

ORIGINAL

1 STATE OF MINNESOTA
2 COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

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|---|--------------------|---|-----------------------------|
| 4 | State of Minnesota |) | |
| | |) | |
| 5 | Plaintiff, |) | VOIR DIRE/JURY TRIAL |
| | |) | D.C. File 27-CR-10-2076 |
| 6 | v. |) | App. Court No. A12-0173 |
| | |) | |
| 7 | Mahdi Hassan Ali |) | Volume V of XIV |
| | |) | |
| 8 | Defendant. |) | |

9 -----

10 The above-entitled matter came duly on for trial
11 before the Honorable Peter A. Cahill, one of the judges
12 of the above-named court, on September 12, 2011, in the
13 Hennepin County Government Center, Minneapolis,
14 Minnesota.

15 APPEARANCES:

16 Robert J. Streitz and Charles S. Weber, Assistant
17 Hennepin County Attorneys, appeared on behalf of the
18 State of Minnesota.

19 Frederick J. Goetz, Esq. and Gregory Young,
20 Certified Student Attorney, appeared on behalf of the
21 Defendant.

22 Mahdi H. Ali, defendant.

23 Abdi Elmi, Interpreter.

24 Erin Lutz, Law Clerk.

25 Dana Carmichael, Court Reporter.

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1 (In open court:)

2 THE COURT: We are on Juror Number 4.
3 Morning.

4 PROSPECTIVE JUROR: Morning.

5 THE COURT: We're going to start -- you
6 can have a seat.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: We'll start you off with an
9 easy question. That is, give us your full name
10 and spell each of your names.

11 PROSPECTIVE JUROR: Beverly Ann
12 Horachek; B-e-v-e-r-l-y, A-n-n, H-o-r-a-c-h-e-k.

13 THE COURT: Okay. Ms. Horachek, I'm
14 going to ask you a few questions from later on in
15 the questionnaire. This is about as private as
16 we get during jury selection, but I'm just going
17 to generally ask you some questions. It sounds
18 like you have some concerns you could not be fair
19 in this case.

20 THE WITNESS: Yeah. I do have concerns
21 that I wouldn't be fair.

22 THE COURT: Okay. And we do want you be
23 to honest because both sides want a fair trial,
24 both sides want somebody who is impartial. And
25 since we all bring our life experiences here,

1 some people can, some people can't. Can you
2 expand on it for me? Do you have a certain side
3 you think you might be biased against?

4 PROSPECTIVE JUROR: I live in South
5 Minneapolis, heavily populated Somalian community
6 in South Minneapolis. Just in my day-to-day
7 dealings with Somalia people, I guess I feel -- I
8 don't want to say prejudice but an attitude
9 towards them.

10 THE COURT: Do you think you've had some
11 negative experiences that might carry over into
12 this trial?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Counsel approach.

15 (Off the record discussion at the
16 bench.)

17 THE COURT: Ms. Horachek, thank you for
18 your honesty in this. I'm going to let you go
19 back to the jury office. You're excused from
20 service on this jury, but you need to go back to
21 the jury office for further instructions
22 regarding your jury service.

23 PROSPECTIVE JUROR: So that would be
24 back downstairs where I originally first came?

25 THE COURT: Right. That assembly room

1 down there. Tell them that you were excused from
2 this jury and you're now available and they'll
3 give you instructions.

4 PROSPECTIVE JUROR: Thank you.

5 THE COURT: Thank you.

6 (Prospective juror leaves courtroom.)

7 THE CLERK: Number 43 Ms. Roberts is not
8 here. Do you want me to bring in Number 44?

9 THE COURT: Well, I don't think we can
10 because this is -- we're getting to the point
11 where order matters. So unless either side
12 thinks we should just go forward?

13 MR. GOETZ: No. I think -- may we
14 approach?

15 THE COURT: Okay.

16 (Off the record discussion at the
17 bench.)

18 THE COURT: It's my understanding that
19 after discussions at the bench that the State
20 would have exercised a peremptory on Juror Number
21 43 based on the answers in the questionnaire and
22 that the defense does not have any challenge to
23 that on any other grounds. Is that correct?

24 MR. GOETZ: It is, Your Honor.

25 MR. STREITZ: That's correct.

1 THE COURT: Okay. So the State wishes
2 to excuses Juror Number 43?

3 MR. WEBER: Yes.

4 THE COURT: Okay. That is a peremptory.

5 MR. STREITZ: Yes.

6 (Prospective juror enters courtroom.)

7 THE COURT: Morning, sir.

8 PROSPECTIVE JUROR: Morning.

9 THE COURT: Let's start by having you
10 state your full name and spell each of your
11 names.

12 PROSPECTIVE JUROR: Larry Larson;
13 L-a-r-r-y, L-a-r-s-o-n.

14 THE COURT: All right. And just a
15 little insider information, you are married to
16 Leah who is our receptionist on 12?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Who's always a pleasure to
19 deal with. Does the fact that you have someone
20 in your household that works for the District
21 Court going to bias you in any way?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Anything else from your
24 questionnaire you thought, well, maybe I should
25 have put this in there?

1 PROSPECTIVE JUROR: My sister works at
2 the courthouse at Ridgedale.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: You know, the people
5 come up with tickets and she's at the desk there.

6 THE COURT: Okay. So the clerk's
7 office, the front counter area?

8 PROSPECTIVE JUROR: Yeah.

9 THE COURT: Okay. Anything about that
10 that might affect your ability to be fair?

11 PROSPECTIVE JUROR: No.

12 THE COURT: I'm going to turn it over
13 then to Mr. Goetz for further questioning.

14 Mr. Goetz.

15 MR. GOETZ: Thank you, Your Honor.

16 BY MR. GOETZ:

17 Q. Good morning, Mr. Larson.

18 A. Good morning.

19 Q. As the Court indicated, my name is Frederick
20 Goetz. To my left is Mahdi Ali. Also at the
21 defense table morning is Abdi Elmi doing
22 interpreting, and Greg Young with my office, just
23 so you know who the faces are.

24 I'm going to ask you a few questions this
25 morning. There's no right or wrong answer to any

1 question that I ask. Whatever comes to mind is
2 the correct answer. Okay. You've been through
3 this process before as I recall.

4 A. Yes, in the 80s, I believe.

5 Q. Okay. It's some time ago. I trust that whatever
6 you recall about the law that you maybe then were
7 exposed to or learned about in that case you'll
8 forget about and just follow the law that Judge
9 Cahill gives you?

10 A. Yes.

11 Q. If you can remember the jury selection process,
12 it's probably a little different than that, you
13 were all seated in the jury box at the same time?

14 A. Yeah.

15 Q. Because of the nature of the case this is a
16 little different method we're using, but the
17 ultimate test is the same. That being, do you
18 think you can be fair and impartial to both
19 sides. And I'm not asking you to answer that
20 question now, just have it in the back of your
21 mind as we go through these questions. Okay.

22 A. Uh-huh.

23 Q. As you know, people have all sorts of different
24 experiences in life and every case has its unique
25 aspects. Sometimes because of that a particular

1 case might be hard for a particular juror to
2 listen to the evidence fairly, respectively or
3 rather impartially. Other times it's not a
4 problem. So that's kind of what we're driving
5 at, alright?

6 A. Okay.

7 Q. You're a Cowboy, is that right? I'm thinking of
8 West High School?

9 A. Yes.

10 Q. That goes a ways back. So you've lived in the
11 Twin City area all your life?

12 A. Yes.

13 Q. Okay. Do you enjoy living in Minneapolis?

14 A. I do.

15 Q. What do you like about living in Minneapolis?

16 A. It's clean and it's still not overpopulated.
17 It's nice living conditions.

18 Q. Okay. And I'm sorry, there is elevators right
19 here and it's little hard to hear your answer.

20 A. Okay.

21 Q. I want to focus on one of your answers in the
22 questionnaire. You indicated that a family
23 member had -- they were a victim of a robbery?

24 A. Yes.

25 Q. Okay. That's good --

1 A. Okay.

2 Q. And then you give us more information about that
3 apparently the perpetrator was supposedly from
4 Somalia, described from cameras, later arrested
5 for some other charge?

6 A. Yes.

7 Q. Can you tell me a little bit more about that
8 incident, what you recall about it?

9 A. From what I recall, he was seen using her credit
10 card at a Southdale store, so they had him on
11 camera. And she couldn't identify him in the
12 lineup but later found out that he was arrested
13 for something else. And then she found, I think,
14 where he was from and got more detail about him
15 and that's all --

16 Q. Okay. And the family member, what exactly was
17 the relation to you?

18 A. She's my wife.

19 Q. Oh, your wife. So this is something that
20 affected you very closely?

21 A. Yep.

22 Q. Do you think at all that might carry over to how
23 you view the evidence in this case?

24 A. No.

25 Q. How long ago did that happen?

1 A. I'm thinking four years ago. I think he was just
2 kind of out terrorizing the light rail stations
3 at the time. He was just -- I think it was four
4 years ago. At least three.

5 Q. Was your wife hurt at all?

6 A. No, she wasn't.

7 Q. Was there a weapon involved?

8 A. Yes.

9 Q. And what was that?

10 A. He had a handgun.

11 Q. What was your reaction, Mr. Larson, when you came
12 up here last Tuesday and you heard this was a
13 case involving allegations of murder?

14 A. I thought, you know, wow, it's a big case, you
15 know, involves murder so. Previous case I was in
16 was an assault. So I guess the fact that it's
17 kind of a big case and it's going to take as it
18 comes, you know, the evidence, you know.

19 Obviously, the prosecutors have enough evidence
20 to bring it -- to charge him and the defense has
21 enough evidence to bring it to trial. So I can
22 be a fair juror.

23 Q. Okay. Since last Tuesday have you thought any
24 more about being a juror in this particular case
25 in terms of actually, you know, how you might

1 approach the job of being a juror? Have you
2 thought about that at all?

3 A. Just taking all the evidence in the case. And I
4 heard it's going to be like a three-week case so
5 I thought about my work and that I'd be gone from
6 work quite awhile and I'm the only one in my area
7 so other people would have to cover for me so I
8 thought about that too. I do enjoy being on
9 cases that involve trying to, you know, to taking
10 all the evidence and trying to figure out, using
11 common sense and all that.

12 Q. May I ask you a few follow-up questions about
13 your work. Have you discussed with your employer
14 the prospect that you might be gone for two weeks
15 give or take?

16 A. Yeah.

17 Q. And is your employer able to make some sort of
18 accommodations for that?

19 A. I think so. I mean, there is one person in the
20 different department that could -- he'll probably
21 be overworked, but he could probably cover for
22 me.

23 Q. And are you being reimbursed your wages?

24 A. Yes.

25 Q. I ask those questions because it's important that

1 when jurors are on a case, as you probably know
2 from your prior experience, that they just focus
3 on what's going on in the courtroom and that they
4 not be thinking about, for example, work and, you
5 know, a paycheck and things like that. It sounds
6 like it's not going to be an issue for you,
7 right?

8 A. Right, yeah. As far as employees at my work, I
9 might be thinking about that. But as far as pay,
10 no.

11 MR. GOETZ: May I just have a moment
12 please, Your Honor?

13 THE COURT: You may.

14 (Defense counsel confers with his
15 client.)

16 MR. GOETZ: Defense will exercise a
17 peremptory challenge.

18 THE COURT: Mr. Larson, we'll excuse you
19 from this jury. You can go back down to the jury
20 office for further instructions. Thank you.

21 PROSPECTIVE JUROR: Thank you.

22 (Prospective juror leaves courtroom.)

23 (Prospective juror enters courtroom.)

24 THE COURT: Morning.

25 PROSPECTIVE JUROR: Morning.

1 THE COURT: Ms. Ewald.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: If you could start us off by
4 giving us your full name and spelling each of
5 your names.

6 PROSPECTIVE JUROR: My full name is
7 Brittany Marie Ewald; B-r-i-t-t-a-n-y, M-a-r-i-e,
8 E-w-a-l-d.

9 THE COURT: Okay. And before I turn it
10 over to the attorneys, I want to ask you a few
11 questions. First of all, is there anything you
12 wanted to add to your questionnaire now that
13 you've had about a week to think about it?

14 PROSPECTIVE JUROR: I don't think so.

15 THE COURT: All right. As you sit here
16 right now, do you think you could be a juror on a
17 murder trial and give both sides a fair and
18 impartial trial?

19 PROSPECTIVE JUROR: I would hope that I
20 could, but, I mean, I don't -- I think I stated
21 in my little questionnaire there that because it
22 is a murder trial that I am a really emotional
23 person and I would just automatically feel bad
24 for the victims and their families and so it
25 would be really hard to kind of have to try to be

1 fair, I guess.

2 THE COURT: Okay. This type of case
3 does usually does involve some emotional
4 testimony, some graphic pictures --

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: -- and if you can handle it
7 and put that aside, that's what we need to know.

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: Because it's not so much
10 that you'll have those emotions because given the
11 nature of the case probably all the jurors would
12 have a certain amount of emotion. The question
13 is can you put that aside, put aside any sympathy
14 for the victims or any bias or prejudice and just
15 decide the case just on the facts and the
16 evidence according to the law that I give you.
17 Do you think you can do that? Do you think you
18 can put aside the emotional part, even
19 recognizing it will probably come up?

20 PROSPECTIVE JUROR: Yeah. I think that
21 I could.

22 THE COURT: Okay. So it's not that if
23 you react emotionally you're off the jury. It's
24 what you can do with it.

25 PROSPECTIVE JUROR: Okay.

1 THE COURT: Let's talk about your -- you
2 were also hit by a drunk driver.

3 PROSPECTIVE JUROR: I was, yes.

4 THE COURT: Was there any court case
5 that came out of that?

6 PROSPECTIVE JUROR: No, it was just
7 settled. I mean, he was just at fault and I got
8 my car paid for and went on from there.

9 THE COURT: All right. Anything about
10 that that we should know about that that would
11 affect your ability to be fair?

12 PROSPECTIVE JUROR: No, not really, no.
13 I wasn't sure if I should put it down. It was
14 the only instance that I ever had of anything
15 like that.

16 THE COURT: All right. In that case I'm
17 going to turn over to Mr. Goetz for some
18 questions.

19 Mr. Goetz.

20 MR. GOETZ: Thank you, Your Honor.

21 BY MR. GOETZ:

22 Q. Good morning, Ms. Ewald. Did I pronounce that
23 correctly?

24 A. Yes.

25 Q. Ms. Ewald. My name is Fredrick Goetz. To my

1 left is Mahdi Ali. Also at our table is Abdi
2 Elmi, who will be doing interpreting and Greg
3 Young from my office. I'm going to ask you a few
4 questions this morning. There is no right or
5 wrong answer to any question. Whatever comes to
6 mind, that's the correct answer.

7 A. Okay.

8 Q. And sort of following up on some of the questions
9 in the dialogue you just had with the judge.
10 Think in the back of your mind, in this
11 particular case can you be fair and impartial to
12 both sides? And that's not a question I want you
13 to answer but that is the ultimate test.

14 A. Uh-huh.

15 Q. As you can probably imagine, there is a number of
16 trials going on in this building right now, they
17 all have different facts. And for each trial, as
18 you've already seen, we bring the prospective
19 jurors who come from a variety of life
20 experiences, different views, different
21 experiences. So sometimes a case is a good fit,
22 meaning the person can be fair and impartial.
23 Other times because of somebody's life
24 experiences or because something about that
25 particular case, that might be difficult. So

1 we'll leave it up to you to tell us how you feel.

2 Is that all right?

3 A. Yes.

4 Q. Is that fair?

5 A. Yes.

6 Q. Okay. And I do want to follow p a little bit on

7 what you and the judge were just talking about.

8 And Judge Cahill, we understand that this case

9 will necessarily involve very emotional testimony

10 and --

11 A. Uh-huh.

12 Q. -- emotional reactions. We don't ask or expect

13 people to turn off their humanity. But we do ask

14 and expect people to be fair and to base the

15 decision on the evidence rather than any feelings

16 or emotions. Do you think you'd have any

17 difficulty doing that?

18 A. Not really. I think once I got into the

19 courtroom and kind of went through the whole

20 process and heard both sides I think I'd be able

21 to be fair to both sides and really just look at

22 the evidence presented to me.

23 Q. Okay. So as you sit here right now, do you think

24 you could, I guess steel yourself or brace

25 yourself for what's coming in the nature of

1 graphic evidence?

2 A. Yeah, I could. Yeah, I mean, I haven't really
3 seen anything like that in my life, not for real,
4 but I think I could. I think I could handle it.
5 Yeah, I do.

6 Q. Okay. Again, it's not that we're asking you to
7 turn off your humanity and your feelings, but
8 just experience them, but then when it comes time
9 to decisionmaking, do it on the facts. Do you
10 think you could do it?

11 A. Yeah.

12 Q. Any concern or doubt in your mind about your
13 ability to do that?

14 A. I don't think so. No, no.

15 Q. And by asking the questions I'm not suggesting
16 otherwise. I hope you understand why. I just
17 need to ask those questions.

18 A. No, I do.

19 Q. You also indicated in the answer to one of your
20 questions in the questionnaire -- this was
21 towards the end -- I don't know if you remember
22 -- is there anything else about you the Court
23 should know? And you wrote, I'm the member of
24 the Lutheran Church, strong Christian. What this
25 means to you is unknown, but I wanted it to be

1 known.

2 A. Yeah.

3 Q. That's fine. I'm just wondering why you wanted
4 to share that with us and if there is anything
5 you think we should know about that?

6 A. I only shared it because I know many people in
7 society would assume that a Christian would be
8 judgmental and so I just wanted that to be known.
9 I'm not judgmental, but I think that some people
10 have that predisposition and so I just wanted it
11 to be out there. That way if it was something
12 that you guys felt then you would know that right
13 offhand.

14 Q. Thank you for sharing.

15 A. Uh-huh.

16 Q. And you're a graduate of Cooper; is that right?

17 A. Yeah.

18 Q. And you work as a child care center director?

19 A. Yep.

20 Q. How long have you been doing that?

21 A. A little over two and a half years I've been the
22 director there.

23 Q. Quite a change from your job as a promoter for --
24 was it --

25 A. Diageo.

1 Q. Diageo?

2 A. Diageo brand.

3 Q. Sorry for the pronunciation. What sort of
4 promoting were you doing for that?

5 A. With Diageo that was a really, really part time
6 thing and I would basically -- they would send
7 me -- I worked at a liquor store, or different
8 liquor stores, I guess. And they would send me
9 to a liquor store to give out samples of like
10 Baileys or things like that. I just kind of
11 stood there and handed out free samples to
12 people. So that's what I did.

13 Q. Okay. Did you enjoy working at the child care
14 center?

15 A. I do, yeah.

16 Q. What ages do you work with?

17 A. Birth to five years of age, so -- but I'm more,
18 so work with the staff and the parents. I kind
19 of do it all.

20 Q. Have you been able to make sufficient
21 arrangements that they could be without you for
22 two weeks give or take?

23 A. They wouldn't like it, but, yeah, they would be
24 fine.

25 Q. Okay. And important for this case, it's

1 something that you'd be able to be comfortable
2 with those arrangements so that if you were
3 selected on the jury, you could focus on the
4 evidence and not be thinking about the kids and
5 how they're doing?

6 A. They should be just fine.

7 Q. Okay. And you enjoy volleyball, softball,
8 running races?

9 A. Yes.

10 Q. What sort of miles do you run?

11 A. Usually they are just 5Ks. But I ran in the
12 Ragnar Relay this past June and so I ran a total
13 of 28 miles over three different legs, I guess.
14 So that was a big one. I'll probably do another
15 one next summer.

16 Q. What relay is that?

17 A. Ragnar Relay Series. I ran from Madison to
18 Chicago with me and five of my other girlfriends.

19 Q. Was that for a cause?

20 A. Nope, just because we're crazy.

21 Q. Good for you. We asked questions about Facebook
22 sites and related to that.

23 A. Uh-huh.

24 Q. If you can think of your typical day, how often
25 during the day are you communicating with friends

1 or other people?

2 A. Well, I pretty much work in my office and up on
3 my computer screen will be my work e-mail, my
4 personal e-mail and Facebook. And it will just
5 be up there so there's just kind of always there,
6 I guess. As long as I'm in my office, they're
7 right there. I have my phone on me at work and
8 I'll text people once in a while. So I'm kind of
9 always constantly in communication with somebody,
10 whether it's a parent or staff member or friend
11 or whatever.

12 Q. Not saying this is the case with you but I know
13 some people I talked to, they kind of can get
14 sort of addictive, you know, you need to be
15 plugged in?

16 A. Yeah.

17 Q. All right. How do you think you'd be if you're
18 unplugged for a couple weeks at the time?

19 A. Like when I go on vacation and things like that,
20 like out of the country I've been unplugged and
21 it's always a nice thing just to be without it.
22 And if I had to be, I'd be able to do it. You
23 know, it probably would just be kind of like on
24 my own time, just be bored, I guess.

25 Q. I guess what I'm talking about, and the Court

1 will give you specific instructions, but I would
2 imagine, of course while you were in the
3 courtroom you would be focusing on the
4 evidence --

5 A. Yep, yep.

6 Q. And when you're in deliberations afterwards you'd
7 need to be just focusing on those and not
8 communicating in any fashion.

9 A. Yep.

10 Q. Would you be able to do that?

11 A. Yep.

12 Q. And you have some relatives in the law; is that
13 right?

14 A. Yes.

15 Q. Uncle that's a district court judge?

16 A. Yep. He works in Wausau, Wisconsin. He's been a
17 judge out there for a long time. Then I have
18 another uncle who works at a woman's correctional
19 facility in Wisconsin as well. Then I have an
20 uncle who took one year of law at William
21 Mitchell, but he didn't do anything with it.

22 Q. How often do you have contact with those uncles?

23 A. The judge probably once every other year. I
24 don't see him very often. He's not doing well
25 health-wise. And then the other uncle who works

1 in the corrections facility, probably three or
2 four times a year I'll see him when we go to
3 visit. And the uncle here, probably three or
4 four times a year. Used to be more but not so
5 much anymore.

6 Q. So he decided not to pursue his --

7 A. Yep, yep. He was done. He works as a paralegal
8 now for a friend of his that's a lawyer.

9 Q. Do you know what kind of law he does?

10 A. Something with children and family. Lot of
11 divorce cases, things like that.

12 Q. We asked question about your experience with
13 people from Africa, Somalia, Ethiopia in
14 particular.

15 A. Yep.

16 Q. And it looks like you have had contact in the
17 child care capacity?

18 A. Yep.

19 Q. Can you tell me about that?

20 A. Yeah, I mean we're pretty, I guess most of our
21 families there, 95 percent of them are Caucasian.
22 But once in a while we'll have a family of a
23 different culture come in. I get a lot of people
24 that stop by looking for care, or just kind of
25 asking about it. They'll come by once in a

1 while, but generally they don't end up coming to
2 us. I guess we're not very diverse so that could
3 be one of the reasons they don't want to bring
4 their children to us. But that's kind of it for
5 work.

6 Q. How would you describe your experience with
7 people from Somalia?

8 A. I never really know specifically where they're
9 from, I guess. Sometimes they're hard to
10 understand and -- or they don't quite understand
11 what we're about or how we work, so I have to do
12 a lot of explaining, but it's pretty minimal.
13 And I guess it's pretty neutral, not really
14 negative or positive, I guess. That's not much I
15 can glean from ten minutes of contact, I guess.

16 Q. I wanted to ask you a few questions about some
17 different areas. As you eluded to earlier, there
18 are two sides in this case, the prosecution and
19 the defense.

20 A. Uh-huh.

21 Q. But in our system of criminal justice in this
22 country only one of the two sides has to prove
23 anything. The prosecution has brought the
24 charges and they have the burden exclusively of
25 proving those beyond a reasonable doubt. The

1 accused in our system doesn't have to prove a
2 thing.

3 A. Uh-huh.

4 Q. Mr. Ali doesn't have to testify should he choose
5 not to. How would you feel, and I know it's asking
6 you to think ahead, but how would you feel if at
7 the end of the day you had not heard from Mr. Ali
8 from the witness stand and, you know, the defense
9 had not presented another side, so to speak.
10 Would you hold that against Mr. Ali?

11 A. No, I don't think so.

12 Q. Okay. Do you think that's the right way to do
13 things that we just put the burden of proof
14 exclusively on the party that's brought the
15 charges, the State?

16 A. I've never really thought about it in that way.
17 I think -- I think it is a good, I guess a good
18 decision because I would just hate for people to
19 have to come in and prove their innocence when
20 people could bring random charges against them
21 for no reason, I guess. So I guess it does make
22 sense and, yeah, I think it works.

23 Q. Okay. I'm going to jump around a few different
24 topics. As you can see there are a number of
25 lawyers in the courtroom.

1 A. Uh-huh.

2 Q. As you would expect. Any feelings about lawyers
3 in general?

4 A. No.

5 Q. Any feelings about defense attorneys in general?

6 A. No.

7 Q. Prosecutors?

8 A. No.

9 Q. A trial has different parts to it and everyone
10 has different roles to play. Part of what I
11 might do as defense attorney is cross-examine
12 witnesses. Sometimes that may be rather simple.
13 Sometimes it may be more complex, sometimes even
14 heated confrontational. Do you understand that
15 that's part of what I'm going to have to do?

16 A. Yes.

17 Q. If for any reason, I guess, you felt I was being
18 a jerk in any cross-examination, would you hold
19 that against me and not Mr. Ali?

20 A. I would understand that that's your job and
21 that's the nature of a trial, I guess.

22 Q. Okay. I'm going to ask you some questions about
23 witness credibility.

24 A. Okay.

25 Q. Part of what a juror's job is is to evaluate the

1 credibility of witnesses. And last Tuesday Judge
2 Cahill gave us all some instructions and factors,
3 and that instruction would be repeated. My
4 question is, how do you think you might approach
5 the job of evaluating the testimony of a
6 stranger?

7 A. I guess their -- what their motive or like why
8 they're here, what their motive might be, any
9 biases they might have, how they present
10 themselves up here, I guess. How real they seem,
11 or -- yeah, I'm not really sure. I think it
12 would always be helpful, like, to -- I would
13 have, you know, 11 other people or however many
14 other people to bounce things off of in that way
15 that would be much better than me solely having
16 to, you know, decide these things or how I feel
17 so.

18 Q. Okay. And we understand this is something you
19 don't do on an everyday basis.

20 A. Yeah.

21 Q. Let me follow up one thing you just said, 11
22 other people. Imagine, if you will, that you're
23 back in that jury room deliberating.

24 A. Uh-huh.

25 Q. And 11 people feel one way about the case and you

1 feel differently.

2 A. Uh-huh.

3 Q. How do you think you might handle that?

4 A. I'm pretty good at standing up for myself and
5 kind of making my argument. And if I really felt
6 strongly, I mean, I would be able to just kind of
7 try to explain to them why I feel a certain way
8 and kind of maybe, you know, talk to them or
9 figure it out. I would just stand up for myself,
10 you know, until we figured something else out
11 otherwise.

12 Q. Okay. And then I guess related to what we're
13 talking about, I want you to think for just a
14 moment of some of the most important decisions
15 that you've made in your life. I don't want you
16 to tell me what they are, but just think about
17 them. Can you think about them right now?

18 A. Uh-huh.

19 Q. How have you gone about making those decisions?

20 A. Some of them have taken weeks, like months to
21 decide. And I guess I talk to a lot of different
22 people. I would, you know, make pro and con
23 lists of both sides. You know, I sort out how I
24 felt about it and, you know, what I wanted for
25 the future and I'm thinking long term, and so a

1 lot of thinking. And one time I know I was 75
2 percent sure I was going to go one way, and two
3 days later I was like, no, and I went completely
4 the opposite way so.

5 Q. So sounds to me like you're a person who does not
6 like to rush to judgment?

7 A. No, no, I definitely do not.

8 Q. And if you're not comfortable telling me, that's
9 fine, but are there any generally just types of
10 decisions you can share with me?

11 A. It was I had a job decision to make. I'm
12 currently in one job and about a year after
13 starting this job I was offered a position to
14 teach. And I went to school to teach and it was
15 where I student taught, and I was excited about
16 it. But it ultimately came down to the fact that
17 I just didn't feel like I was done where I'm at.
18 I feel like I had more work to do there. And
19 also monetarily it was a very large pay cut. And
20 besides that, it took me five weeks to say no.
21 It was a called position, so called in the
22 church. And I, you know, I still -- I didn't say
23 no right away because of the money. I thought
24 for a few days that I was certainly going to go
25 there and I didn't. It took me a long time to

1 come to that decision.

2 Q. Okay. Thank you. Focusing back on witness
3 credibility then. You mentioned some factors,
4 some things that you would consider or evaluate.
5 If you heard that a particular witness had
6 entered into an agreement with one party or
7 another, whereas if that witness did something
8 they hoped to get some kind of benefit in return,
9 would that be something that you would consider
10 amongst everything else in determining, do I
11 believe this person or not, or how much to
12 believe them?

13 A. Yeah. I think it's always meant to consider,
14 that's kind of their motive behind it, I guess.

15 Q. Have you ever heard the term plea bargain?

16 A. Yes.

17 Q. Or plea deal?

18 A. Yes.

19 Q. And I'm -- I forgot your answer on the
20 questionnaire. Do you watch any crime dramas or
21 legal dramas?

22 A. I used to. I used to watch a lot of Law and
23 Order SVU. I don't want too much TV anymore.
24 I'm too busy and playing sports, I guess, all the
25 time. I did use to watch Law and Order. I think

1 that's probably the only one. Yeah.

2 Q. You probably experienced already that real life
3 courtroom situations are very different than how
4 they appear on television?

5 A. Yes.

6 Q. If you're selected as a juror, you hear a lot of
7 different types of evidence from many different
8 sorts of witnesses. Some of the evidence you
9 might hear would be forensic evidence, including
10 DNA evidence in particular. Do you have any
11 general familiarity with DNA evidence?

12 A. Maybe a little, but probably only from a TV
13 standpoint. So probably not. No real life
14 experience or much knowledge about it, I guess.

15 Q. Okay. Are you open to evaluating any DNA
16 evidence in this case based upon just the
17 testimony that's presented in this courtroom?

18 A. Can you ask the question one more time?

19 Q. Sure. I'm sorry. When you evaluate DNA evidence
20 presented in this case, will you do so just based
21 upon the evidence presented in the courtroom
22 rather than anything you've seen on TV?

23 A. Yes, yes.

24 Q. Do you have any sense as you sit here right now
25 whether or not DNA evidence is fallible or

1 infallible?

2 A. I think, I mean, everything is infallible in --
3 I'm sorry, fallible in our world, nothing is
4 infallible, something can always be wrong.

5 Q. We talked about witnesses. Some of the witnesses
6 I expect will be experts in various fields.
7 They'll give their testimony and you as a juror
8 would evaluate their testimony with the judge's
9 instructions that he'll give you. Do you
10 understand that the juror's job though remains,
11 they're the judges of the facts?

12 A. Yes.

13 Q. So you'd evaluate the testimony of an expert,
14 whether you believe or not believe, that's up to
15 you. Do you understand that?

16 A. Yes.

17 Q. Just a few final questions for you, Ms. Ewald.
18 And I want to get back to the first thing we
19 talked about, the fact that it's a murder case.
20 Three people are killed -- were killed.

21 A. Uh-huh.

22 Q. As you sit here today, right now in the context
23 of this case, must somebody be convicted of these
24 crimes?

25 A. No. If the evidence doesn't, you know, for

1 anybody to have charges against them, if the
2 evidence isn't there to, you know, prove that
3 they committed the crime, then, I mean, some
4 things just go left unsolved.

5 Q. Okay. Ms. Ewald, I appreciate you answering my
6 questions, I just have one last one. You
7 obviously know yourself better than anybody in
8 this courtroom. Is there any reason that you can
9 think of that causes you any hesitation, any
10 doubt, as to whether you can be fair and
11 impartial to both sides?

12 A. No, there isn't.

13 MR. GOETZ: Thank you for answering my
14 questions.

15 May I have a moment, please, Your Honor.

16 THE COURT: You may.

17 (Defense counsel confers with his
18 client.)

19 MR. GOETZ: Thank you, Your Honor. The
20 defense would accept Ms. Ewald.

21 THE COURT: All right. Mr. Streit.

22 MR. STREITZ: Thank you, Your Honor.

23 BY MR. STREITZ:

24 Q. Good morning, Ms. Ewald. How are you?

25 A. Good.

1 Q. Last week Judge Cahill introduced me as Bob
2 Streitz and my co-counsel Chuck Weber as the
3 prosecutors in the case. It's our chance to chat
4 with you a little bit this morning.

5 A. Uh-huh.

6 Q. I believe I've been careful in looking over your
7 questionnaire. I've tried my best to listen
8 carefully to your answers this morning. If you
9 think that I've misunderstood something, you've
10 either written or told me, please tell me, it's
11 not intentional.

12 A. Okay.

13 Q. I don't want to be repetitious but on the other
14 hand there's some things I'd like to get into a
15 little bit more. Fair enough?

16 A. Yes, yes.

17 Q. Let's just do a little word association.

18 A. Okay.

19 Q. First thing that comes to your mind or image that
20 comes to your mind. Handgun.

21 A. I guess probably a murder.

22 Q. Police officer?

23 A. A cop car.

24 Q. Anything negative or positive about that image?

25 A. Well, about the police car?

1 Q. Policeman?

2 A. No.

3 Q. DNA?

4 A. Blood.

5 Q. You were asked some questions about DNA.

6 A. Yep.

7 Q. And you said you heard some things on TV. Have
8 you heard about DNA in any other context?

9 A. I mean in the context like figuring out who's --
10 like paternity tests and things like that you use
11 DNA. I mean there can be -- any bodily fluid can
12 be DNA, hair samples, things under fingernails,
13 you know, yeah.

14 Q. Any general reaction to DNA like it's good or,
15 boy, they should never use it, anything like
16 that?

17 A. No, not really. I know that people are
18 exonerated because they have used DNA to prove
19 that it wasn't them in the past. I don't have
20 too many general feelings on it, no.

21 Q. You mentioned that you wanted us to know about
22 your religion.

23 A. Yeah.

24 Q. So that, you know, we can do with it what we
25 wanted with that information. And you've told us

1 that you're not judgmental.

2 A. Yep.

3 Q. As a member -- if you're a member of this jury
4 and you deliberate, you will have to judge the
5 facts and apply them to the law. And so in a
6 sense you would be judging the issue of guilt or
7 non guilt?

8 A. Uh-huh.

9 Q. Is there anything about your religious views that
10 would cause you to -- or preclude you from being
11 able to do that?

12 A. No.

13 Q. Okay. And if you haven't figured it out already,
14 I jump all over the place.

15 A. It's okay.

16 Q. Your uncle the prison guard.

17 A. Yep.

18 Q. Do you ever talk to him about stuff that goes on
19 in his work?

20 A. Not really. He might bring up something funny
21 once in awhile but not really, no.

22 Q. Have you ever had to fire someone?

23 A. Yes.

24 Q. I take it that that is not on your top ten most
25 favorite things to do in life?

1 A. No, not at all.

2 Q. And I'm guessing that the fact -- because the
3 facts warranted it that was the right thing to
4 do?

5 A. Yes.

6 Q. Even though it meant probably some hardship for
7 that person?

8 A. Yes. Yeah, it was not enjoyable, but it needed
9 to be done.

10 Q. The process that you went about, I take it, you
11 tried to gather facts from wherever you could.

12 A. Uh-huh.

13 Q. Was that one of those decisions that took awhile?

14 A. Yeah, this one did take awhile. I've had to do
15 it twice. And with both -- in both cases it was
16 probably over a year of me feeling like this
17 person wasn't the right fit and I just need
18 enough things built up to where it was like, now
19 I need to let you go. It might be something
20 minor, right, not but this is one of many things
21 that have happened and I need you to move on so.

22 Q. Using a continuum, on one end of the continuum
23 are people who can make decisions really quick.
24 On the other end of the continuum are people who
25 just really have a difficult time making big

1 decisions. On that continuum, where would you
2 put yourself?

3 A. Probably not right -- not right in the middle,
4 more towards the takes me a lot longer time to
5 make a decision.

6 Q. Do all of your -- have all of your more important
7 or difficult decisions in life taken a long time?

8 A. Some of them, no. I knew which college I was
9 going to go to immediately.

10 Q. Okay.

11 A. And others like when I want to take a certain job
12 when I already had one, that took awhile. And
13 I'm not married, I don't have kids so all those
14 big life decisions I don't have to make yet.

15 Q. You told us there was one important decision that
16 you were 75 percent sure one day and then a
17 couple of days later you went the other way.

18 A. Yep.

19 Q. Was that the job?

20 A. Yes.

21 Q. Teaching job?

22 A. Yep.

23 Q. Is that typical for you to take that long?

24 A. This was -- it was a spiritual decision so it was
25 a, you know, five-week process of what God wanted

1 me to do. It was a job within a church school
2 and it wasn't just a job, it was a called
3 position. It's very different and so that
4 decision took a long time because I felt like
5 there was a much greater weight on my shoulders
6 with that one. And because the lady whose job I
7 was taking, I student taught with her and she had
8 cancer and wished for me to take over for her.
9 That's a lot to put on somebody, I guess. So it
10 took me a long time.

11 Q. You seem like a very spiritual person. That's
12 important to you. How does that spiritual part
13 of your life factor into when you make decisions?

14 A. I know sometimes I make decisions that I know God
15 wouldn't be happy with, but then we all do that
16 because we're all sinners. And, you know, other
17 times I make decisions based on, you know, my
18 beliefs and how I believe that God wants me to
19 live so.

20 Q. Is there ever any real struggle?

21 A. Yeah, there is definitely certain sins that I
22 struggle with so, yeah. I'm not perfect.

23 Q. One of the things that the defense attorney
24 talked to you about was plea bargains and deals
25 people can make. First of all, what is your

1 understanding of plea bargain?

2 A. When somebody gets something in exchange for
3 their, you know, testimony or pleading guilty or
4 something like that to whatever it might be.

5 Q. Have you heard of those kind of situations where
6 government might approach somebody and say,
7 listen, in exchange for your cooperation we'll do
8 this for you.

9 A. Uh-huh.

10 Q. A lesser charge or lesser time. When you hear
11 about that, do you have any particular reaction
12 to that?

13 A. Not really, no. To be honest I never really
14 thought much about any of this, I guess. I mean,
15 I went to school to be a social studies teacher.
16 This is all interesting to me and definitely kind
17 of it -- to getting as far as good life
18 experience for that. But I really haven't
19 thought much about any of those things, and I've
20 never had anybody that I know deal with the law
21 or myself or my family and so I've never really
22 had to think much about it.

23 Q. Last week when Judge Cahill read to you the
24 definition of proof beyond a reasonable doubt,
25 any particular reaction to that?

1 A. No.

2 Q. You understand that is our job to prove it beyond
3 a reasonable doubt?

4 A. Yep.

5 Q. Nothing more, nothing less. You're comfortable
6 with that?

7 A. Yeah.

8 Q. Our job as prosecutors is to attempt to present
9 jurors with evidence that is relevant to what are
10 elements of the offense or parts of the crime,
11 which the judge will give you at the end of the
12 case if you're selected. There may be unanswered
13 questions that a juror might have.

14 A. Uh-huh.

15 Q. But if we've proven the case beyond a reasonable
16 doubt, you're to return a guilty verdict. Are
17 you comfortable with that kind of a framework
18 where you may have some unanswered questions but
19 if the facts warrant conviction, that is, it's
20 been proven beyond a reasonable doubt that you'd
21 be able to do that?

22 A. Yes.

23 Q. TV shows, Law and Order SVU. Any CSI shows?

24 A. No.

25 MR. STREITZ: Ms. Ewald, if I can just

1 have a second.

2 (State's counsel confer.)

3 MR. STREITZ: Your Honor, the State
4 would accept Ms. Ewald.

5 THE COURT: Ms. Ewald, you will serve on
6 this jury, and we will have you come back at 1:30
7 this afternoon because we will start at that
8 time. So bit of a long lunch hour before we
9 reconvene. We'll be doing other matters so we'll
10 have you come back and wait in the same room you
11 were in before at 1:30, and we'll see you then.

12 PROSPECTIVE JUROR: Sounds good.

13 (Prospective juror leaves courtroom.)

14 THE COURT: All right. I have Ms. Ewald
15 as our second alternate, or second -- the last
16 juror to be selected, so we'll convene at 1:30 if
17 possible, but I have two 1:15 matters so I'll
18 stick with expecting that we'll start at 1:45.
19 If you can be present at 1:30, in any case.

20 Mr. Streitz.

21 MR. STREITZ: Your Honor, there is one
22 pretrial motion that has not been ruled upon.
23 It's the Crawford issue.

24 THE COURT: Hold on. Let me get my
25 notes. I think you're referring to the on-scene

1 statements of Witness A, who is Jamila Ahmed,
2 J-a-m-i-l-a.

3 MR. STREITZ: Yes, Your Honor.

4 MR. GOETZ: Your Honor, could I, before
5 we have a ruling on that make one comment given
6 the state of the record?

7 THE COURT: Sure.

8 MR. GOETZ: I don't believe the State
9 has made its showing of unavailability as to that
10 witness. So I think it's premature at this time
11 to get -- my understanding is the basis was an
12 exception to hearsay rule that presupposed
13 unavailability.

14 THE COURT: Mr. Streitz.

15 MR. STREITZ: I don't believe that's
16 necessary, Your Honor. It would be an excited
17 utterance.

18 THE COURT: All right. This is where I
19 land on it. The focus at this point is on the
20 Crawford issue and that's whether it's
21 testimonial or not. And based on the offer of
22 proof that we have at this point, I do find that
23 the statements on scene would be non-testimonial
24 until that witness was placed in the squad car.
25 At that point it was very clear that the officers

1 were separating Witness A from other witnesses
2 for the purpose of keeping their statements
3 straight and untainted and at that point they're
4 going to be taken down for questions. So up
5 until the time that person is put in the squad
6 car, however, it's clear from the audio that I
7 listened that there is a sufficient basis for
8 this to be an excited utterance and that by
9 virtue of that it was non-testimonial because it
10 was clear that it was to me an ongoing emergency
11 and that it was not in preparation for
12 litigation.

13 I analyzed the four factors that are
14 found in Wright and Warsame. Wright is
15 W-r-i-g-h-t and Warsame is W-a-r-s-a-m-e, and
16 concluded on that analysis that these are
17 non-testimonial statements. It was a pretty
18 bright line, I think, but any clarification the
19 parties need?

20 MR. GOETZ: No, I just -- the defense
21 would just make its objection clear. We don't
22 believe the threshold or the foundation has been
23 met for excited utterance under the Crawford
24 objection notwithstanding.

25 THE COURT: And I would expect that the

1 State would still lay that foundation before it
2 tries to introduce any on-scene statements.

3 MR. STREITZ: Understood, Your Honor.

4 THE COURT: Okay. Thank you. We'll
5 reconvene at 1:30 or 1:45 rather.

6 (Recess.)

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1 (Afternoon session:)

2 THE COURT: Members of the jury, good
3 afternoon.

4 JURORS: Good afternoon.

5 THE COURT: Before we begin, we will
6 swear you in so that you may take on the
7 important duty of being judges. In this case
8 you'll be the judges of the facts and I'll be the
9 judge of the law.

10 So I'd ask everyone in the courtroom to
11 stand while the oath is being administered.

12 (Jury empaneled and sworn.)

13 THE COURT: The trial is about to begin.
14 It is important that you, members of the jury, be
15 able to hear and see everything that takes place
16 during the trial. If you at any time have any
17 difficulty hearing or understanding what a
18 witness is saying, or if a witness or attorney
19 should block your view, please raise your hand
20 immediately so that we can correct the problem.

21 You may take notes during the trial, and
22 we have provided you with the notepads, but you
23 should not feel required to do so. The most
24 important thing is to give your full attention to
25 the testimony as you hear it. In order to

1 protect the privacy of your notes, I would
2 suggest you write your name on the first page and
3 then begin taking notes on the next page after
4 that. You may leave your notepad on your chair,
5 during breaks and at the end of the day. Ms.
6 Lutz will collect the notepads at the end of each
7 day and will keep them secure until the next
8 session of court. Extra notepads will be
9 available if you need them.

10 During the trial you're going to hear
11 the testimony of a number of witnesses. You will
12 have to make judgments about the credibility and
13 the weight of their testimony. Be patient and
14 listen carefully to all the testimony of all the
15 witnesses. Keep it all in mind until you have
16 heard all the evidence.

17 As you listen to the witnesses, you
18 should take note of such matters as the witness's
19 interest or lack of interest in the outcome of
20 the case, the ability and opportunity to know,
21 remember, and tell the facts, their experience,
22 frankness and sincerity or the lack thereof, the
23 reasonableness or unreasonableness of their
24 testimony in light of all the other evidence, and
25 any other factors that bear on the question of

1 believability and credibility. In the last
2 analysis, you should rely on your own experience,
3 judgment, and common sense.

4 You should keep an open mind about all
5 the evidence until the end of the trial, until
6 you have heard the final arguments of the
7 attorneys, and until I have instructed you in the
8 law.

9 Evidence is what the witnesses say and
10 any exhibits submitted to you. What the
11 attorneys say is not evidence. However, you
12 should listen attentively to any statements the
13 attorneys make. Those statements are made so
14 that you can better understand the testimony.

15 Now, the Somali language may be used
16 periodically during this trial. Minnesota law
17 provides that a defendant who cannot fully
18 understand or participate in legal proceedings
19 because of a difficulty speaking or comprehending
20 English must be provided a qualified interpreter.
21 This is because a defendant who lacks an
22 understanding of the legal proceedings
23 surrounding his case cannot assist in the
24 defense, challenge the accusers and make informed
25 choices regarding his fundamental rights. It is

1 through the use of qualified interpreters that
2 defendants who cannot fully understand English
3 are afforded the same treatment and opportunities
4 in their defense as English speaking defendants.

5 The State policy is to use interpreters
6 when it is the judgment of the Court that it is
7 necessary to ensure fairness in a trial. The
8 defendant, Mr. Ali, speaks and understands a
9 great deal of English, but it is my judgment that
10 his understanding of English is not sufficient to
11 ensure that he has full understanding of the
12 proceedings. I have, therefore, authorized the
13 use of an interpreter in this case to be used
14 when Mr. Ali needs assistance. The decision to
15 use an interpreter is my decision.

16 Now, during the trial an objection may
17 be made to some evidence and I may sustain or
18 overrule the objection. If I sustain the
19 objection, it means that the question may not be
20 answered. In that case you should simply ignore
21 the question and any answer that might have been
22 given. You should not speculate about what the
23 possible answer would have been. Similarly, if I
24 instruct you during the trial to disregard some
25 statement that a witness or attorney has made,

1 then you must disregard it. If I overrule an
2 objection, it means that the question may be
3 answered. In that case you should treat the
4 answer like any other answer. If a piece of
5 evidence is received despite an objection, you
6 should, as I said, treat that piece of evidence
7 like any other.

8 Now, from time to time the attorneys
9 will need to discuss issues of law or scheduling
10 matters with me. If these discussions are brief,
11 they'll occur here at the bench. If they're
12 lengthier, I'll take a recess. You may rest
13 assured that we are not attempting to conceal
14 anything from you which is necessary for you to
15 hear. I ask that you be patient when we have
16 these discussions even though they may interrupt
17 the case. When I turn on the white noise, that
18 is your indication that the conversation at the
19 bench is about matters that do not concern you.
20 Please feel free to stand, stretch, talk to your
21 neighbor, or open a can of pop during that time.
22 However, do not attempt to listen in and please
23 come to order when I turn the white noise off.

24 As I stated before at the beginning of
25 jury selection, there are certain things you

1 should not do and those now apply that you are on
2 the jury and we are in trial. So this is a
3 repeat of many things I told you at the start of
4 jury selection. You are not investigators. You
5 are not to go out to do any looking and you are
6 not to ask people about this matter. You are not
7 to use the internet to look for information about
8 this case or about the law. Above all, you must
9 not talk to anyone who is involved, the lawyers
10 or the witnesses. Do not be offended if the
11 attorneys, parties or witnesses do not speak to
12 you, they know it would be improper to contact
13 you during trial and will confine themselves to a
14 brief greeting.

15 You should not discuss the case among
16 yourselves. At the end of the trial you will
17 have as much time as you need to discuss it, but
18 that is at the end and not during the trial.
19 When you go home during the trial your family and
20 friends will wonder what you are during. You may
21 tell them you are sitting as a juror in a
22 criminal case, and that is all you should tell
23 them. Since that is all you should tell family
24 and friends, that is all you should tell the
25 general public. So please during the trial

1 refrain from using Facebook, Twitter, web blogs
2 or other social media to comment on this trial.
3 You may access such tools and use them, but
4 please do not publish any information or your
5 thoughts about this case.

6 You do not have to stay away from people
7 and refuse to speak to them. Do whatever you
8 wish but do not talk about this case and do not
9 talk to anyone involved in it.

10 Now, we don't know if this case will
11 receive any media coverage, most likely it will,
12 so do not read about this case in the newspapers
13 or listen to the news about it on radio or
14 television or read about it online.

15 Now, there are certain things you should
16 do as jurors. First of all, please be on time
17 for court. Court cannot begin unless every
18 participant is present. While waiting for court
19 to begin, I'd like to have you wait in the jury
20 room behind you. You can use either of the two
21 rooms that are there. That is for your exclusive
22 use. My clerk, Ms. Lutz, will bring you into the
23 courtroom.

24 Now, there are times when the lawyers
25 and I have to deal with legal issues before you

1 get called back in so at times there may be
2 unexpected delays. We will do our best, however,
3 to keep on schedule. Generally, court will start
4 at 9 a.m. and go until noon with a 20-minute
5 break, and then we will go from 1:30 or 2 p.m.
6 until 4:30, again with a 20-minute break. Now,
7 that may seem like a long lunch and a pretty
8 leisurely schedule, but I assure you no one in
9 this case is taking a leisurely lunch. During
10 the lunch break the attorneys are generally
11 tending to their other cases, or more likely
12 preparing for the next session of court. I also
13 use part of this lunch break to hear other
14 matters or very often take care of other judicial
15 business and go to a variety of meetings. So we
16 do appreciate your patience in following the
17 schedule.

18 During the trial, please turn off all
19 electronic devices such as cell phones, pagers
20 and computers while court is in session. I will
21 allow you to bring in coffee, water or other
22 beverages with you during the trial. But to keep
23 noisy distractions to a minimum, please open any
24 containers before we resume court and not while
25 evidence is being taken. Also on the small table

1 at your far left are some water pitchers and cups
2 for your use and your use alone. It's the good
3 water, it's not the stuff that comes out of the
4 drinking fountains around here. So I would
5 suggest you use that versus the drinking
6 fountains.

7 If any problem arises during the trial
8 or you observe what you believe to be improper
9 conduct or improper contact and you need to bring
10 such matter to my attention, please contact my
11 clerk, Ms. Lutz. She will communicate your
12 concerns to me and we will do our best to handle
13 the matter.

14 Make a mental note of the seat in which
15 you are now sitting and please keep that seat
16 throughout the trial.

17 If goes without saying, this case is
18 important to all the participants and you should
19 give your undivided attention to the case while
20 the trial is in session. I thank you in advance
21 for your service as jurors. You play a critical
22 central role in the administration of justice.

23 Mr. Streit, is the State ready to
24 proceed?

25 MR. STREITZ: State is ready, Your

1 Honor. Mr. Weber will be opening.

2 THE COURT: Mr. Weber, you may proceed.

3 MR. WEBER: May it please the Court,
4 counsel, jurors. Seward Market and Halal Meat is
5 a long, narrow store. It's located at the corner
6 of 25th Avenue South and East Franklin Street,
7 Minneapolis. January 6, 2010 was a cold night.
8 It was a Wednesday night. People in or around
9 the market went about their daily lives at they
10 always would. Jamiila Ahmed went to the market
11 looking for Somali coffee. Youb Ala who often
12 hung out at the market and helped went with Youb
13 -- excuse me -- went with Jamiila back to point
14 out the coffee on the shelf. Peter Fleck left
15 his house near the market about the time that
16 Jamiila was standing there looking at the coffee.
17 He wore his big Sorel boots and he carried a
18 laptop in his backpack. He was on his way to the
19 Seward Co-op, which is just a few blocks away.

20 As Jamiila and Youb looked for the
21 coffee, a young man came running in from the
22 front of the store. He spoke Somalian, he wore a
23 mask. He did not have a weapon, but he corralled
24 them against the store display. He asked them if
25 they had cell phones. They said, no. They heard

1 a commotion at the front of the store. Soon
2 there was a gunshot. The young man who had been
3 standing in front of them ran out the front door
4 and there were more gunshots. Jamiila and Youb
5 quickly moved to the back of the store and they
6 went into a beverage cooler. It was 7:45 p.m.
7 when Jamiila Ahmed called 911 from her cell phone
8 that she had just denied she had. She whispered
9 to the operator that she heard gunshots and that
10 she was going to die today.

11 Peter Fleck took to the alley from his
12 house. He passed directly behind the Seward
13 Market. As he neared the sidewalk of 25th Avenue
14 he heard a gunshot. He looked to his left. He
15 saw what you will hear him described as a 5'6
16 person walking toward him. Seeing this person
17 and having heard the gunshot, he instinctively
18 crossed the street. He looked back and saw no
19 one. He continued through the alley up to
20 Franklin and came back to the Seward Market.
21 There he saw a person lying dead in the doorway
22 of the store. He called 911 at 7:46, "Two people
23 shot. I'm looking at the body. I'm looking at
24 the body."

25 Officers quickly arrived and encountered

1 a horrific scene. Mohamed Abdi Warfa lay with
2 his head just inside the store, his feet
3 stretched outside, his body propping open the
4 door, a pool of blood gathered around him and
5 flowed outside.

6 Anwar Mohammed's left foot touched the
7 top of Mr. Warfa's head. His body stretched in
8 the store and up to the cashier's counter. His
9 head lay partially under a display rack in a
10 heavy pool of blood. Further inside the store,
11 Osman Elmi lay almost peacefully, his stomach
12 against the debris of an overturned chip rack,
13 his face to the floor, a cell phone inches from
14 his hand.

15 Officers began looking for the killers.
16 They canvassed the neighbored. They searched
17 with dogs. They found no one. Fortunately, as
18 you will hear, the market is equipped with
19 surveillance video. And that night investigators
20 were able to make copies of video and watch what
21 happened. As they watched they saw Mohamed Warfa
22 sitting behind the counter of the store. Next to
23 him sat Osman Elmi. They saw Jamiila Ahmed
24 walking on the video and Mr. Warfa point toward
25 the back of the store. Youb Ala can then be seen

1 walking back towards where Jamiila is.

2 At 7:44 on the surveillance camera clock
3 a gunman bursts into the store, followed
4 immediately by a taller skinny man. The taller
5 man goes to the back of the store where he
6 confronts and corrals Youb Ala and Jamiila Ahmed
7 as she picked out the coffee. As you will see,
8 the gunman appears to direct Mr. Warfa and Mr.
9 Elmi to lie down on the floor and they do not
10 appear to exactly cooperate.

11 About 30 seconds after the gunman has
12 entered, Anwar Mohammed opens the store's front
13 door. As he does you will see that he is
14 smiling. The gunman immediately turns, walks
15 toward him and points. He shoots him in the arm,
16 the bullet exiting his chest.

17 At the moment of that first shot you
18 will see the taller man from the back race to the
19 door. By the time he gets there, he's passed Mr.
20 Mohammed and he's passed Mr. Warfa. As you will
21 see, Mr. Warfa and Mr. Elmi followed the shooter
22 immediately to the door. As they did so, the
23 shooter turned around and shot. He shot Mr.
24 Warfa and killed him right at the door. And by
25 the time the tall skinny man that was in the back

1 of the store got to the door, he had to basically
2 step over two bodies.

3 As you will see, the taller man when he
4 exits the store runs past the gunman who has gone
5 south on 25th Street, a short distance. The
6 gunman, who is standing there for a very short
7 period of time, walks back into the store. As he
8 walks back into the store we can see Mr. Elmi is
9 walking towards the front of the store and he's
10 pulling out his cell phone as if about to dial.
11 He sees the gunman come in and turns and he runs.
12 The gunman shoots him in the back three times.
13 He falls over a rack of chips and that's where he
14 dies.

15 The shooter heads back toward the front
16 door. Mr. Mohammed, who has been shot in the
17 chest, lay there. The shooter walks up to him,
18 leans down, and shoots him in the head, right in
19 front of the mirror, killing him instantly.

20 The portions of the videos from the time
21 the gunman enters to the time he leaves is one
22 minute and two seconds. One minute and two
23 seconds, the three men are gone.

24 As Minneapolis homicide detectives began
25 their investigation they got information that

1 very night that led them to consider this
2 defendant to be that shooter. That first
3 information was that there was a young man
4 talking about robbing the Seward Market. That
5 information included the detail that the young
6 man owned a black Chevrolet Caprice with a
7 broken-out window, and it was parked in an
8 apartment building kitty-corner from the Seward
9 Market.

10 You will hear that investigating
11 officers, Det. Ann Kjos and Luis Porras, found
12 that black Caprice with the broken-out window.
13 The spot where the car was parked, registered to
14 an apartment lived in by a young man and his
15 grandmother. That young man is this defendant,
16 Mahdi Ali.

17 Detectives went home that night without
18 too much, a man talking about robbing a store.
19 The next bit of information concerned talk about
20 the shooting at the VOA School. The information
21 contained enough details that were unknown to the
22 public at the time, that investigators believed
23 that had to originate from somebody who had been
24 inside the store, most likely from the taller
25 person in the back. It was also as part of this

1 information the second time that officers had
2 heard the name Mahdi Ali. And it was that
3 information that led officers to prepare to
4 arrest the defendant, believing him to be the
5 shooter, and to prepare to arrest a person named
6 Abdisalan Ali, believing him to be the taller man
7 who went to the back of the store.

8 Abdisalan Ali was found first. He came
9 to the Minneapolis Police Department and he
10 cooperated with police. He recounted that on
11 January 6, 2010, he spent a good deal of the day
12 with his cousin, Ahmed Ali, the co-defendant in
13 this case, and the defendant. Abdisalan Ali told
14 police that the defendant picked him and Ahmed up
15 from school in a red Crown Victoria. He
16 explained on that day they went to a coat factory
17 outlet store, the Minneapolis Impound Lot, a
18 SuperAmerica store, and finally they parked at a
19 location where officers later determined there
20 was a money transfer business.

21 At roughly 6:30 or 6:45 the defendant
22 dropped Abdisalan off at home. As Abdisalan
23 waited for investigators in the interview room,
24 investigators went looking for videos to verify
25 what he had just told them. They got a video

1 from the Minneapolis Impound Lot earlier that
2 day, January 6th. That video showed Abdisalan
3 Ali, the defendant, and Ahmed Ali. All three
4 later identified themselves in this video.

5 They got a video from the SuperAmerica.
6 Again, earlier in that day. Shows the Crown
7 Victoria and it shows Ahmed Ali. All three would
8 later identify Ahmed Ali inside the store.
9 Officers noted the clothing worn by Ahmed Ali.
10 And a number of features stuck out. Most
11 importantly, Ahmed Ali wore a black and white
12 striped shirt that stuck out from under his
13 jacket. And that shirt you will see visible in
14 the video at the impound lot, in the SuperAmerica
15 video, and the video of the shooting at the
16 Seward Market.

17 A number of other comparable features
18 stuck out to officers in the defendant's
19 clothing. In the impound lot video the defendant
20 can be seen wearing a hat. The defendant will
21 later identify that hat as his and say that it
22 has dangling strings; it's a winter-type hat with
23 flaps and strings. The masked shooter in the
24 Seward Market is wearing a hat with long strings.
25 In the impound lot video you will see the

1 defendant wearing what appeared to be cuffed
2 jeans. The masked shooter in the market video
3 appears to wear cuffed jeans. In the impound lot
4 video you will see that Ahmed Ali and Abdi Ali
5 both wear what appear to be white tennis shoes
6 with a black mark, perhaps a triangle over the
7 toe.

8 You will see that the defendant wore
9 darker shoes with kind of a reddish tint. In the
10 market video you will see that the shooter has
11 darker shoes with a reddish tint. The second
12 man, Ahmed Ali, can be seen with white shoes with
13 a black mark over the toe.

14 In the impound lot video, Abdi and Ahmed
15 appear to be of similar height. The defendant
16 appears to be much shorter. In the market video
17 you will see that the shooter appears to be much
18 shorter than the person who goes to the back of
19 the store.

20 From watching the videos that first
21 night while Abdisalan waited in the interview
22 room, investigators concluded that he had not
23 been in the market at the time of the murders.
24 They drove him home that night. And you will
25 hear that they were able -- they were able to

1 corroborate his statement that he had got home at
2 about 6:30 or 6:45.

3 From that point on the investigation
4 focused on this defendant, Mahdi Ali, as well as
5 the co-defendant, Ahmed Ali. You will hear that
6 investigators continued to work on confirming
7 what Abdisalan Ali had told them. They obtained
8 video from a business called the Dahabshil Money
9 Transfer Business, which showed two individuals
10 who you will see look remarkably -- excuse me --
11 remarkably like the defendant and Ahmed Ali, the
12 co-defendant. The video corresponds in time to
13 when Abdisalan said they were near the business.
14 The video shows two individuals walking down a
15 hallway outside of this business. And you will
16 see the co-defendant's black and white striped
17 shirt sticking out from underneath his coat.

18 Officers also spoke to a witness at the
19 Coat Factory Outlet Store who did recall Somali
20 males being in the store earlier that afternoon,
21 and recalled catching one of the males trying to
22 steal a coat. And then after the males left
23 recalling that another coat was missing.

24 You will hear that on January 8th
25 officers arrested the defendant as he returned to

1 his apartment building. He was brought downtown,
2 and among other items officers collected from him
3 was a cell phone. That same day investigators
4 executed a search warrant at the defendant's
5 apartment where he lived with his grandmother.
6 In the defendant's bedroom officers recovered,
7 among other items, a pair of jeans. Those jeans
8 were cuffed.

9 On January 9, 2010, Ahmed Ali turned
10 himself into authorities. Ahmed Ali reached an
11 agreement with the State. And you will hear
12 about the agreement, which among other things
13 required him to be truthful and to continue to
14 cooperate with police and the prosecution. In
15 exchange for lesser charges, he also agreed to
16 testify in this trial against this defendant. He
17 agreed to tell investigators everything that
18 happened that day without being told what
19 information the investigators already knew. And
20 with his lawyer present, he said, after school on
21 January 6th, Mahdi Ali picked him and his cousin
22 Abdisalan Ali up in a red Crown Victoria. They
23 drove from school to a Coat Factory Outlet where
24 they took a coat. They went to the Minneapolis
25 Impound Lot where the defendant tried to retrieve

1 an impounded car where the defendant was unable
2 to get at that car because they didn't have
3 enough money.

4 Ahmed said they drove around and he kind
5 of fell asleep. He woke up and they were at a
6 SuperAmerica store and he didn't remember exactly
7 where it was. But he did remember going inside
8 and paying for gas. He identified a picture of
9 himself inside the store. Ahmed Ali said that
10 they next went to a money transfer business,
11 Dahabshiil. They planned on robbing the
12 business. They parked and left Abdisalan in the
13 car and Ahmed and the defendant went inside the
14 building. They looked inside and decided for
15 whatever reason that they weren't going to rob
16 the store. Ahmed Ali identified pictures of
17 himself and the defendant inside the store.

18 They then drove Abdisalan Ali home.
19 They drove around a little bit. They smoked some
20 marijuana. They drove to the Seward Market.
21 They parked down the block. The defendant then
22 told Ahmed Ali that he wanted help on a mission.
23 He told Ahmed that he was in charge with dealing
24 with any customers in the store and the defendant
25 would handle the robbery. They walked in the

1 store, the defendant first, Ahmed second. Ahmed
2 went immediately to the back where he found two
3 people, Youb and Jamiila. He could hear what was
4 happening in the front of the store but he could
5 not see. He heard a gunshot and he was scared.
6 He ran out immediately. He had to jump over a
7 body on his way out. He ran down the street to a
8 parked car and the defendant followed a short
9 time later. He asked the defendant, why did you
10 shoot those people? And the defendant said, they
11 knew. They drove away, parked in the lot for a
12 short time and then the defendant drove Ahmed
13 home. And that's the last time they spoke.

14 You will hear about how investigators
15 were able to put together the rest of the
16 defendant's activities that night. He drove the
17 red car to the Fairview Riverside Hospital where
18 he picked up the owner, person who owned the car
19 who worked at Fairview. The defendant and the
20 car's owner then drove up to Brooklyn Park where
21 they stopped at a SuperAmerica. Investigators
22 obtained footage of the car's owner leaving the
23 hospital and investigators obtained footage of
24 the car in the SuperAmerica at Brooklyn Park.

25 Remember the cell phone that Mahdi Ali

1 was carrying that was taken by investigators when
2 he was arrested. Investigators obtained records
3 from cell phone towers that indicated that calls
4 made by the defendant closely track an area where
5 the investigators knew he was that day.

6 Now, remember those cuffed jeans that
7 were found in Mahdi Ali's closet. Those jeans
8 had DNA on them. The DNA was from the blood of
9 Mohamed Abdi Warfa. That's the man who sat
10 behind the counter, who followed the defendant to
11 the market door after the first shot, the man who
12 died in the pool of blood in the market door.

13 The defendant gave a statement to the
14 police. He was read his Miranda warnings and
15 told specifically that he was the suspect in the
16 Seward Market triple homicide, and then he was
17 asked, do you remember what you were doing that
18 day? He did. He said he remembered everything.
19 He remembered where he was. He remembered who he
20 was with, and he remembered the car he was
21 driving in. But he lied about everything.
22 Officers challenged him again and again. They
23 had video.

24 After two hours or more he asked to
25 start over. He admitted to lying and said, this

1 time I'll tell the truth. He told investigators
2 that he drove the red Crown Victoria all that
3 day. He told investigators that he picked up
4 Abdisalan Ali and the co-defendant Ahmed Ali at
5 school. He told investigators that they went to
6 the impound lot with Ahmed Ali and Abdisalan Ali.
7 He identified a photo of himself in the impound
8 lot. He identified Ahmed Ali at the
9 SuperAmerica. He told investigators that he had
10 parked the car where Abdisalan Ali said he had
11 parked the car near the money transfer business
12 and that he and Ahmed got out of the car leaving
13 Abdisalan in. He did deny going into the
14 business. He was shown a picture from the video
15 of Ahmed Ali inside the hallway with his black
16 and white stripe shirt showing. On seeing that
17 picture he said, I don't know who that is, but
18 it's not Ahmed.

19 He told investigators that he dropped
20 Abdi off at his house and continued on that day
21 with Ahmed. He denied to investigators that he
22 committed the murders. He denied to
23 investigators that he was at the store at the
24 time of the murders. He told investigators that
25 he dropped Ahmed off at his house close to 8

1 o'clock and he told investigators that he picked
2 up the owner of that car at the Fairview
3 Riverside Hospital after that.

4 The evidence you will hear will show
5 that the defendant, through much effort by the
6 detectives, told some truth, but he didn't tell
7 the whole truth.

8 The State submits to you that on January
9 6, 2010, the defendant went on what he called a
10 mission. That mission left three innocent men
11 dead. We will present evidence to you to prove
12 that. And at the end of the trial the State will
13 come back before you and ask that you return
14 verdicts of guilty on all counts.

15 THE COURT: Mr. Goetz, do you wish to
16 open?

17 MR. GOETZ: I do, Your Honor.

18 THE COURT: You may proceed.

19 MR. GOETZ: Your Honor, counsel, ladies
20 and gentlemen of the jury, good afternoon.
21 Misidentification. That's what this case is
22 about. And that's why Mahdi Ali is not guilty.
23 There will be not much dispute in this case,
24 ladies and gentlemen, about what happened on
25 January 6, 2010 at the Seward Market. The issue

1 is, who did it, or more precisely, will the State
2 be able to prove beyond a reasonable doubt that
3 Mahdi Ali, to the exclusion of all others, is the
4 individual who shot those three men. Because at
5 the end of the day, ladies and gentlemen, the
6 proof beyond a reasonable doubt will not be there
7 that Mr. Mahdi Ali is the shooter. I will come
8 back and ask that you find him not guilty of all
9 charges.

10 The charges are six in number. Three
11 counts of First Degree Murder with Premeditation
12 and three counts of what we term or call Felony
13 Murder, a murder committed in the process of
14 another crime. The judge will give us a
15 definition of those later on.

16 Ladies and gentlemen, cases do not get
17 more serious than this. This is a tragic
18 circumstance. We all agree on that. We will
19 hear emotionally wrenching testimony in this
20 case, and we've talked about that already to some
21 extent in the jury selection process. And you
22 will hear and see that three good men are dead;
23 Mr. Mohammed, Mr. Warfa and Mr. Elmi. But you
24 must approach this case like any other. We all
25 will have feelings and reactions as we go through

1 the evidence in this case. That's natural. And
2 as we talked about, we're not asking you not to
3 feel, we're not asking you to turn off your
4 humanity, but we are asking that you put your
5 feelings aside and judge the case based upon the
6 facts and the evidence that comes from that
7 witness stand.

8 I want to talk a little bit about the
9 evidence that I expect you will hear, I'm not
10 going to cover all of it. Some witnesses we will
11 not have much dispute about their testimony, so
12 there may be some witnesses I'm not even going to
13 ask any questions to. Others we will
14 cross-examine. Some perhaps vigorously. It
15 might get contested. I think we talked about
16 this as well and you all understand that's part
17 of what I have to do. Some of those experts, or
18 some of the witnesses will be experts.

19 Erin Hoffman is a person we'll hear
20 from. She's with the Minnesota Bureau of
21 Criminal Apprehension and her expertise is in the
22 area of DNA evidence. We will go through with
23 Ms. Hoffman not only her results but the process
24 that she follows and that others in her office
25 follows to get to those results. Because how you

1 get to the result has an important bearing on the
2 validity of that result. You must assess what
3 Ms. Hoffman is telling you, and all the experts,
4 what they're going to tell you in the context of
5 all of their testimony and the context of all of
6 their evidence. We will talk about how the
7 substances that got on the sample tested. We
8 will talk about that. We will talk about how the
9 samples were actually tested, as well as the
10 result obtained. All of these will be examined
11 with her testimony.

12 We will also hear testimony from two
13 individuals, as least two, from Target, Target
14 Corporation. You probably didn't know it but
15 Target has a forensic services unit or division.
16 Now, they're set up primarily to deal with
17 corporate loss prevention and liability issues,
18 but they also work exclusively with law
19 enforcement, not the defense, but with law
20 enforcement. They provide their services pro
21 bono, free of charge, to law enforcement in
22 certain cases. And they will come in and they
23 will talk about comparisons that they did on some
24 of the still images from the video surveillance,
25 the surveillance videos that we've already heard

1 something about, the impound lot, the check
2 cashing facility, Dahabshiil, the SuperAmerica
3 store on 22nd and Lyndale in South Minneapolis,
4 and the Seward Market. And listen carefully to
5 the testimony of those witnesses, ladies and
6 gentlemen, because what you will not hear them
7 say is that Mahdi Ali has been identified by them
8 as the shooter.

9 You will also hear from witnesses
10 connected, indisputably connected with this
11 crime, that is Ahmed Ali, the alleged accomplice.
12 Now, we heard something mentioned of this
13 agreement but, ladies and gentlemen, you will
14 see, it is a sweetheart deal that he made with
15 prosecutors in this case. He will not be
16 spending the rest of his life in prison. He'll
17 be getting substantially, substantially less time
18 than that if he gets on that witness stand, comes
19 into this court and implicates Mahdi Ali as the
20 shooter. That's how he gets the deal.

21 But when we review all his testimony,
22 ladies and gentlemen, it will be clear that he's
23 not being truthful about what happened that day.
24 I expect that we will be able to show that he is
25 lying to protect others, putting the blame on

1 Mahdi Ali.

2 So consider, ladies and gentlemen, as
3 you listen to the testimony of Ahmed Ali, what
4 witnesses might hope to gain from their
5 testimony. But that applies not only to Ahmed
6 Ali, but that applies to other witnesses in the
7 case. Because you will see, ladies and
8 gentlemen, that Ahmed Ali is not the only witness
9 who sees Mahdi Ali as a ticket. A ticket to
10 liberty. Implicate him in a crime to get out of
11 the jam that they're in.

12 Now, ladies and gentlemen, we will spend
13 a week, maybe two, going through an incident that
14 took 61 or 62 seconds, that's it. An incident
15 committed by boys, teenage boys, who went in to
16 rob a market, and that robbery very quickly, very
17 suddenly went bad, and three good men lost their
18 lives. Even Ahmed Ali, ladies and gentlemen, I
19 expect when he hits that witness stand will agree
20 that it was never the plan, there was never any
21 premeditated plan to go into the store and shoot
22 three men.

23 And as we review all the evidence,
24 ladies and gentlemen, what we will see is, I
25 think what accurately is described as a blur,

1 within seconds three people were dead.

2 Sixty-one, 62 seconds.

3 But because at the end of the day the
4 prosecution will not be able to prove beyond a
5 reasonable doubt that Mahdi Ali was one of those
6 two boys, I'm going come back after we've heard
7 all the evidence and ask that you find him not
8 guilty of all six charges.

9 Thank you, ladies and gentlemen.

10 THE COURT: State may call their first
11 witness.

12 MR. STREITZ: We call Officer Brandon
13 Brugger.

14 **BRANDON MAXWELL BRUGGER,**

15 called as a witness on behalf of the State, having been
16 first duly sworn, was examined and testified as follows:

17 THE COURT: Have a seat in the witness
18 chair.

19 Officer, before you begin, give us your
20 full name, spelling each of your names.

21 THE WITNESS: It's Brandon Maxwell
22 Brugger; B-r-a-n-d-o-n, M-a-x-w-e-l-l,
23 B-r-u-g-g-e-r.

24 THE COURT: Okay. Mr. Streitz.

25

DIRECT EXAMINATION

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BY MR. STREITZ:

Q. Can you hear me okay?

A. Yes.

Q. How are you this afternoon?

A. I'm good.

Q. Sir, by whom are you employed?

A. City of Minneapolis, Minneapolis Police
Department.

Q. How long have you been a police officer?

A. I'm in my 13th year.

Q. Prior to working as a police officer in
Minneapolis, were you in law enforcement?

A. No.

Q. Your current assignment is what?

A. Current assignment is Third Precinct mid-watch.
Hours are 4 p.m. to 2 a.m. Duties include routine
patrol of the precinct, respond to 911 calls,
traffic enforcements. I'm also part of a crisis
intervention team, which is a team that responds
to individuals who are suffering from mental
illness or in a mental crisis.

Q. I want to take you back to January 6, 2010, in
the evening hours, were you on duty?

A. Yes, I was.

1 Q. And your assignment then was?

2 A. My assignment that night was patrol. I was
3 assigned to Squad 320, which would be our Sector
4 2 car for that precinct.

5 Q. Did you have a partner?

6 A. I did.

7 Q. What was his or her name?

8 A. That was Officer Steve Klimpke.

9 Q. And I take it that the two of you were then in a
10 squad car that evening?

11 A. Correct.

12 Q. What time did you start your shift?

13 A. We started our shift at 4 p.m. or military time
14 1600.

15 Q. And you were supposed to work until what time?

16 A. 0200.

17 Q. And the area that you were assigned that
18 particular night, is there a precinct that you
19 were assigned?

20 A. It would be -- I was within third precinct, but
21 our precincts are divided into sectors so I was
22 assigned to Sector 2.

23 Q. Tell us what geographic area is the Third
24 Precinct in Minneapolis.

25 A. Geographical area for Third Precinct would be

1 everything east of 35W. So basically down to
2 Lake Street Corridor down to the river, over to
3 94, and then all the way south down to Highway
4 62.

5 Q. Now, you mentioned that that particular evening
6 you were assigned to this second sector?

7 A. Correct.

8 Q. Within the Third Precinct?

9 A. Within the Third Precinct.

10 Q. And a sector means what, a more refined area?

11 A. Correct. It's, I guess, if I want to put it, we
12 have four sectors for the precinct, so each squad
13 assignment when you work, you're assigned a
14 specific squad number and that depicts your
15 sector for the day.

16 Q. Okay. Do you recall what the weather was like
17 that particular evening?

18 A. We're talking January, so I know it was cold. I
19 can't give you an actual temperature, but I know
20 it was really cold.

21 Q. And approximately 7:47, do you recall hearing a
22 call come out over your squad car radio?

23 A. I do.

24 Q. What was the nature of that call, officer?

25 A. The nature of that call was a robbery of a

1 business.

2 Q. Where?

3 A. In the area of 24th Avenue South and East
4 Franklin.

5 Q. Specifically, 2431 East Franklin, a Seward
6 Market?

7 A. Correct.

8 Q. And I take it that's in Hennepin County?

9 A. It is.

10 Q. How far away from that store do you recall being
11 when you first heard the call come over your
12 squad car radio?

13 A. My partner and I were actually at the Third
14 Precinct, which is a -- the address of the Third
15 Precinct is 3000 Minnehaha Avenue, so basically
16 Lake Street and Minnehaha, I would say from the
17 precinct to the store, two, two and a half miles.

18 Q. When you heard the call come out, did you respond
19 immediately?

20 A. We did.

21 Q. And did that -- did you use emergency equipment
22 on your car?

23 A. Yeah. It was a Code 3 response, which is lights
24 and sirens.

25 Q. On the way to the Seward Market, did you receive

1 updated information about what may have happened?

2 A. We did. We had received information through our
3 dispatch over the radio that it was now updated
4 to a shooting.

5 Q. As you continued towards the market, did you
6 continue to get updated information?

7 A. There were some info related that there were two
8 victims, possibly a third.

9 Q. And you told us that approximately two, two and a
10 half -- how long did it take you to get there?

11 A. I would say probably two, three minutes.

12 Q. Okay. When you got there, to the Seward Market,
13 what did you see?

14 A. Well, our direction of travel from the precinct
15 was northbound 26th Avenue to Franklin and then
16 west on Franklin. As we pulled up to the store,
17 we observed a group of people standing in front
18 of the store waving us in. As we exited the
19 squad, they were saying that, you know, that
20 there was a shooting and there might possibly be
21 suspects in the store.

22 Q. The individuals who were standing outside the
23 store telling you this, what was their emotional
24 state like?

25 A. Excited, scared. Really, they really didn't know

1 what was going on and I guess really wanted us in
2 that store.

3 Q. You said you met these people at the front of the
4 store. Where is the front of the Seward Market,
5 what streets?

6 A. The front of the Seward Market would be right on
7 the corner of East Franklin and 25th Avenue
8 South.

9 Q. Were you and your partner, Officer Klimpke, the
10 first officers to arrive?

11 A. Yes, we were.

12 Q. As those individuals were telling you about
13 individuals who may be in the store or whatever,
14 what did you see?

15 A. As we approached, I was driver so I was driving
16 the squad, we saw, well, I saw two bodies laying
17 in the entryway of the store. And even from the
18 squad I could see pools of blood on the sidewalk
19 and in the entryway of the store.

20 Q. As -- I take it you and your partner got out of
21 your squad car?

22 A. Correct.

23 Q. What did you do?

24 A. My partner and I exited the squad. We then
25 entered the store to check for possible suspects

1 and try to make the scene safe, check for any
2 suspects or if anybody else was in the store.

3 Q. The two individuals who you testified were lying
4 in kind of the entryway of the store, could you
5 determine any signs of life in those two men?

6 A. I didn't see any movement.

7 Q. What did you and your partner begin doing?

8 A. My partner and I then began to search the store.
9 I took, I guess if you want to call it, I took
10 the right side of the store and my partner took
11 the left side. As we walked into the store we
12 then located a third victim. There was a snack
13 rack that was kind of in our way, we had to move
14 that to get around so we could continue the
15 search of the store.

16 Q. When you moved, who moved it, do you recall?

17 A. My partner.

18 Q. Do you recall if you and your partner were
19 wearing gloves that evening?

20 A. I believe we were.

21 Q. Okay. And was your partner wearing gloves, if
22 you remember?

23 A. I believe he was.

24 Q. When he moved the rack?

25 A. I believe so.

1 Q. Okay. So you found a third individual, third
2 victim and had to move a rack. What did you do?

3 A. We then continued to search the store. As I was
4 walking down the aisle there was a beverage
5 cooler that would be to my right. As I
6 approached the beverage cooler, I heard voices
7 coming from inside the beverage cooler. My
8 partner and I then went to the back of the room,
9 opened up the door, found two individuals inside,
10 which we later determined to be witnesses.

11 Q. And was that a male and female?

12 A. It was.

13 Q. When you and your partner located this female and
14 male in the cooler, could you describe their
15 emotional states to us?

16 A. The female was -- you could tell she was very
17 scared. Kind of, I guess, in a panic, very
18 emotional, but as she was, as we were getting her
19 out, she was trying to tell us what had
20 transpired before we had arrived.

21 Q. And while you were still in the store with this
22 woman, was she able to provide you any
23 information about what happened?

24 A. Yes.

25 Q. What?

1 A. She had told us that she entered the store and
2 she was looking for coffee, another gentleman who
3 was working in the store was trying to help her.
4 While she was in the store she observed an
5 individual enter the store wearing a black ski
6 mask, heard him speaking in Somali. And at this
7 point the other gentleman who was another worker
8 in the store led her to the beverage cooler and
9 they both hid in the cooler.

10 Q. Was she able to give you any description of this
11 individual who spoke in Somali and had a black
12 ski mask on?

13 A. She described him as skinny black male
14 approximately 5'5" and wearing a ski mask.

15 Q. The height that she gave you, did you write down
16 that information shortly after you cleared the
17 scene that evening?

18 A. Yes.

19 Q. Are you sure of the height that she gave you?

20 A. I guess I would have to refresh my memory in my
21 supplement.

22 Q. Would it refresh your memory to look at your
23 supplement?

24 A. Yes.

25 MR. STREITZ: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. STREITZ:

4 Q. Officer Brugger, I'm showing -- counsel,
5 supplement three. Showing you what appears to be
6 supplement three, do you recognize that, sir?

7 A. I do.

8 Q. And is that your supplement that you filled out
9 either the evening of January 6, 2010 or the next
10 day?

11 A. It is.

12 Q. And if you look at that, tell me if that
13 refreshes your memory as to the height of the
14 skinny black male this woman described to you?

15 A. Yes, it does.

16 Q. And having looked at your report that you filed
17 back then, what was the height that she told you
18 she thought that individual was?

19 A. About 5'10".

20 Q. Did she indicate to you what that person said to
21 her and the man that was in the cooler with her?

22 A. Yes.

23 Q. What?

24 A. "Don't move."

25 Q. Did she indicate whether or not that individual

1 had a gun or not?

2 A. She did not.

3 Q. At some point, Officer -- was she eventually
4 taken out of the store?

5 A. Yes.

6 Q. By whom?

7 A. By my partner and myself.

8 Q. And where was she and the man who had been with
9 her in the cooler taken?

10 A. They were escorted out of the store through a
11 side service door, which would have been on --
12 would come out on 25th Avenue. And we walked
13 them in the front of the store and put them in
14 separate squad cars.

15 Q. And the reason for separating them?

16 A. The reason for separating witnesses, especially
17 in a crime such as this, is to make sure that
18 statements aren't tainted and that they're able
19 to tell what they saw, I guess, with no
20 influence.

21 Q. At some point after you had arrived in response
22 to the call on your squad car radio, did other
23 officers start arriving also?

24 A. Yes.

25 Q. About how soon after you got to the market?

1 A. I would say within 30 seconds to a minute.

2 Q. And what did those officers do?

3 A. Those officers, some came into the store to assist
4 with Officer Klimpke and I searching the store.

5 The rest stayed outside and started putting up
6 crime scene tape to protect our scene.

7 Q. After you and your partner took this woman and
8 man who had been in the cooler who you had talked
9 to about what happened and put him in your squad
10 car, what did you do?

11 A. I then basically continued to maintain a scene
12 security, and as my sergeant arrived updated him
13 to what we had found or what we had seen when we
14 first arrived.

15 Q. Did you learn the names of those two individuals
16 who you found in the cooler?

17 A. Yes.

18 Q. Was one of them Jamiila Ahmed?

19 A. Yes.

20 Q. Was one Youb Ala?

21 A. Correct.

22 Q. And was Mr. Ala, was he a young or older person?

23 A. He was an older gentleman.

24 Q. Were you able to talk to him at all when you were
25 at the market?

1 A. Not very much. There was a big language barrier,
2 so it was very hard to get information out of
3 him.

4 Q. Did either of those individuals, Ms. Ahmed or Mr.
5 Ala, appear to be Somali?

6 A. They both were, yes. They both appeared to be.

7 Q. When you were speaking to Ms. Ahmed, Jamiila
8 Ahmed, were you able -- I take it she spoke to
9 you in English?

10 A. She did speak English, yes.

11 Q. Do you have any problem understanding?

12 A. No.

13 Q. While you were at the market, did homicide
14 detectives arrive?

15 A. They did.

16 Q. Do you recall their names or --

17 A. Sgt. Folkens and, I believe, Karakostas.

18 Q. And did you do anything with those particular
19 homicide detectives?

20 A. I did with Sgt. Folkens.

21 Q. What did you do with Sgt. Folkens?

22 A. I asked -- before doing anything with Sgt.
23 Folkens, the owner of the store had arrived.

24 Q. Okay.

25 A. And he was also placed in a separate squad car.

1 There was a basement that we couldn't get to
2 because it was locked. So Sgt. Folkens asked me
3 to retrieve the keys from the owner for the
4 store.

5 Q. And did you?

6 A. I did retrieve the keys.

7 Q. And what did you do?

8 A. Brought the keys back in. Sgt. Folkens and
9 myself then went downstairs. Searched down there
10 to basically make that area secure and make sure
11 no one was -- potential suspects that would be
12 hiding downstairs. Also, if I remember
13 correctly, that is where the video surveillance
14 equipment was kept.

15 Q. And what did you do after that?

16 A. After that I also notified him that there was an
17 apartment that was attached to the building that
18 the store owned, which also hadn't been checked.
19 Sgt. Folkens and myself then went and checked
20 that area and determined that nothing had been
21 touched, nothing had been disturbed, everything
22 was locked up. It was determined that it was
23 offices that the owners or other employees would
24 use.

25 Q. So Sgt. Folkens and yourself went into that part

1 of the business?

2 A. Correct, yes.

3 Q. And how did you get into that portion of the
4 business?

5 A. The same keys from the owner of the business.

6 Q. So that portion was locked?

7 A. Correct.

8 Q. And nothing appeared disturbed?

9 A. No.

10 Q. And where was that portion of the building in
11 relationship to the market?

12 A. If you're looking at the front of the market, it
13 would have been to the right.

14 Q. When the homicide detectives arrived, that is
15 Sgt. Folkens and Karakostas, did you brief them
16 as to what you had seen and what you had learned
17 from the people in the freezer -- or the cooler?

18 A. Yes, yes.

19 Q. After you and Sgt. Folkens had checked out the
20 adjoining portion of the business, what were
21 other officers who had arrived doing?

22 A. Some were just maintaining security, scene
23 security, pedestrians from entering our scene.
24 Others were doing a canvas of the area. Some
25 were going door to door and doing what we call

1 knock and talks, just talking to neighbors,
2 seeing if they heard or if they saw anything. I
3 know we had a couple of K9's out there who were
4 also canvassing the area and trying to do --
5 trying to do a search.

6 Q. Protocol, if you're doing knock and talks as you
7 described to us, if officers learn of any
8 information, what are they to do with that
9 information?

10 A. Notify the sergeants on scene and then the
11 sergeant can determine if that information is to
12 be related to the homicide investigators, and, if
13 so, it's up to the homicide investigates to
14 decide what they want to do with that
15 information.

16 Q. Did you remain at the market that evening?

17 A. For a little -- for a little while.

18 Q. Then what did you do?

19 A. We were then cleared by the homicide detectives
20 to transport our witness Ahmed down to Room 108,
21 which is our homicide office.

22 Q. And did you remain with her at the homicide
23 office until they were done with her?

24 A. Yes.

25 MR. STREITZ: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. STREITZ:

4 Q. Officer Brugger, I'm going show you what's been
5 previously marked as Exhibit 91, have you take a
6 look at that and tell me if you recognize that.

7 A. I do.

8 Q. And what is it, sir?

9 A. It is an aerial view of the area in question
10 showing the Seward Market.

11 Q. And does that appear to have been taken in
12 January of 2010?

13 A. No.

14 Q. But is it a fair and accurate depiction of the
15 area of the Seward Market and immediate areas
16 surrounding it?

17 A. Yes, it is.

18 Q. Showing you what's been marked as Exhibit 92,
19 have you looked at that and tell me if you
20 recognize that.

21 A. I do.

22 Q. And what is that, sir?

23 A. This is a drawing, or scale drawing of the crime
24 scene. A drawing that would have been done by
25 our crime scene investigators.

1 Q. And do you recognize it as such?

2 A. I do.

3 Q. And is it a fair and accurate sketch, if you
4 will, of the market and the immediate area
5 outside of it?

6 A. Yes.

7 MR. STREITZ: Your Honor, the State
8 would offer into evidence Exhibits 91 and 92.

9 THE COURT: Any objection?

10 MR. GOETZ: None, Your Honor.

11 THE COURT: 91 and 92 are received.

12 MR. STREITZ: May I publish, Your Honor?

13 THE COURT: You may.

14 BY MR. STREITZ:

15 Q. Officer Brugger, over your left shoulder -- soon,
16 there it is -- that is what you have identified
17 and has been received into evidence as Exhibit
18 91. And you have to, actually I will ask you --
19 if you can please step down and describe what's
20 shown in that exhibit to the jury. And please
21 keep your voice up since your back will be to the
22 court reporter.

23 THE WITNESS: Sure.

24 Well, as you can see, this is Franklin
25 Avenue, which runs east and west. The arrow

1 which is pointing right there is the Seward
2 Market and you have 25th Avenue right here which
3 would run north and south.

4 BY MR. STREITZ:

5 Q. In the lower left-hand corner of that aerial
6 photograph appears to be a tall building.

7 A. Uh-huh.

8 Q. Do you know what that building is called?

9 A. It's called Seward Towers.

10 Q. Kitty-corner from the market?

11 A. Correct.

12 Q. Now, the evening of January 6th, after you had
13 responded to the call in your squad car radio and
14 arrived and you've done the things you've told us
15 about, you mention that an area has been, I guess
16 for lack of a better word, roped off with scene
17 security tape; is that correct?

18 A. Correct.

19 Q. Can you tell us the area that had been marked off
20 as part of the crime scene?

21 A. Sure. East Franklin right here, we had crime
22 scene tape probably halfway down, probably to
23 about here (pointing).

24 Q. Here being?

25 A. East Franklin. I guess between 26th to 25th.

1 Q. Okay.

2 A. We also had crime scene tape right down here,
3 which is also 25th. This little, right here,
4 would be 26th Avenue coming up to Riverside
5 (pointing). We also had --

6 Q. Just for the record, you're pointing to an area
7 as we look at that exhibit just to the right of
8 the Seward Towers as you described it?

9 A. If you want to call it to the right or to the
10 north.

11 Q. Okay. We'll call it to the north.

12 A. And then we had crime scene tape coming all the
13 way down here to 24th Avenue (pointing).

14 Q. Here being?

15 A. Franklin Avenue. We had crime scene tape
16 probably here, which is Franklin and 25th
17 (pointing). We had crime scene tape back here
18 behind the business on 25th (pointing) because
19 there is actually an alley back there that people
20 could -- people and vehicle traffic could get to.
21 And then, of course, definitely crime scene
22 around the front of the store (pointing).

23 Q. Okay. While you're still standing, I want to
24 show you Exhibit 92. Can you kind of take the
25 jury through that exhibit in terms of what it's

1 showing and areas of the store?

2 A. Sure.

3 MR. STREITZ: Your Honor, do you have a
4 pointer by chance -- oh, here we go. We have
5 one.

6 BY MR. STREITZ:

7 Q. Officer, if you point the red key there, that
8 will help you.

9 A. So right here you got 25th Avenue right here
10 (pointing), this would be east Franklin right
11 here in front of the store (pointing). Again, as
12 my partner and I came, we approached -- we
13 actually parked literally in front of the store.
14 As we approached, I immediately saw victim one,
15 which was -- he was partially, you know, front of
16 the body was inside the entryway, and I guess the
17 lower half would be outside, so I basically saw
18 his legs. My partner and I then entered the
19 store, saw victim number two. We continued to
20 walk through the store, coming through and
21 encountering victim number three.

22 Q. Now, you had previously testified that you and
23 your partner kind of divided the store up, you
24 took the right and, I think, he took the left, as
25 I recall?

1 A. Correct. We kind of, I mean, it's been awhile
2 so, but, I can't -- I don't know exactly when we
3 divided up.

4 Q. Okay.

5 A. But I do know that I was with him when we -- we
6 both found victim three.

7 Q. Okay.

8 A. So we found victim three and probably right about
9 here is where we separated (pointing). So,
10 again, my partner took this side and I came
11 around this side.

12 Q. So you would be going down the west aisle?

13 A. Yes.

14 Q. And your partner the east aisle?

15 A. Yes.

16 Q. Okay.

17 A. Then just continued to walk through, keeping --
18 trying to keep eye or voice contact with each
19 other, come through here, go down -- there is a
20 bathroom right here (pointing). That was locked,
21 so we actually, if I remember correctly, we had
22 to kick that in.

23 Q. Why?

24 A. To make sure -- clear it and make sure there were
25 no suspects or, I guess, even potential witnesses

1 or anybody hiding in there.

2 Q. Was anybody found in that bathroom?

3 A. No.

4 Q. Okay.

5 A. Continued the search. It's hard to see, but if I
6 remember correctly, this should be the beverage
7 cooler (pointing).

8 Q. You're pointing to something that's labelled as
9 such?

10 A. I can't make it out on here.

11 Q. Would it help if you got closer?

12 A. No, sorry.

13 Q. You're pointing to an area that appears to be --

14 A. I think it says -- I think it says walk-in cooler
15 also.

16 Q. Okay. Was it a walk-in cooler where you found
17 these two individuals?

18 A. Yes. So I continued here, heard the voices, my
19 partner then hooks up with me, we come around the
20 back and this would be the door of the cooler, we
21 open it up and located the two witnesses inside
22 (pointing).

23 Q. Okay. Thank you. You can have a seat.

24 MR. STREITZ: May I approach again, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. STREITZ:

3 Q. Officer, I want to show you some other exhibits
4 that have been marked. First of all, Exhibit 47,
5 do you recognize that?

6 A. I do.

7 Q. And what is there, sir?

8 A. It is a picture of the front of the Seward
9 Market.

10 Q. Is that a fair and accurate depiction of the
11 Seward Market the evening of January 6, 2010?

12 A. Yes.

13 Q. Exhibit 48, do you recognize that?

14 A. I do.

15 Q. And what is that, sir?

16 A. This is a picture of the front of the store, also
17 showing two of the victims.

18 Q. Is that a fair and accurate depiction of that
19 area of the store and the two individuals in the
20 doorway as you saw it January 6, 2010?

21 A. Yes, it is.

22 Q. Exhibit 49, do you recognize that?

23 A. I do.

24 Q. And what is that, sir?

25 A. This would be a close-up picture of the first

1 victim that we -- that we found. Also in this
2 picture is showing a spent casing on the ground
3 next to the victim.

4 Q. Where next to the victim?

5 A. By his -- by his leg.

6 Q. Fair and accurate depiction of what you saw near
7 that victim January 6, 2010?

8 A. Yes.

9 Q. Exhibit 50, do you recognize that?

10 A. I do.

11 Q. And what is that, sir?

12 A. It's just another picture of the first victim.
13 However, in this one is a yellow placard with the
14 number two on it, depicting the spent cartridge
15 and that number two placard would be a card that
16 our crime scene investigators would put down to
17 mark evidence.

18 Q. Fair and accurate of that spent casing near that
19 victim?

20 A. Yes.

21 Q. Exhibit 51, do you recognize that, sir?

22 A. Yes.

23 Q. And what is that?

24 A. Picture of front window of the store showing a
25 blue Minneapolis police case card inside the

1 store, which would lead me to believe that there
2 is evidence there.

3 Q. Now, you mention a blue card. And in the prior
4 exhibit, Exhibit 50, you mentioned a yellow card,
5 what's the difference?

6 A. The difference is the blue case cards are put
7 down by the patrol officers to mark evidence
8 prior to crime scene investigators arriving so
9 that our crime scene investigators know what
10 evidence to mark.

11 Q. Thank you. So Exhibit 51, is that a fair and
12 accurate depiction of that area of the store at
13 the market?

14 A. Yes.

15 Q. Exhibit 52, do you recognize that?

16 A. Yes.

17 Q. And that is what, sir?

18 A. Close-up picture of the previous one you just
19 showed me, but in this one it is showing a spent
20 casing laying in the window sill.

21 Q. And referring back to Exhibit 51, the spent
22 casing that you referred to in Exhibit 52 appear
23 to be underneath the blue marker that the officer
24 would have placed?

25 A. Yes.

1 Q. Is Exhibit 52 a fair and accurate depiction of
2 that area of the store including the spent
3 casing?

4 A. Yes.

5 Q. Exhibit 53, do you recognize that?

6 A. I do.

7 Q. And that is?

8 A. This would be the entry of the store basically
9 showing the positions of victim one and victim
10 two. Also in this one is again another blue
11 Minneapolis case card, which would be marking
12 evidence for the crime scene investigators.

13 Q. Is that a fair and accurate depiction of the
14 first two victims as you saw them when you
15 arrived January 6, 2010?

16 A. It is.

17 Q. Exhibit 54, Officer?

18 A. Okay.

19 Q. Do you recognize it?

20 A. Yep.

21 Q. And that is?

22 A. This would be a close-up picture of victim two.
23 You can see in here a spent casing, which is
24 laying in the pool of blood, which would be the
25 blue case card is also in here, which would be

- 1 depicting that there's evidence nearby.
- 2 Q. Fair and accurate depiction of that victim as you
- 3 saw him that particular evening?
- 4 A. Yes.
- 5 Q. Exhibit 55, do you recognize it?
- 6 A. Yes.
- 7 Q. And that is what, sir?
- 8 A. That would be a close-up picture of the spent
- 9 casing which was in Exhibit 54. This is just a
- 10 close-up picture of it.
- 11 Q. Fair and accurate depiction of that casing?
- 12 A. Yes.
- 13 Q. Exhibit 59, do you recognize it?
- 14 A. Yes.
- 15 Q. And that is what, sir?
- 16 A. This would be a view of the store from outside
- 17 looking in, I guess, depicting the scene.
- 18 Q. And you say outside, outside the front door?
- 19 A. Outside the front door.
- 20 Q. Fair and accurate depiction of what you saw when
- 21 you entered the store that evening?
- 22 A. Yes.
- 23 Q. Exhibit 60, do you recognize it?
- 24 A. I do.
- 25 Q. And it is --

1 A. It is a picture of the inside of the store where
2 victim three was located, also depicting the
3 snack rack that my partner had to move in order
4 to get around victim three.

5 Q. Fair and accurate depiction of victim three as
6 you saw him when you entered the store that
7 evening?

8 A. Yes.

9 Q. Exhibit 61, do you recognize it?

10 A. Yes.

11 Q. And what is that, sir?

12 A. This would be a close-up picture of victim three,
13 also in this picture is a cell phone laying next
14 to the victim's hand.

15 Q. Fair and accurate depiction of that as you
16 encountered it the evening of January 6, 2010?

17 A. Yes.

18 Q. And Exhibit 62, do you recognize that?

19 A. I do.

20 Q. And that is --

21 A. This would be a picture of the aisle that I
22 searched, including the beverage cooler.

23 Q. And we're looking -- if you can orient us, is
24 this from front to back, back to front?

25 A. This would be front to back.

1 Q. So we're looking from the front of the store,
2 down the aisle by the cooler, towards the back of
3 the store?

4 A. Yes.

5 Q. Fair and accurate depiction of that area of the
6 store?

7 A. Yes.

8 Q. And, finally, Exhibit 63, do you recognize that?

9 A. Yes.

10 Q. And that is?

11 A. This would be picture depicting a spent
12 cartridge, again with another yellow placard that
13 our crime scene investigators would put down to
14 mark evidence.

15 Q. Fair and accurate depiction of that item?

16 A. Yes.

17 MR. STREITZ: Your Honor, the State
18 would offer into evidence Exhibits 47, 48, 49,
19 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, and 63.

20 THE COURT: Any objection?

21 MR. GOETZ: No. May I just have a
22 moment, please, Your Honor?

23 THE COURT: You may.

24 MR. GOETZ: No objection.

25 THE COURT: Exhibits 47 through 55 are

1 received as are Exhibits 59 through 63.

2 Counsel approach.

3 (Off the record discussion at the
4 bench.)

5 MR. STREITZ: Your Honor, may I publish
6 those exhibits?

7 THE COURT: You may.

8 BY MR. STREITZ:

9 Q. Officer, to your left is Exhibit 47. Can you
10 explain to the jury that exhibit.

11 A. This would be a picture of the front of the
12 Seward Market.

13 Q. And what do we see -- some yellow tape, is that
14 the crime scene tape that you've been telling us
15 about?

16 A. Correct. Right here would be the crime scene
17 tape, you have the front of the store blocked off
18 with crime scene tape.

19 Q. Now, you had previously testified that there is
20 an adjoining part to that business. Is that
21 depicted in that exhibit?

22 A. Yes, it is.

23 Q. And can you point that out to us?

24 A. That would be right here, which again was locked,
25 had to retrieve the keys from the store owner.

1 There is a set of stairs, once you get in there,
2 go up in here is -- there is a bunch of offices
3 (pointing).

4 Q. You pointed to the entrance to that adjoining
5 businesses, kind of immediately right of the
6 front windows on Franklin to the market?

7 A. Correct.

8 THE COURT: Mr. Streitz, I think we'll
9 take our afternoon break at this point.

10 Members of the Jury, we'll take our
11 afternoon break. Please be ready to go by 3:35.
12 And you're not confined to the jury room area,
13 but would you wait there once you are done with
14 whatever you'd like to do on your break so that
15 Ms. Lutz can come get you there. Thank you.

16 (Recess.)

17 THE COURT: Members of the jury, just a
18 reminder, during breaks if you could stay outside
19 the courtroom during the breaks because sometimes
20 the lawyers and I have to put some legal rulings
21 or have a discussion about legal issues on the
22 record and we rather you not stumble into
23 something that you should not be a part of. So
24 if you could stay outside the courtroom
25 throughout the breaks until Ms. Lutz comes to get

1 you. And use the door out in the hallway to
2 access the jury room area. With that, you also
3 don't have to be standing when I come in unless
4 someone tells you to.

5 All right. Mr. Streitz, you may
6 continue.

7 MR. STREITZ: Thank you, Your Honor.

8 **CONT'D DIRECT EXAMINATION**

9 BY MR. STREITZ:

10 Q. Officer, I want to show you what has been
11 identified and received into evidence as Exhibit
12 48. Can you please explain that exhibit to the
13 jury.

14 A. This would be a picture depicting the front of
15 the store. I see the front of the store on
16 Franklin showing the two victims; victim one,
17 victim two.

18 Q. Did you later learn the names of those two
19 individuals?

20 A. I did not.

21 Q. You did not. Exhibit 49. Can you explain that
22 picture to the jury?

23 A. This would be a picture of -- close-up picture of
24 victim one. Down here by his leg you can see a
25 spent cartridge laying on the ground next to his

1 leg (pointing).

2 Q. When you talk about spent cartridge casings, are
3 those generally associated with a particular type
4 of weapon?

5 A. Yes. This one would be associated with a
6 semiautomatic handgun.

7 Q. Exhibit 50, if you can explain that.

8 A. This is the yellow placard that I testified to
9 earlier. This is what our crime scene
10 investigators would put down to mark the
11 cartridge here as evidence so that they can take
12 photographs of it. And on here is also a ruler
13 so that they can measure.

14 Q. Fifty-one?

15 A. Front of the store windows facing Franklin,
16 Minneapolis police blue card that I testified to
17 earlier marking evidence that would be in that
18 area.

19 Q. And 52?

20 A. Just a close-up of 51, same window, still facing
21 Franklin. Again, you have a spent semiautomatic
22 cartridge laying in the window sill which
23 would -- in the previous picture where the blue
24 case card was depicting that there was evidence
25 there.

1 Q. Fifty-three?

2 A. Fifty-three, picture of the inside of the store.
3 This picture looks like it's being taken from
4 inside the store looking out.

5 Q. Out where?

6 A. Out onto -- well, right onto the corner of 25th
7 and Franklin. Victim one, victim two. Over here
8 you have a blue Minneapolis case card, again,
9 depicting that there is evidence there for the
10 crime scene investigators.

11 Q. Fifty-four.

12 A. Just a close-up of 53, but in the pool of blood
13 here there is another spent cartridge with this
14 blue card is depicting that there is evidence
15 there.

16 Q. And the blue card you referred to, is that in the
17 lower left-hand corner of that exhibit?

18 A. Correct.

19 Q. Exhibit 55?

20 A. Close-up of 54. Now it's just showing the spent
21 cartridge laying in the pool of blood.

22 Q. Fifty-nine?

23 A. Fifty-nine is a picture from outside the store
24 looking in showing you got one, two, MPD blue
25 case cards. Again, marking evidence for our

1 crime scene team.

2 Q. And does it also show two of the victims who were
3 near the front door?

4 A. Yes, it does.

5 Q. Sixty?

6 A. Sixty. Again, you've got photograph from --
7 looks like inside the store, shooting outside the
8 store to, you know, the corner of 25th and
9 Franklin. You have victim three. And then this
10 would be the snack rack that my partner had to
11 move in order to get around this victim.

12 Q. You had previously testified that there were two
13 aisles, one to the west, one to the east. Which
14 aisle would this be?

15 A. This one would be the east.

16 Q. Exhibit 61?

17 A. This one is close-up of victim three. And as
18 you -- right here is a cell phone laying next to
19 the victim's hand (pointing).

20 Q. Exhibit 62?

21 A. This would be the west aisle. This picture is
22 being taken from the front towards the back and
23 this would be -- this would be the beverage
24 cooler (pointing).

25 Q. You're referring to what appears to be some

1 glass --

2 A. Glass doors. You're looking -- it would be
3 basically the right of the aisle.

4 Q. And Exhibit 63?

5 A. This one, again, another yellow placard that our
6 crime scene investigators would put down marking
7 another spent cartridge as evidence.

8 Q. Officer Brugger, other than your partner moving
9 the snack rack, as you've described it, to allow
10 you to get beyond the third victim, do you recall
11 if anything else was -- the scene was disturbed
12 by you or any other officers as you know it?

13 A. Not that I'm aware of.

14 MR. STREITZ: Thank you. I have no
15 other questions, Officer. Perhaps defense
16 counsel does.

17 THE COURT: Mr. Goetz.

18 MR. GOETZ: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. GOETZ:

21 Q. Good afternoon, Officer.

22 A. Afternoon, sir.

23 Q. 7:47 p.m. January 6, 2010, let's start there.

24 Okay. You're in your squad car.

25 A. No, we were actually at the precinct.

1 Q. Okay. Where were you in the precinct, do you
2 remember?

3 A. I believe I was sitting at one of the computers.

4 Q. All right. And how do you actually get the call?
5 Is it on your radio that you have here on your
6 shoulder?

7 A. Correct. It would have come over on the portable
8 radio.

9 Q. Where is your partner?

10 A. I don't recall.

11 Q. Close to you?

12 A. I don't remember.

13 Q. Some point shortly after you got the call you
14 connected with your partner, obviously, right?

15 A. Correct.

16 Q. So your squad car is outside?

17 A. Yes.

18 Q. You get the call at 7:47 p.m., right?

19 A. Roughly, yes.

20 Q. Do you write in your report about 19:47 hours,
21 that would be 7:47 p.m.?

22 A. Correct.

23 Q. So you get the call at 7:47 p.m., you're inside,
24 you connect with your partner and then you go
25 outside; correct?

1 A. No, we -- correct.

2 Q. Get in your squad?

3 A. Yes.

4 Q. Turn the squad car on or is it already running?

5 A. Squad was running.

6 Q. You are at Hiawatha and Lake Street; correct?

7 A. Lake Street and Minnehaha.

8 Q. Sorry. Minnehaha and Lake. You go on to 26th
9 Avenue?

10 A. Correct.

11 Q. You take 26th northbound?

12 A. Correct.

13 Q. Take a right on Franklin?

14 A. Left.

15 Q. And then go one block?

16 A. Correct.

17 Q. And you come to the Seward Market?

18 A. That is correct.

19 Q. Did you take another left to go southbound on
20 25th or did you park on Franklin?

21 A. We kind of -- we were on 25th -- if I had a
22 picture in front of the store I could probably
23 show you where the squad was, but we were --

24 MR. GOETZ: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. GOETZ:

2 Q. I'll just use this. Can you just sort of show
3 that to the jury and give us a rough idea of
4 where --

5 A. Sure. Again, Franklin is right here (pointing).
6 This would be 25th (pointing). Again, we came
7 west on Franklin and our squad car was pulled
8 basically right here (pointing). So we are
9 actually angled facing right at the front door.

10 Q. Okay. Clearly you had moved your squad by the
11 time Exhibit 47 was taken; correct?

12 A. Correct.

13 Q. So I understand your testimony, it took about
14 two, three minutes to kind of go through all
15 those steps we just talked about? From the time
16 you get the call seated at your computer all the
17 way until you're parked in that position?

18 A. It's an estimated time but, yes.

19 Q. Could it have been a little longer?

20 A. Perhaps.

21 Q. When you got to the Seward Market you initially
22 have a robbery call but on your way there it
23 turns into a shooting; correct?

24 A. Correct.

25 Q. You enter the store, you and your partner;

1 correct?

2 A. Correct.

3 Q. Guns drawn?

4 A. Correct, yes.

5 Q. Your initial concern at that points is making the
6 scene safe, right?

7 A. Correct.

8 Q. You were looking about the store seeing if there
9 were any suspects or other witnesses or victims;
10 correct?

11 A. Yes.

12 Q. As opposed to, for example, looking down at the
13 floor seeing if there was any evidence,
14 discharged cartridge casings, that wasn't your
15 focus initially going in, is it?

16 A. No, it wasn't.

17 Q. So whether or not you disturbed any discharged
18 cartridge casings or small items of evidence like
19 that from the time you walked into the store
20 until you go back and get the two people out of
21 the cooler, you don't know one way or the other;
22 correct?

23 A. I don't believe I disturbed any of the evidence
24 while I was in there.

25 Q. You don't believe, but you don't know for sure

1 because you weren't focusing on whether you
2 kicked a DCC or not, did you?

3 A. I am positive I did not kick any of the
4 cartridges.

5 Q. Now, the discharged cartridge casings you
6 testified come from an automatic -- or a
7 semiautomatic; is that right?

8 A. Correct.

9 Q. And I suspect we'll have somebody from ballistics
10 later, but just so we understand since the
11 subject was brought up, the bullet will go out
12 the front end of the gun and the discharge
13 cartridge casings will be ejected out of the
14 plural on the gun; correct?

15 A. That's correct.

16 Q. And typically they're ejected to the right and to
17 the rear?

18 A. Correct.

19 Q. You were asked some questions about statements
20 that Jamiila Ahmed made; she's the woman in the
21 back of the cooler?

22 A. Correct.

23 Q. And you told us some of them. Did she also tell
24 you -- well, she told you about the Somali male
25 about 5'10", skinny build wearing a black face

1 mask?

2 A. That's correct.

3 Q. Did she also say that she saw two other males in
4 the store?

5 A. I believe she did.

6 Q. And those would be two other males that she
7 thought may have entered with the man in the
8 black face mask; correct?

9 A. Yes.

10 Q. Prosecutor asked you questions about whether or
11 not Ms. Ahmed said anything about the man in the
12 black ski mask having a gun, I want to follow up
13 about that with you. You didn't ask her one way
14 or the other if the man in the black ski mask had
15 a gun; correct?

16 A. I don't believe I did, no.

17 Q. So she didn't say anything about the man in the
18 black ski mask having a gun one way or the other;
19 correct?

20 A. To me, not that I recall.

21 Q. We spoke before about the route that you took
22 from the Third Precinct to the Seward Market. At
23 any time did you see a car that appeared to be
24 speeding away?

25 A. No.

1 Q. Did you see a red Caprice that you can recall at
2 any time?

3 A. No.

4 Q. Or a red Crown Victoria?

5 A. Not at all.

6 MR. GOETZ: May I just have a moment
7 please, Your Honor?

8 THE COURT: You may.

9 MR. GOETZ: That's all the questions I
10 have. Thank you, Officer.

11 THE COURT: Mr. Streitz.

12 MR. STREITZ: If I can just have a
13 second.

14 THE COURT: You may.

15 **REDIRECT EXAMINATION**

16 BY MR. STREITZ:

17 Q. Counsel asked you if Jamiila Ahmed said she saw
18 two other males in the store. Did she indicate
19 specifically whether those males were possibly
20 involved, or if they were other employees or
21 what?

22 MR. GOETZ: Objection. Leading, Your
23 Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I don't believe she

1 indicated either way how there were related.

2 BY MR. STREITZ:

3 Q. Okay. You were asked if on your way to the
4 market you saw a red Crown Victoria. Were you
5 looking for a red Crown Victoria?

6 A. No.

7 Q. Had you received any information about a Crown
8 Victoria being in any way connected to this?

9 A. Not that I remember.

10 MR. STREITZ: Thank you. No further
11 questions.

12 THE COURT: Mr. Goetz.

13 MR. GOETZ: Just a few follow up.

14 **RE-CROSS-EXAMINATION**

15 BY MR. GOETZ:

16 Q. If you're responding to go a robbery call, one of
17 the things that you want to look for, Officer, or
18 be on alert for are vehicles fleeing the scene;
19 correct?

20 A. For the most part, yes, if that information is
21 relayed. However, we had no information of any
22 vehicles being involved in this at the time.

23 Q. Certainly. But if you're responding to a robbery
24 call and a vehicle comes speeding by you, that's
25 something you're going to note, is it not?

1 A. It's very possible, but I'm also occupied with
2 listening to my radio, reading the call,
3 responding Code 3, making sure I get there in a
4 safe manner, and my focus is getting to the
5 store.

6 Q. I appreciate that, but it's the case, is it not,
7 that you did not see, did or did not recall
8 seeing any red Crown Victoria type car speeding
9 in any kind of direction from the time you left
10 the station at Lake Street and Minnehaha to the
11 time you got to the Seward Market at 25th and --

12 A. No, I didn't observe any vehicle matching that
13 description.

14 MR. GOETZ: That's all the questions I
15 have.

16 THE COURT: Mr. Streitz.

17 **FURTHER REDIRECT EXAMINATION**

18 BY MR. STREITZ:

19 Q. Officer, in your 13 years of experience as a
20 Minneapolis police officer, have you ever been
21 involved in a case where, let's say, a car may
22 have been involved in a scene but doesn't speed
23 away because they don't want to draw attention to
24 themselves?

25 A. Yes.

1 MR. STREITZ: No further questions.

2 THE COURT: Anything further?

3 MR. GOETZ: Nothing, Your Honor.

4 THE COURT: Officer, you may step down.

5 (Witness leaves the stand.)

6 THE COURT: State may call its next
7 witness.

8 MR. STREITZ: We would call Cliff
9 Johnson to the stand.

10 CLIFFORD JOHNSON,
11 called as a witness on behalf of the State, having been
12 first duly sworn, was examined and testified as follows:

13 THE COURT: Have a seat. Before you
14 begin, give us your full name.

15 THE WITNESS: Clifford Johnson;
16 C-l-i-f-f-o-r-d, J-o-h-n-s-o-n.

17 THE COURT: Okay. Thank you.
18 Mr. Streit.

19 **DIRECT EXAMINATION**

20 BY MR. STREITZ:

21 Q. Good afternoon, Mr. Johnson.

22 A. Good afternoon.

23 Q. Because we're competing with the elevator shaft
24 over there, make sure to speak up loudly so we
25 can hear.

1 A. I will.

2 Q. Okay. How you doing this afternoon?

3 A. Just fine. Thank you.

4 Q. You're employed by whom?

5 A. City of Minneapolis.

6 Q. And in what capacity?

7 A. I'm a senior forensic scientist and video analyst
8 for the crime lab of the police department.

9 Q. And how long have you been in that position?

10 A. In that specific position for about the last
11 seven years.

12 Q. Prior to that, were you a member of the
13 Minneapolis Police Department?

14 A. Yes. I was a sworn police officer for 25 years.
15 I retired from the department in 1996, become a
16 civilian with the crime lab and become a senior
17 forensic scientist after approximately seven
18 years within the lab. I've been there now 15
19 years.

20 Q. Your present duties as a forensic scientist, your
21 specific assignment is what again?

22 A. Forensic video analyst.

23 Q. Can you explain that to us including any training
24 or experience you have for that position?

25 A. Well, forensic video analyst is a scientific

1 examination comparison and/or evaluation of video
2 and legal matters; that's the description of the
3 position. My duties involve going to specific
4 areas, recovering video, retrieving video from
5 our property and evidence unit, reviewing video
6 and making it in a viewable format for
7 investigators. My training has been through the
8 LEVA, which is an acronym for Law Enforcement and
9 Emergency Services Video Association. And also
10 Ocean Systems which is a corporation that
11 produces software. We use AVID video editing
12 system in our office. AVID is an editing system
13 which is trained again by LEVA, along with the
14 software from Oceans which gives us some
15 additional forensic tools to do our work.

16 Q. I'm going to come back to AVID. By the way, is
17 AVID, A-V-I-D?

18 A. Yes, it is.

19 Q. Mr. Johnson, I want to take you back to the
20 evening hours of January 6, 2010. Were you on
21 duty that evening?

22 A. No, I was not.

23 Q. Did you get called in to work that evening?

24 A. Yes, I did.

25 Q. Was that about 8:30 that evening?

1 A. Yes.

2 Q. And why were you called in?

3 A. I received a call from Lt. Aker that there had
4 been an event take place and that video needed to
5 be recovered from a business on Franklin Avenue
6 and 25th -- Franklin Avenue and 25th Avenue
7 address.

8 Q. And did you learn that to be the address of the
9 Seward Market?

10 A. Yes.

11 Q. On 25th and Franklin?

12 A. Yes.

13 Q. And did you go to that business?

14 A. Yes, I did.

15 Q. Do you recall approximately when you may have
16 gotten there -- I know it's been awhile but --

17 A. I don't recall I arrived at the scene until
18 probably around 10:30 at night.

19 Q. When you got there, were there police officers
20 there?

21 A. Yes, there were.

22 Q. Homicide detectives?

23 A. Yes.

24 Q. Bureau of -- your colleagues from the Bureau of
25 Identification?

1 A. Yes.

2 Q. Was the crime scene, including the store, the
3 market secure?

4 A. Yes, it was.

5 Q. When you got there were you briefed by the
6 homicide detectives, Sgts. Folkens and
7 Karakostas?

8 A. Yes, I was.

9 Q. And why do you -- why do Bureau of Identification
10 personnel get briefed by the officers and
11 detectives when you arrive at a scene like this?

12 A. Well, we need to know exactly what had occurred,
13 what possible evidence may be in place, what they
14 have observed prior to our arrival. We do not
15 want to contaminate any evidence and we also want
16 to know if there is any evidence that we need to
17 be specifically aware of that's within my
18 expertise that I need to collect.

19 Q. After -- were you so briefed by those homicide
20 detectives?

21 A. Yes, I was.

22 Q. And after being briefed by them, did they ask you
23 to go someplace in the store?

24 A. Yes, they did.

25 Q. What did they -- where did they ask you to go?

1 A. I went to the basement level of the store.

2 Q. And why were you directed to go there?

3 A. I was informed that in the basement level they
4 had discovered two video systems that appeared to
5 be recording.

6 Q. Did you go there?

7 A. Yes, I did.

8 Q. Did you find two video systems that appeared to
9 be active and recording?

10 A. Yes.

11 Q. And what did you do with respect to those two
12 systems?

13 A. I was asked to see if I could isolate images from
14 an event that had just taken place. At which
15 time I tried to search the systems, each one of
16 them, for any data that would pertain to this
17 particular event.

18 Q. And were you able to access them at the store?

19 A. No, I was not.

20 Q. Why was that?

21 A. The systems indicated that a password was needed,
22 and according to the investigators they were
23 discussing this was someone at the scene. No one
24 could remember a password that could be used for
25 the system.

1 Q. So what did you do?

2 A. I believe Sgt. Folkens instructed me to take the
3 systems from the scene and remove them to the
4 crime lab.

5 Q. Are you talking about two systems. Are those
6 what's called DVRs?

7 A. That's correct. DVR would be digital video
8 recorder.

9 Q. There were two different systems?

10 A. Yes.

11 Q. Can you explain that to us, what the two
12 different systems were?

13 A. It appeared that one system was mainly within the
14 business itself, recording inside the business
15 and some outside views, two different outside
16 views. This particular system, the monitor for
17 it was actually up on the first level behind the
18 counter of the business which made it impossible
19 for me to view while I was trying to go through a
20 menu option on the system. The second system
21 appeared to be connected to a TV which was down
22 in the lower level. This particular system would
23 go through, I think it was seven or eight
24 cameras. However, it did not appear to be that
25 particular business. It appeared to be some

1 other building, possibly close by.

2 Q. When you took those two DVR systems back to your
3 lab, what did you do?

4 A. I tried to find some initial information about
5 the type of system that we had. The one that was
6 recording in the store, off the top of my head I
7 couldn't tell you what the system brand was, but
8 I went to the internet to try to find a manual or
9 some type of information of how to recover video.

10 Q. And were you able to get into both of those DVR
11 -- and I'm probably using the wrong terminology
12 so correct me -- but were you able to access
13 those DVRs to retrieve footage from them?

14 A. Eventually I was, yes.

15 Q. And can you kind of briefly tell us the process
16 of how you did that?

17 A. Well, each system had a video out export
18 function, most DVRs do have some type of export
19 function that you can send your video to a media
20 such as a compact flash, a disk or an external
21 drive. The particular system that I was working
22 on had a video out connection, which you could
23 connect to a monitor, which I connected to my
24 monitor in my office. I found that although I
25 couldn't access the menu because I still did not

1 have a password, the system allowed me to go back
2 approximately 36 hours worth of video. I went
3 back to, I believe it was 5/11 at about 11 a.m.
4 and began playing video from that time forward
5 until I arrived at the incident in question.

6 Q. You said 5/11?

7 A. At 1/5/11, December 5th, was when it started -- I
8 mean, of '10. I'm sorry.

9 Q. So January 5th, 2010?

10 A. Yes.

11 Q. And what -- were you able to find any images that
12 you believed were relevant to what had happened
13 on January 6, 2010?

14 A. Yes. Eventually I did find the event that took
15 place and I connected the video out connection
16 directly into my forensic analysis system, my
17 AVID system and recorded it directly into my
18 system.

19 Q. Does every DVR, that is digital video recorder do
20 something to the quality of what it captures in
21 its cameras a thing called compression?

22 A. Yes.

23 Q. And what is compression?

24 A. Compression is making a file size small enough to
25 store. Most people would like to store large

1 amount of video in a hard drive, let's say maybe
2 a 300 gig hard drive. To do that you have to
3 make the file size smaller. And what it actually
4 does is removes pixels from a picture and the
5 image itself. Most times in a small vision or
6 small view of the event you would not notice a
7 whole lot of difference, however, for forensic
8 purposes, compression removes articles which make
9 detail work difficult.

10 Q. So you took, as I understand it, took the two DVR
11 systems -- first of all, you took one of them and
12 hooked it -- connected it to your AVID system?

13 A. Yes.

14 Q. In an effort to retrieve what you believe to be
15 relevant video of the event that happened the
16 evening of January 6, 2010?

17 A. Yes.

18 Q. Tell us about this AVID system. What is it and
19 why did you use that?

20 A. Well, AVID is a video editing system that's used
21 in most motion picture and television industries
22 today. However, it's been coupled with software
23 from Ocean Systems which gives us some forensic
24 tools that we use. And these tools allow us to
25 go in and separate images, clarify images and

1 make them more presentable and identifiable for
2 investigators. The system itself has been used
3 for many years, probably since the late 1990s for
4 forensic work. We've been using it in our office
5 since about 1997. And we've been through the
6 training from Oceans and LEVA. It's the leading
7 tool for forensic examination in the country
8 today.

9 Q. Now, when you take information from the DVR in
10 this case and extract it into your AVID system,
11 is your AVID system further compressed?

12 A. No, it's not.

13 Q. Does the AVID system do anything such as
14 manipulate or distort or anything what was
15 actually in the DVR in the first place?

16 A. No, it does not.

17 Q. What was the next step in your process?

18 A. Well, after I recovered the video from the first
19 DVR, I exported it back out from my system into a
20 DVD format which would be viewable by our
21 investigators. I gave copies to the
22 investigators so they can review this particular
23 event from all camera angles that captured it and
24 they could do their investigation.

25 Q. And a DVD is a digital video disk?

1 A. Yes.

2 Q. When you took -- when you made the DVD from your
3 AVID system, is what was on the DVD, was that
4 compressed?

5 A. Yes, it is. That's further compressed from the
6 original. Unfortunately, the DVD process itself
7 does compress images to fit it onto the disk
8 itself.

9 Q. But this was, if I understand you correctly, was
10 to in an effort to get some information to the
11 detectives so they could start using this in
12 their investigation?

13 A. That's correct. We consider it a viewing copy.

14 Q. Okay. After giving them the DVD, the viewing
15 copy for their use, what did you do?

16 A. Well, there was another system brought to my lab
17 that I accessed, and each time I did the same
18 process by connecting it directly to my AVID
19 system and viewing it direct and recording it
20 directly into my system.

21 Q. When you were able to export what you believed to
22 be the relevant surveillance footage from the DVR
23 into your AVID system, did you put it in any
24 particular type of sequence or editing for use?

25 A. Well, inside AVID is what's called the timeline

1 and in the timeline you can place the events in
2 somewhat of an order in the way they occurred to
3 make it more visible and more viewable by our
4 investigators. I took each separate camera view
5 and placed it in a timeline so as you viewed the
6 DVD that I created, you would view all camera
7 views that captured the event one after the
8 other.

9 Q. Did you do the same process with the second DVR
10 system that you talked about?

11 A. Yes.

12 Q. In addition to making DVDs from both of those
13 systems from the market for the investigators,
14 were -- did you make still photographs that they
15 could use from that same footage?

16 A. Yes, I did.

17 Q. And when you would make those still images from
18 the surveillance video, did that -- did those
19 stills gets compressed? How does that work?

20 A. No, they do not. We export a still image from
21 the video as an uncompressed image. The
22 uncompressed images are placed on a disk or CD.
23 We also print them out. The printouts are
24 compressed and unfortunately with printers today
25 you can't regulate color sometimes. So they are

1 compressed and not an actual color. However, the
2 disk itself contains an uncompressed image from
3 the video.

4 Q. I want to talk to you a little bit about the
5 second DVR system from the market. Was there a
6 particular camera that appeared to capture events
7 outside the market on 25th Avenue?

8 A. Yes.

9 Q. And, again, did you use the same process with
10 that particular DVD and that camera that you did
11 with the other footage from the market?

12 A. Yes.

13 Q. Did you note anything different about what was
14 captured on that camera in terms of the time
15 stamp?

16 A. Well, the time stamp was off. It appeared to be,
17 I believe, ten something in the evening was the
18 event that was recorded on that particular
19 camera.

20 Q. And did you, after viewing all of the
21 surveillance footage that you believed relevant
22 to what had happened at the market, think that
23 was off, the time was off?

24 A. Yes, it was.

25 Q. And were you able to come to a time that you

1 believed was more accurate as to what you would
2 see on Camera 2 from the second DVR?

3 A. What I recorded from the second DVR would be
4 consistent with the same timeframe as the first.
5 I didn't actually calculate the time difference.
6 I noted how to find the event by looking for as
7 the event took place or just afterwards as people
8 arrived on the scene and the flashing lights and
9 the officers began to move about is how I
10 recognized when the scene took place.

11 Q. And what was the time that you believed was more
12 accurate that was shown by this Camera 2 of the
13 second DVR system?

14 A. I would have to look at the video itself at this
15 point to see the timestamp on the original video.
16 It would be consistent with the original video.

17 Q. Okay. Do you know an individual from the County
18 Attorney's Office by the name of Paul Hartzell?

19 A. Yes.

20 Q. And how do you know Mr. Hartzell?

21 A. He is the county's forensic video analyst.

22 Q. For the office where I work?

23 A. That's correct.

24 Q. And did you give him access to your AVID system
25 in which you had stored the information that you

1 took from the two DVR systems of the market?

2 A. Yes.

3 Q. Prior to your testifying this afternoon, did I
4 have you look at some premarked exhibits for
5 purposes of your testimony today?

6 A. Yes, you did.

7 MR. STREITZ: May I approach, Your
8 Honor?

9 THE COURT: You may.

10 BY MR. STREITZ:

11 Q. Showing you what I've marked as Exhibit 94, do
12 you recognize that particular exhibit, Mr.
13 Johnson?

14 A. Yes.

15 Q. And that is?

16 A. It is do Camera 1 from the -- reproduction of
17 Camera 1 video from the store.

18 Q. And after reviewing that exhibit, did it appear
19 to be consistent with what you had retrieved from
20 the DVR system at the market in terms of its
21 content and the time?

22 A. Yes.

23 Q. Showing you what's been marked as Exhibit 95, do
24 you recognize that, Mr. Johnson?

25 A. Yes, I do.

1 Q. And that is what?

2 A. That is the Seward Camera No. 3, which is, again,
3 at the market location.

4 Q. And after reviewing Exhibit 95, did that appear
5 to be consistent with what you had retrieved from
6 the DVR systems at the market in terms of its
7 content and the time?

8 A. Yes.

9 Q. Exhibit 96, do you recognize that, Mr. Johnson?

10 A. Yes, I do.

11 Q. And that is?

12 A. It's the Seward Camera 4 copy.

13 Q. And after reviewing that, did that appear to be
14 consistent with the content that you took from
15 the DVR systems at the market in terms of the
16 content as well as the time?

17 A. Yes.

18 Q. Exhibit 97, do you recognize that, Mr. Johnson?

19 A. Yes, I do.

20 Q. And that is?

21 A. That would be the Seward Market Camera No. 5
22 copy.

23 Q. And does that copy contain consistent content and
24 time as what you originally took out of the DVR
25 system at the market?

1 A. Yes.

2 Q. And Exhibit 98, do you recognize that?

3 A. It's Camera No. 6 from the Seward Market.

4 Q. And does that also contain content and time
5 consistent with what you took out of the DVR
6 systems at the market?

7 A. Yes.

8 Q. Exhibit 99, do you recognize that, Mr. Johnson?

9 A. Yes.

10 Q. And that is?

11 A. Seward Camera No. 8 copy from the market.

12 Q. And having reviewed that, does the content and
13 time on that exhibit, is that consistent with
14 what you exported from the DVR system at the
15 market?

16 A. Yes.

17 Q. And Exhibit 100, do you recognize that, Mr.
18 Johnson?

19 A. Yes, I do.

20 Q. And what is that?

21 A. It's the Seward Camera No. 9 copy.

22 Q. And does the content and time depicted on that
23 exhibit, is that consistent with what you had
24 taken from the DVR system at the market?

25 A. Yes.

1 Q. Exhibit 101, do you recognize that, sir?

2 A. Yes.

3 Q. And what is on that?

4 A. This would be the timeline sequence that I
5 created from the Seward Market.

6 Q. And does that contain the same information that
7 you had exported from the DVR systems at the
8 market in terms of its content and the time?

9 A. Yes.

10 Q. All cameras and all systems, or just the one
11 system?

12 A. That was just the one system.

13 Q. Okay. And that was the system you referred to as
14 having the inside views, mostly inside camera
15 views?

16 A. That's correct.

17 Q. But had a couple outside camera views?

18 A. Correct.

19 Q. Exhibit 102, do you recognize that, Mr. Johnson?

20 A. Yes, I do.

21 Q. And that is?

22 A. That is what is labelled Camera No. 2 but that's
23 the second DVR system that's located in the
24 basement.

25 Q. And this particular camera view depicted what?

1 A. The exterior view of 25th Avenue looking
2 southbound on 25th.

3 Q. All of those exhibits I just had you look at, are
4 those consistent with the views in what you
5 reported in it's original and the timeframe of
6 the originals?

7 A. Yes.

8 MR. STREITZ: Your Honor. The State
9 would offer Exhibits 96 --

10 MR. GOETZ: Without objection, Your
11 Honor, for the record, 96 through 102, or 94
12 through 102.

13 THE COURT: 94?

14 MR. STREITZ: Yes.

15 THE COURT: 94 through 102 are received.
16 Counsel approach.

17 (Off the record discussion at the
18 bench.)

19 THE COURT: Members of the jury, since
20 the next step would be to publish, in other
21 words, show these videos to you, given the
22 lateness of the hour, we're going to break for
23 the day and start tomorrow morning with this.
24 Please be ready to go in the jury room at 9
25 o'clock tomorrow morning. And we will post

1 updates as far as time we start just in case you
2 need to know or you forget. So we'll see you
3 tomorrow 9 a.m. Thank you.

4 (Court in recess until the following
5 day, September 13, 2011.)
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