

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA,

v.

KEITH JOHN ALLEN JOHANSEN,

Defendant.

CASE NO.: 2018-00426-CFFA  
JUDGE TERENCE R. PERKINS

**MOTION IN LIMINE TO EXCLUDE SALACIOUS NETGEAR VIDEO  
SURVEILLANCE DATED APRIL 3, 2018 THROUGH APRIL 5, 2018**

COMES NOW the Defendant, Keith Johansen, by and through his undersigned Assistant Public Defender pursuant to Fla. R. Crim. Proc. 3.190(a), the Due Process Clause, Article I, §9 of the Constitution of the State of Florida, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and the inherent authority of this Honorable Court hereby moves to prohibit any state witness in the above-styled cause throughout the trial including but not limited to opening and closing statements, direct, cross, re-direct and re-cross examinations with regard to the Netgear video surveillance dated April 3, 2018 through April 5, 2018, based upon the following grounds:

1. The Defendant stands before this Honorable Court charged by Information with the Second Degree Murder in violation of Florida Statute §782.04(2) and §775.087(1)and(2), with a Firearm as defined by Florida Statute §790.001(6).
2. The State has provided a large number of motion captured recordings of a Netgear video surveillance from inside and outside of the Defendant's home to include recorded sex acts and verbal arguments between the Defendant and the decedent, his wife on April 3, 2018 through April 5, 2018.
3. The State has alleged a homicide occurred in the shared bedroom on April 7, 2018; however, there are no video recordings of any events in the bedroom on April 7, 2018.
4. There are no recordings of the events immediately surrounding or concerning the circumstances to support the allegations as charged; therefore there is no evidentiary value in the salacious video recordings and verbal arguments between the Defendant and his wife on April 3, 2018 through April 5, 2018.
5. This Court should disallow the video recordings or testimony of salacious acts and/or pornographic sex acts between the Defendant and his wife, and/or and verbal arguments between the Defendant and his wife, as the recorded evidence holds no evidentiary value to the crime as charged by the State on April 7, 2018.
6. Contrary to Florida Statute §90.401 the Netgear video surveillance recordings are void of any evidentiary value to prove or disprove a material fact of the offense as charged on April 7, 2018.
7. This Court should disallow testimony of the audio recordings between the Defendant and his wife, in light of the couple's private use of slurs to include homophobic slurs and racial

slurs and misogynistic slurs; any probative value is substantially outweighed by the prejudicial and inflammatory effect the recordings will have on the jury in violation of Florida Statute §90.403.

8. This Court should disallow testimony regarding the Netgear video surveillance recordings inside and outside of the home dated April 3, 2018 through April 5, 2018, as any portion of the recordings would lose their context and serve only to confuse and mislead the trier of fact.
9. The recordings are a needless presentation of cumulative evidence that can only serve one purpose to inflame the jury or improperly appeal to their emotions.
10. Lastly, should the jury have an opportunity to view or listen to these recordings, they would be inflamed and prejudiced to the extent that the defendant could not receive a fair and impartial trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 22 of the Florida Constitution.

WHEREFORE, the Defendant, Keith Johansen, prays this Honorable Court grant this Motion in Limine to prohibit any state witness in the above-styled cause throughout the trial including but not limited to opening and closing statements, direct, cross, re-direct and re-cross examinations regarding the Netgear video recordings and testimony of the salacious acts of the Defendant and/or the decedent dated April 3, 2018 through April 5, 2018 in violation of both the State and the Federal Constitutions.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: Jennifer L. Dunton, Assistant State Attorney, 2446 Dobbs Road, Saint Augustine, FL 32086, and to the defendant, on August 23, 2019.

/s/ Rosemarie Peoples

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**IN THE CIRCUIT COURT OF THE SEVENTH CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA**

**STATE OF FLORIDA  
v.  
KEITH JOHANSEN**

**CASE NO: 18-426-CFFA**

**SUPPLEMENT TO DEFENDANT'S  
MOTION IN LIMINE TO EXCLUDE SALACIOUS NETGEAR VIDEO  
SURVEILLANCE DATED APRIL 3, 2018 THROUGH APRIL 5, 2018**

COMES NOW the Defendant, Keith Johansen, by and through his undersigned attorney, who files this supplement to the Defendant's previously filed Motion in Limine to Exclude Salacious Netgear Surveillance Video, based on the following:

1. Previously, in August, 2019, the Defendant's appointed attorneys in the Office of the Public Defender filed a Motion in Limine concerning certain Netgear videos that the State produced in discovery.

2. Since then, the Office of the Public Defender withdrew from this case, and the undersigned was appointed as conflict counsel.

3. Prior to the undersigned's appointment in this case, the referenced Motion in Limine was set for a hearing on February 28, 2020. At that time, the case was nearing trial.

4. However, during the hearing, there was some mention from Assistant State Attorney Jenny Dunton that the State had narrowed down the home surveillance videos that they intended to use at trial at 10. The State said that the videos were all from one day---April 5, 2018, and gave the times specified for each of the 10 videos.

5. There was some discussion from the State that those 10 may be further edited prior to trial, and if so, a copy would be provided to the Court and the defense for review.

6. Consequently, a ruling was not made on the defense motion at that time.

7. There was some mention also from the Court at the prior hearing that the defense had not provided specifics as to their objections to the videos.

8. To assist in the Court's consideration of the admissibility of all or part of any of the videos in question, and with the understanding that the subject videos may be

redacted by the State after this pleading is filed herein, the defense notes the following specific notes to supplement the general objections previously made by prior defense counsel (NOTE---the corresponding video is identified by the last four numbers of the video file, and the time of such video):

**0561---5:34 p.m.**

Def. yelling at Brandi

Calls her stupid

Defendant: I'm going to sleep and hopefully I won't wake up  
"go to a bar and do what you do"  
I am not going to allow you to hurt me anymore  
Maybe we will not get back together  
Maybe I will die  
You make me sick  
General argument about her not being faithful  
You are dreaming about being with someone else

Accuses her of "hiding it"

Objection---relevancy. Unduly prejudicial. There is no specific threat here from Mr. Johansen to Ms. Celenza.

**5816---8:30 p.m.**

Brandi is masturbating on the bed

Defendant: "Tell me you were not masturbating in that tub or I'll kill you"  
I want to know everyone you did it with. Who, when...  
I will leave and never come back

Insinuates that she has been with a "nigger". Hopefully she won't get a "nigger baby"  
Mentions punching her in the mouth. Swings a fist in her direction. "You deserve it"  
He calls her ugly.

Objection---relevancy. Unduly prejudicial. Contains masturbation by Ms. Celenza. Has the potential of admitting completely irrelevant racial statements by the Defendant which has nothing to do with this case. The word "kill" by the Defendant would be taken out of context if admitted into evidence. The statement was made two days before the shooting incident here, and there is no proof the Defendant made any such statements on April 6<sup>th</sup> or 7<sup>th</sup> of 2018.

**8852---9:29 p.m.**

He says her caught her masturbating to some guy

Defendant: Every time I ask you who you are talking you don't tell me shit. You lie.  
I am going to punch you in the mouth everytime, and if you don't like it, you can get the fuck out of my house

I am going to get away from you or I am going to kill you.  
I built you a life, and you fucked me over, good luck with Karma  
Hope you get aids  
Hope your insides fall out  
Defendant smoke from a pipe again.  
He talks about jumping off of a bridge one day

Objection: Relevance. Unduly prejudicial. There is no showing that the Defendant made any type of statements of harming Ms. Celenza on the day before, or the day of, the shooting.

**7156---9:43 p.m.**

Def.: for two fucking years you didn't tell me shit. I am going to take the thing and beat the shit out of you and call the cops on myself, just so I wouldn't have to see you again.  
Go ahead and call the cops on me for threatening you, so that I can get rid of you and end you.

Objection---relevancy. Unduly prejudicial. There is no showing that the Defendant made any similar statements the day before or the day of the shooting. In fact, the home surveillance video on the morning of the 7<sup>th</sup> does not show any threats of violence towards Ms. Celenza (note: the video had sound)

**3661---9:45 p.m.**

Accuses her of cheating. Defendant: "I will kill you both". I will put a tracker on your ass. I cannot trust you. You deserve to be alone.

Objection: relevancy and unduly prejudicial if admitted. Again, there is no showing that the Defendant made any threats or similar statements on the day before and the day of the incident.

**2154---9:49 p.m.**

Vague talk about getting a guy to rip her rectum  
Talks about catching both of them in the act and beating them up  
Defendant: Are you afraid yet, Brandi? Because you are going to be  
Cut your fingers off

Same objection as above,

**3770---10:04 p.m.**

Defendant: I can't believe that I married your ass  
Anyone would have been better  
You are a whore  
You are a bitch  
I can call my homeys and make sure both of you die  
You don't care about me  
I should put fish hooks in that pussy because it is not worth anything to me now  
You fucked with the wrong person  
I ain't going to let you live. I'd rather kill you then go back to jail

Maybe I will give you sleeping pills and cut off your goddamn clit  
You know what a fucking whore you are  
You fucked up for cheating on me

In addition to the objections as to relevancy, and in further support of the content of this video being unduly prejudicial, the clip states that the defendant would rather kill her then go back to jail". This notifies the Defendant that he has a prior record in the State's case in chief.

**6352---10:24 p.m.**

Threatens to put her in an institution

Defendant: Call 911 on me  
I could beat or kill you bc you are a whore  
You do not give a fuck about me  
Threatens to leave her  
I want to just hurt you and just leave the state

Defendant goes around to her side of the bed and gets out a handgun and puts it on the bed beside her and suggests that she "use it"

Then he picks the gun up off of the bed and walks around with it. He says that maybe he will haunt her with it. Out of view you hear a click of some kind.

In addition to the issues of lack of relevancy, this video is extremely prejudicial because of the display of a gun. The Defendant does not threaten Ms. Celenza with the gun directly, and states that she should use the gun on herself.

**7738---10:29 p.m.**

Defendant: This makes me so upset

Talks about getting away to avoid hurting her, or have someone else hurt her, because she deserves it

You've ruined everything that I have worked for all of my life

Same objections to relevancy and unduly prejudicial, This is two days before the shooting, with no showing of any similar statements being made by the Defendant going forward for the next 48 hours.

**1157---11:52 p.m.**

Defendant: You better walk with two eyes behind you  
Keeps accusing her of cheating on her  
Tells her to get the fuck out of my life  
Show the cops these videos, I do not give a fuck. I would rather be in prison  
You ruined my life, I am going to ruin yours  
Go with whoever that is, so I do not hurt you

Same objection as to relevancy and being unduly prejudicial.

Again, these specific objections are intended to supplement the objections previously made by prior counsel to the admissibility of the aforementioned Netgear videos.

**Certificate of Service**

I certify that a copy of this document was electronically served via the Florida Courts E-Filing Portal to the State's Attorney on February 2, 2021.

Respectfully submitted,

By: /s/ Garry Wood

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**IN THE CIRCUIT COURT OF THE SEVENTH CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA**

**STATE OF FLORIDA  
v.  
KEITH JOHANSEN**

**CASE NO: 18-426-CFFA**

**SECOND MOTION IN LIMINE  
RE: NETGEAR VIDEO EVIDENCE**

COMES NOW the Defendant, Keith Johansen, by and through his undersigned attorney, who files this Second Motion in Limine regarding Netgear video evidence, based on the following:

1. The Defendant seeks an Order from the Court prohibiting the introduction of any Netgear video surveillance from the Defendant's home as it relates to either April 5, 2018 or April 7, 2018.<sup>1</sup>

2. Regarding April 5, 2018, there are a number of Netgear videos that the State intends to introduce which purports to show a number of discussions between the Defendant and Brandi Celenza. Regarding April 7, 2018, the State may seek to introduce a number of videos from that morning at the Defendant's home, through the time the police were dispatched and arrived on scene at the house.

3. It is anticipated that the State may seek to introduce at trial any of the Netgear videos previously provided to the Flagler County Sheriffs Office, through the use of a business records certification signed by a named paralegal (Keith Uyeda) acting as business custodian for Netgear, Inc. (also known as Arlo), and pursuant to F.S. 90.902(11)

4. If that is the case, it does not appear that this person who reportedly signed the Netgear business records certification would have the necessary personal knowledge of the process of how Netgear surveillance videos are stored into their cloud system, and the operations of the videos equipment used in this case, nor when the recordings were made. Nor would this person appear to have the knowledge of why some activities in the

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<sup>1</sup> The Defendant, through his prior attorney---the Office of the Public Defender, and filed a motion in limine regarding the unduly prejudicial effect and irrelevancy of the April 5, 2018 Netgear videos. The undersigned, as the appointed conflict counsel herein, filed a supplement to the earlier motion, in which specific details and objections of each of the ten April 5, 2018 videos that the State seeks to introduce.



house were recorded, and what caused any particular recording to start or stop at certain times.

5. By way of background regarding the production of these videos, the Flagler County Sheriffs Office experienced much delay from Netgear in responding to the FCSO attempts to obtain these videos. On April 7, 2018, a preservation letter was sent to Netgear requesting that the company preserve certain account information and digital recordings allegedly pertaining to a Netgear account assigned to the Defendant. The following day, Netgear provided a letter saying that the account would be locked.

6. A search warrant, based on an affidavit from Det. Nicole Thomas of the FCSO, was executed on April 10, 2018. This time, however, the requested time frame for Netgear records and recordings was from March 28, 2018 to April 7, 2018. No reason was provided in the affidavit as to why the search parameter was expanded to March 28, 2018.

7. Netgear did not accept this initial search warrant, apparently. A new search warrant was executed on April 23, 2018 for the same Netgear records and digital records. However, this time, no time frame was included in the search warrant as to a search parameter for such records. It does not appear a new affidavit was generated for this modified search warrant.

8. It appears the response from Netgear for the requested account documentation and digital recordings were not produced until April 26, 2018. Attached is a Business Certification from Netgear, which has been received by the undersigned in discovery. Note the lack of specificity in the certificate as to what records or videos that were produced for the FCSO, or the time frame for whatever videos were produced by Netgear to the FCSO.

9. What has been received in discovery, reportedly from Netgear, are two videos reportedly from April 3, 2018, one video reportedly from April 4, 2018, 85 videos reportedly from April 5, 2018, and 154 videos reportedly from April 7, 2018. There apparently were no videos produced from Netgear which reportedly give dates for dates prior to April 3, 2018, nor were there any videos reportedly produced for the date of April 6, 2018.

10. The Defendant **objects** to the introduction of any Netgear video reportedly

from his home or from his Netgear/Arlo account, because it is impossible to tell if the videos produced are an accurate and complete recording of the events depicted in the videos. Most of the videos are of very short duration. Some of them are seconds long, others for a few minutes. What is mysterious is why the recording suddenly starts at one time, and then suddenly ends at another time. What triggers the recording to begin at all? What triggers it to stop recording? Is the recording voice activated or motion activated? The parties on the recordings often are moving about, but the recording stops suddenly. Or they may be in the middle of a conversation, and the recording stops. Why does it record some activities, but not others? What happened to the recordings of the remaining parts of conversations/activities not reflected in these recording?

11. What is needed is an actual person or persons from Netgear who can answer the questions above, if possible. How were the recordings derived? When were they recorded? How does the Netgear equipment operate, particularly in a cloud-based system? **See, for example, *Whitaker v. State***, 46 So. 3d 650 (Fla. 2<sup>nd</sup> DCA, 2010); ***Bryant v. State***, 810 So. 2d 532 (Fla. 1<sup>st</sup> DCA, 2002)(the proponent of a video must be prepared to establish as a predicate for its admission that the videotape fairly and accurately what it purports to depict).

12. Per the ***Bryant*** case, if there is no witness to corroborate the contents of a video, a videotape can be admissible under the “silent witness” theory if the following is established:

- a. evidence establishing the time and date of the photographic evidence;
- b. any evidence of editing or tampering;
- c. the operating condition and capability of the equipment producing the photographic evidence as it relates to the accuracy and reliability of the photographic product;
- d. the procedure employed as it relates to the preparation, testing, operation, and security of the equipment used to produce the photographic product, including the security of the product itself; and
- e. testimony identifying the relevant participants depicted in the photographic evidence.

13. Under these requirements, much more than a business records certificate would be needed to admit any Netgear video in this case, particularly those of April 5, 2018 and April 7, 2018. It would require a testimony from an actual Netgear person who would be familiar with the recording equipment in this case, and how recordings are stored in the cloud, how they can be retrieved, and perhaps explain (if possible) why some recordings stop or start suddenly.

14. However, because of these shortcomings in these recordings, it would unduly prejudicial to the Defendant's right to a fair trial to admit them under F.S. 90.403.

#### **Opinion or Hearsay Testimony regarding any "deleted" videos**

15. As noted above, there are no videos produced in this case by Netgear for before April 3, 2018, and for April 6<sup>th</sup>, 2018. There is concern that testimony may be provided by witnesses that recordings for particular dates were deleted by the Defendant or some other person connected to the Defendant. There is no known proof of any such deletions were made by the Defendant, or that act was committed by him or another person connected to the Defendant caused unproduced videos to go missing. All that can be said is that there were no videos produced by Netgear for the dates prior to April 3, 2018, or for the date of April 6, 2018.

16. Again, it does not appear that any Netgear personnel will be testifying in this case, so testimony regarding purported deletions of any recordings would be hearsay if the information came from someone from Netgear or anyone else. Or there may be inadmissible lay opinion provided by a witness that videos from the referenced time frames were deleted or destroyed.

17. Therefore, the Defendant seeks to have the State to be prohibited from insinuating, speculating, or opining that the Defendant or anyone else deleted, erased, or destroyed any Netgear recordings in this case.

#### **Certificate of Service**

I certify that a copy of this document was electronically served via the Florida Courts E-Filing Portal to the State's Attorney on March 24, 2021.

Respectfully submitted,

By: /s/ Garry Wood

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## Business Record Certification

NETGEAR, Inc.


I, Keith Uyeda, with the official title of Senior Paralegal, hereby declare that I am a duly authorized Records Custodian, or other qualified person employed by NETGEAR, Inc. located in San Jose, California.

I, Keith Uyeda, hereby further certify that the following record(s), or data compilation, in any form, of acts, events, conditions, or diagnosis, to wit:

**Video Surveillance and records returned in response to a search warrant for Flagler County Sheriff's Office case number 18-32603 on April 26, 2018.**

were made at or near the time at which the information contained thereon was received by, or from information transmitted by, a person with knowledge of the information contained thereon, and further, that the information is kept in the course of a regularly conducted business activity of NETGEAR, Inc. I further certify that it was the regular practice of that business activity to make record, or data compilation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Keith Uyeda  
NETGEAR, Inc.  
Senior Paralegal

  
\_\_\_\_\_  
Date