigative  
2 steps I am doing. I report to her and things that I need.  
3 As far as the Grand Jury, which she says he wasn't involved  
4 with. She and I don't talk about it and don't discuss it.  
5 I am trying to work this case as independently as possible.

6           So we're getting mixed messages here. I only  
7 bring this to the Court's attention regarding the evidence  
8 that she says we don't know what she has because we should  
9 know what she has under the rules of discovery, and if  
10 there's something being withheld, that's very disturbing.  
11 Thank you.

12           THE COURT: Okay. Most important in this  
13 case and in all trials is the stability and predictability  
14 of a trial setting. I advanced this case at the request of  
15 the defendant and set a date over the State's objection.

16           The fact that there are things that happen west of  
17 here that have occurred in the interim, it does not affect  
18 my trial setting decision. I will not change the trial  
19 setting that may create -- that -- based on an advantage or  
20 disadvantage that may be perceived.

21           The case is set for the 14th of May. That's the  
22 court date. That's the trial date. That's regardless of  
23 what is going on west of here. I am going to do all I can  
24 to keep anything outside of this courtroom that goes on away  
25 from this case. And so I'm not influenced about anything

1 other than the fact that I gave an early trial setting,  
2 that's the trial setting you get, that's the one we'll keep.

3 Anything further?

4 MR. MARTIN: Thank you for your time.

5 MR. GARVEY: Thank you.

6 MR. SIMPSON: Thank you, your Honor.

7 THE COURT: Court will be in recess.

8 (The hearing was concluded.)

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**CERTIFICATE**

1  
2 I, Jennifer A. Dunn, Registered Professional  
3 Reporter and Certified Court Reporter, do hereby certify  
4 that I am an official court reporter for the Circuit Court  
5 of the City of St. Louis; that on March 21, 2018, I was  
6 present and reported all the proceedings had in the case of  
7 STATE OF MISSOURI, Plaintiff, vs. ERIC GREITENS, Defendant,  
8 Cause No. 1822-CR00642.

9 I further certify that the foregoing pages  
10 contain a true and accurate reproduction of the proceedings.  
11  
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16 **"/s/JENNIFER A. DUNN, RPR, CCR #485"**  
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<p><b>MR. BENNETT:</b> [1] 6/11</p>	<p>12/12 12/15 <b>THE COURT:</b> [26]</p>	<p>5/10 2nd [2] 7/11 10/6</p>	<p>15/25 <b>absolute</b> [3] 3/22 4/2</p>	<p>15/19 <b>advised</b> [1] 4/20</p>
<p><b>MR. DIERKER:</b> [5] 5/16 5/25 6/8 6/10 10/12</p>	<p>/</p>	<p><b>4</b> 485 [2] 1/24 17/16</p>	<p>4/3 <b>absolutely</b> [2] 7/9 11/25</p>	<p><b>affect</b> [1] 15/17 <b>affects</b> [1] 13/11</p>
<p><b>MR. GARVEY:</b> [17] 2/6 2/18 2/22 3/9 3/15 3/19 3/22 4/4 4/16 5/13 6/14 6/16 6/20 12/2 14/6 14/14 16/4</p>	<p>/s/<b>JENNIFER</b> [1] 17/16</p>	<p><b>6</b> 63101 [1] 1/16 63105 [3] 1/19 1/19 1/22 <b>64</b> [1] 7/25</p>	<p><b>accurate</b> [1] 17/10 <b>actions</b> [1] 5/6 <b>add</b> [1] 11/1 <b>Adding</b> [1] 13/25 <b>addition</b> [1] 7/14</p>	<p><b>after</b> [1] 6/22 <b>agree</b> [1] 6/25 <b>agreed</b> [1] 11/16 <b>all</b> [15] 5/2 5/6 5/6 5/10 5/12 5/16 8/22</p>
<p><b>MR. MARTIN:</b> [1] 16/3</p>	<p><b>1</b> 1100 [1] 1/18 1114 [1] 1/15 <b>120</b> [1] 1/21 <b>130</b> [1] 1/21 <b>14th</b> [2] 6/23 15/21</p>	<p><b>7</b> 7733 [1] 1/19</p>	<p><b>addressed</b> [1] 4/15 <b>adequately</b> [2] 4/20 4/20</p>	<p>9/20 10/11 12/7 12/12 13/25 15/13 15/23 17/6</p>
<p><b>MR. SIMPSON:</b> [3] 6/2 13/17 16/5</p>	<p>1822-CR00 <b>642</b> [3] 1/7 2/4 17/8 <b>1900</b> [1] 1/19</p>	<p><b>8</b> 8235 [1] 1/18</p>	<p><b>admissions</b> [1] 12/10 <b>admitted</b> [1] 7/21 <b>admitting</b> [1] 12/6 <b>advance</b> [4] 2/10 2/20</p>	<p><b>alleged</b> [8] 8/3 8/8 8/13 8/17 9/2 9/6 9/7 9/11</p>
<p><b>MS. GARDNER:</b> [5] 3/6 3/11 4/6</p>	<p><b>2</b> <b>2018</b> [2] 1/11 17/5 <b>21</b> [2] 1/11 17/5 <b>27</b> [1]</p>	<p><b>A</b> <b>able</b> [2] 5/23 12/9 <b>abort</b> [2] 10/18 11/8 <b>about</b> [7] 6/8 8/19 12/16 13/2 13/6 15/4</p>	<p>6/5 12/10 <b>advanced</b> [1] 15/14 <b>advantage</b> [2] 11/18</p>	<p><b>allegedly</b> [1] 8/24 <b>alluded</b> [1] 5/18 <b>along</b> [2]</p>

<b>A</b>	8/12 8/16	5/22 14/4	13/13	<b>bit</b> [1]
<b>along...</b> [2]	8/23 9/1	<b>asked</b> [3]	14/11	11/13
7/3 8/1	<b>anyone</b> [1]	8/2 8/10	15/19	<b>Bldv</b> [2]
<b>also</b> [3]	8/15	8/19	<b>basis</b> [3]	1/18 1/19
4/8 8/10	<b>anything</b>	<b>asking</b> [3]	10/19	<b>brief</b> [1]
11/21	[3] 15/24	4/7 8/22	12/1	7/13
<b>although</b>	15/25	14/21	14/16	<b>Briefly</b> [1]
[1] 2/13	16/3	<b>assume</b> [3]	<b>be</b> [23]	13/18
<b>am</b> [9] 6/3	<b>appearing</b>	5/12 5/24	<b>became</b> [1]	<b>bring</b> [1]
6/4 8/20	[1] 3/1	6/7	2/5	15/7
9/13	<b>appreciate</b>	<b>attention</b>	<b>because</b> [5]	<b>Burlison</b> [1]
13/12	[1] 6/17	[1] 15/7	4/8 4/11	1/2
15/2 15/5	<b>appropriate</b>	<b>attorney</b> [2]	5/1 14/9	<b>business</b>
15/23	[1] 11/20	5/18 7/20	15/8	[1] 7/6
17/4	<b>April</b> [3]	<b>Attorney's</b>	<b>been</b> [8]	<b>C</b>
<b>another</b> [1]	7/11 10/6	[2] 1/15	3/5 4/20	<b>call</b> [1]
5/19	13/23	7/18	6/23 7/18	7/12
<b>answer</b> [9]	<b>April 2nd</b>	<b>Avenue</b> [1]	10/9	<b>calls</b> [1]
8/4 8/9	[2] 7/11	1/21	10/18	2/3
8/14 8/25	10/6	<b>avoid</b> [1]	12/4	<b>can</b> [8] 3/3
9/4 9/8	<b>are</b> [12]	10/15	13/14	3/10 4/20
9/13 9/16	2/16 3/8	<b>aware</b> [9]	<b>before</b> [1]	4/24 8/1
9/19	5/16 7/10	2/5 6/21	7/1	11/18
<b>any</b> [16]	7/12 8/16	8/15 8/16	<b>behalf</b> [2]	12/13
2/13 5/1	9/10 9/14	9/10 9/13	1/16 1/22	15/23
5/2 8/3	11/9	9/14 9/21	<b>being</b> [2]	<b>cannot</b> [2]
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7/22	specific [2]	10/8	9/5	that's [18]
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