

ORIGINAL

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

3 -----
4 State of Minnesota)
5)
6 Plaintiff,) **JURY TRIAL**
7 v.) D.C. File 27-CR-10-2076
8) App. Court No. A12-0173
9 Mahdi Hassan Ali) Volume VI of XIV
10)
11 Defendant.)
12 -----

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

18 APPEARANCES:

19 Robert J. Streitz and Charles S. Weber, Assistant
20 Hennepin County Attorneys, appeared on behalf of the
21 State of Minnesota.

22 Frederick J. Goetz, Esq. and Gregory Young,
23 Certified Student Attorney, appeared on behalf of the
24 Defendant.

25 Mahdi H. Ali, defendant.

Abdi Elmi, Interpreter.

Erin Lutz, Law Clerk.

Dana Carmichael, Court Reporter.

1 (In open court:)

2 THE COURT: Morning members of the jury.
3 Just so you know, I called the City of
4 Minneapolis to see if they could rip up one more
5 road around here. Whether you have a bus or car
6 commute, my sympathies. And just be aware, we're
7 suffering with you.

8 Mr. Streit.

9 (Witness takes the stand.)

10 THE COURT: Reminder, Mr. Johnson,
11 you're still under oath.

12 THE WITNESS: Thank you.

13 Mr. Streit.

14 **CONTINUED DIRECT EXAMINATION**

15 BY MR. STREITZ:

16 Q. Morning, Mr. Johnson. Yesterday we ended with
17 you having identified certain exhibits said to
18 contain surveillance footage that you were able
19 to export from the two d -- two DVR systems at
20 the market; correct?

21 A. That's correct.

22 Q. I just wanted to cover now, how many cameras did
23 each of those systems have connected to them?

24 A. I believe the store video system, the one that
25 mainly had the interior of the market itself and

1 two exterior cameras had nine total camera views.
2 The second DVR system I believe had either seven
3 or nine views with those being of a separate
4 business or building and exterior views around
5 both of these buildings.

6 Q. When you reviewed the surveillance video from
7 both of those systems, did all of those cameras
8 have footage that you believed was -- that had
9 captured events that had taken place during the
10 course of the murders?

11 A. No, they did not.

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

14 (State's counsel confer.)

15 BY MR. STREITZ:

16 Q. Mr. Johnson, at this time I want to play for the
17 jury the exhibits that were received into
18 evidence yesterday, starting with Exhibit 94.
19 And that will be shown over your left shoulder
20 there.

21 (Video played.)

22 BY MR. STREITZ:

23 Q. Now, on the screen is what's been received into
24 evidence as Exhibit 97 -- 92, I'm sorry. And do
25 you recognize that?

1 A. Yes, I do.

2 Q. And what is that?

3 A. That's a scene sketch done by a forensic
4 scientist from the crime lab.

5 Q. One of your colleagues?

6 A. Yes.

7 Q. And using the laser pointer here -- here it is.
8 Use that red button there, could you show us
9 where in the store Exhibit 94, which was Camera
10 1, which area of the store that camera was
11 covering at the time?

12 A. The area it was covering would be up at the front
13 door area, which would be in this area
14 (pointing), and the camera itself would be -- I
15 can't really see the numbers, but it's right over
16 in this area over here (pointing).

17 Q. This area over here being what?

18 A. It's above the counter. The counter area where
19 you see the gentleman sitting was right here
20 (pointing). The camera itself was placed in this
21 location, I believe that's it right there, C1
22 (pointing).

23 Q. Okay.

24 A. Camera 1, facing the store way.

25 Q. So the camera was facing from the store kind of

1 over the counter towards the front entranceway of
2 the store?

3 A. Yes, that's correct.

4 Q. Okay. Now we're going to show the jury Exhibit
5 95, which is Camera 3.

6 (Video played.)

7 BY MR. STREITZ:

8 Q. I do want to go back to Exhibit 92 again, the
9 sketch of the market, just so that you can
10 orientate the jury as to what area of the store
11 Camera 3 was trained on at that time.

12 A. Camera 3 itself is located in this area right in
13 here (pointing), and it looks down the aisle
14 towards the back of the store. So this is the
15 aisle that you were viewing here (pointing).

16 Q. And that is the aisle, that is east aisle, if you
17 will?

18 A. Yes.

19 Q. Okay. And you were pointing to where the --
20 approximately where the camera was, is that so
21 indicated on the legend in the Exhibit 92?

22 A. Yes, it's right here, C3 (pointing).

23 Q. Okay. I want to go back and have the jury view
24 Exhibit 96, Camera 4.

25 (Video played.)

1 BY MR. STREITZ:

2 Q. And back to Exhibit 92 again so that you can
3 orientate the jury as to the area that Camera 4
4 was covering at that time.

5 A. Camera 4 is next to the front door area, in this
6 area, and it views the counter from here looking
7 in this direction (pointing).

8 Q. So from the front door area back towards the
9 counter?

10 A. Yes.

11 Q. And in Exhibit 97, I'd like to have the jury
12 view.

13 (Video played.)

14 BY MR. STREITZ:

15 Q. And, again, I'd like to go back to Exhibit 92 so
16 you can orientate the jury as to the area of the
17 market that Camera 5 was covering at that time.

18 A. Camera 5 is located at the rear of the store in
19 this location and it observes the aisle north of
20 that location towards the front of the business
21 (pointing).

22 Q. So we're talking about the west aisle?

23 A. That's correct.

24 Q. Okay. And when you pointed to the rear of the
25 store, the rear of the store looking towards the

1 front of the store looking on the west aisle?

2 A. Excuse me?

3 Q. You were pointing to an area of the camera
4 looking from the back of the store towards the
5 front?

6 A. Towards the front; correct.

7 Q. Down the west aisle?

8 A. Correct.

9 Q. Okay. Thank you. I'd like to show Exhibit 98,
10 Camera 6.

11 (Video played.)

12 BY MR. STREITZ:

13 Q. And once again, back to Exhibit 92, and have you
14 describe the area in which Camera 6 was covering
15 at that time.

16 A. Camera 6 is an exterior camera and it would be
17 outside the business. You can tell it's
18 underneath the awning of the business and it
19 looks down 25th Avenue, which is this street,
20 right here, the sidewalk area (pointing).

21 Q. Okay. So from north to south down 25th?

22 A. Correct.

23 Q. And Exhibit 99, which is Camera 8.

24 (Video played.)

25

1 BY MR. STREITZ:

2 Q. I'd like to go back to Exhibit 92 again so that
3 you can tell us the area of the market that
4 Camera 8 was covering at that time.

5 A. Camera 8 views south in this aisle right here and
6 the camera is located in this location here
7 (pointing).

8 Q. That location here being on the west side of the
9 market, a little south of the counter area?

10 A. Yes, that's correct.

11 Q. And directed towards -- down the west aisle
12 towards the back of the store?

13 A. Yes.

14 Q. And to Exhibit 100, Camera 9.

15 (Video played.)

16 BY MR. STREITZ:

17 Q. Again, back to Exhibit 92. And if you could
18 explain the area in which Camera 9 covered at
19 that time.

20 A. Camera 9 was at the exterior of the building
21 underneath the awning again. It faced basically
22 east on Franklin and located here would be the
23 front door area, which is what you were seeing
24 with people entering.

25 Q. Did that camera appear to be under the awning of

1 the store, that is the Franklin side of the
2 store?

3 A. Yes.

4 Q. Thank you. And I'm not going to play Exhibit 101
5 that you identified as the disk that had all of
6 these videos on it because we've looked at each
7 one individually here. So I would like to go to
8 Exhibit 102, which is Camera 2, I believe from
9 your testimony, from the second DVR system; is
10 that correct?

11 A. Yes.

12 Q. Okay.

13 (Video played.)

14 BY MR. STREITZ:

15 Q. Mr. Johnson, I paused this. Was there something
16 in your review of this particular footage that
17 caused you to believe that it might be related to
18 the event?

19 A. Yes.

20 Q. And what was it?

21 A. When I first reviewed the video, I'd actually
22 gone beyond this spot and noticed the flashing
23 red lights. I then went back in the video and
24 began to play it again and when I saw this
25 portion here, I observed vehicles on this street,

1 however, this particular vehicle came to this
2 location and then turned around, made a U-turn on
3 this particular street.

4 Q. And, again, I know we covered this yesterday, but
5 on this particular camera, the timestamp says
6 22:42, of course that's military time for 10
7 p.m.; is that correct?

8 A. Yes.

9 Q. Did you determine that that -- did you make a
10 determination that that was an incorrect
11 timestamp?

12 A. Yes.

13 Q. That was based on what you said yesterday given
14 when the police cars had arrived and that type of
15 thing?

16 A. Correct.

17 Q. And you believe rather than being 22:00, it
18 should be what?

19 A. It would be approximately 7, I believe around
20 7:30 in the evening. I don't know the exact
21 time.

22 Q. And military time, that would be 19:00?

23 A. Yes.

24 Q. Something?

25 A. Yes.

1 Q. Which is consistent with the other exhibits of
2 the surveillance that we just viewed; correct?

3 A. Correct.

4 Q. That is 7 p.m. and so many minutes?

5 A. Correct.

6 Q. Okay. I want to advance this again, and I'll
7 stop it and ask you some questions. If you can
8 view this.

9 (Video played.)

10 BY MR. STREITZ:

11 Q. Was there anything else that you noted about this
12 footage at that time?

13 A. The vehicle that made the turn eventually pulled
14 into approximately this location and backed into
15 a parking spot.

16 Q. Did you note anything when the vehicle appeared
17 to back into the parking spot?

18 A. Yes, I did.

19 Q. What?

20 A. When the car went into reverse or appeared to go
21 into reverse there are reverse taillights that
22 come on. And in this particular vehicle, the
23 only taillight that appeared was on the driver's
24 side of the vehicle.

25 Q. Is that called a backup light?

1 A. Yes.

2 Q. And now I want to advance this again.

3 (Video played.)

4 BY MR. STREITZ:

5 Q. Did you notice something else that was about to
6 happen?

7 A. Well, after the vehicle parked for several
8 moments, another light appeared in the area of
9 the vehicle, which could have possibly been a
10 dome light.

11 Q. Like when somebody opens a door to the car?

12 A. Yes, that's correct.

13 Q. We'll continue on here with this.

14 (Video played.)

15 BY MR. STREITZ:

16 Q. Can you indicate to us when it is that you notice
17 that?

18 (Video playing.)

19 THE WITNESS: There was a flicker of
20 lights there that appeared -- could have been the
21 taillights again. And there is -- that's another
22 vehicle (pointing).

23 BY MR. STREITZ:

24 Q. Did you notice any, when you were reviewing what
25 was contained on Camera 2, did you notice any,

1 what you thought may have been people walking in
2 that area?

3 A. Yes.

4 Q. What did you see?

5 A. Just moments ago a person came from somewhere in
6 this area, which would be the alley behind the
7 business, and walked directly across the street,
8 across 24th Avenue in an easterly direction.

9 Q. Prior to that, and I apologize for not pausing
10 it, had you noticed any, what you thought may
11 have been individuals, walking on the sidewalk?

12 A. In viewing this, I'm sorry but it's hard for me
13 to view it from my angle, but I did observe two
14 people on the sidewalk at a portion of this
15 video, yes.

16 Q. Was that prior to the individual who you just
17 noted to us?

18 A. I would have to back it up and see it again, I'm
19 sorry.

20 THE COURT: Mr. Johnson, is the monitor
21 on there by the witness stand, is the TV monitor
22 on?

23 THE WITNESS: Yes.

24 THE COURT: You can also use that if it
25 will help you.

1 BY MR. STREITZ:

2 Q. I'm going to rewind it here to 22:43. And I'm
3 going to ask you if you can see and tell us when
4 you're able to see any of what you described as
5 dome lights coming on in the car, and then
6 describe to us any individuals you may see and
7 narrate that for us.

8 (Video played.)

9 THE WITNESS: I saw a little flash right
10 there, there it is, which appears to be what I
11 saw in the original video.

12 BY MR. STREITZ:

13 Q. Okay. And continue on.

14 A. And there appears to be a moment down the
15 sidewalk which would look like they're going
16 north approaching the alley line at this point.
17 There would appear to be two individuals.
18 They're pausing at the alley at this point.

19 Q. That's 22:45:20 seconds approximately?

20 A. Yes.

21 (Video continually playing.)

22 A. Now they begin moving north on the sidewalk.

23 Q. That's about 22:45:53?

24 A. Yes.

25 (Video playing.)

1 A. It would appear they're out of the camera range
2 at this time.

3 Q. If you continue to watch that and indicated you
4 notice -- if you notice anything else that you
5 thought may be relevant to the events?

6 (Video continues playing.)

7 A. Here is where someone comes out from the alley
8 area and continues east across the sidewalk and
9 appears to go across 25th Avenue.

10 Q. That was approximately 22:47?

11 A. Yes.

12 Q. Okay.

13 (Video playing.)

14 A. A person is seen going southbound right now on
15 25th on the sidewalk.

16 Q. Approximately 22:47:20?

17 A. Approximately, yes. Another person is seen
18 moving quickly down the sidewalk area southbound
19 on 25th on the sidewalk. There was just a flash
20 of light again up by where that particular
21 vehicle had stopped, which may have indicated a
22 dome light. Automobile lights flash. The
23 vehicle starts moving but no lights are turned on
24 until further down the street.

25 Q. I'd like to go back one last time to Exhibit 92,

1 and again have you tell us the view that Camera 2
2 from the second DVR system was covering at that
3 time.

4 A. This would be the 25th Avenue, the view would be
5 looking in a southerly direction from
6 approximately in this area on top of the business
7 or on the side of the business, I'm not quite
8 sure where the camera was located. And it faced,
9 the view kind of showed this alley area where it
10 came up behind the store up to approximately in
11 this area, I believe (pointing).

12 Q. Up to this area being --

13 A. Approximately the rear door area of the business.

14 Q. Okay. The door on the 25th Avenue side?

15 A. Yes.

16 Q. In viewing the footage from the various cameras,
17 did the cameras overlap the area in which each of
18 them covered? So, for example, on Camera 2 that
19 we just saw, did that overlap with let's say the
20 area that Camera 6 covered, Camera 6 being the
21 camera under the awning on the 25th Avenue side?

22 A. No, they did not show the same areas.

23 Q. So it wasn't an overlap necessarily?

24 A. No, there was not.

25 Q. And is that true for the other cameras also that

1 we've seen; that they didn't necessarily overlap
2 the same areas?

3 A. You may have been able to see a partial view from
4 some of those interior cameras of an area that
5 may have been covered by another one.

6 Q. Okay. What you've just testified to in terms of
7 your observations on Camera 2 that was facing
8 south on 25th Avenue, did you share those
9 observations with the two homicide detectives
10 that were assigned to this case, Ann Kjos and
11 Luis Porras?

12 A. Yes, I did.

13 Q. Did those same two detectives provide you with
14 some CDs that had come from some other businesses
15 containing information they believed was relevant
16 to this case?

17 A. Yes.

18 Q. And did that include a SuperAmerica gas station
19 on Lyndale Avenue in Minneapolis?

20 A. Yes, it did.

21 Q. A check cashing business named Dahabshiil in
22 Minneapolis?

23 A. Yes.

24 Q. Near Franklin and Nicollet?

25 A. Yes.

1 Q. As well as a CD from the Minneapolis Impound Lot?

2 A. Yes.

3 Q. And from that footage -- from those CDs did you
4 then make some still photographs from it?

5 A. Yes, I did.

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

8 THE COURT: You may.

9 BY MR. STREITZ:

10 Q. Showing you what I've marked as Exhibits 77, 78,
11 79, 80 and 81. If you can look at those and tell
12 me if those are fair and accurate pictures taken
13 from the surveillance footage of the Minneapolis
14 Impound Lot on January 6, 2010?

15 A. They do appear to be consistent with the ones
16 that I copied from the disk.

17 Q. Okay.

18 THE COURT: Mr. Streit, can you give me
19 the exhibit numbers again?

20 MR. STREITZ: 77, 78, 79, 80 and 81.

21 THE COURT: Thank you.

22 BY MR. STREITZ:

23 Q. You may have taken more still photographs, but
24 I'm just showing you a portion; is that correct?

25 A. Yes, I made quite a few.

1 Q. Now I'm going to show you what's been marked as
2 Exhibits 82, 83, 84, 85, and 86. Do you
3 recognize those?

4 A. Yes.

5 Q. And what are those?

6 A. They appear to be prints from the disk that I
7 created from the CD, the original CD.

8 Q. The CD from the SuperAmerica store on Lyndale
9 Avenue in Minneapolis?

10 A. Yes.

11 Q. Showing you what's been marked at Exhibits 87, 88
12 and 89. Do you recognize those?

13 A. Yes.

14 Q. And what are those, sir?

15 A. They also appear to be images that were created
16 from the disk that I had received from that -- I
17 believe it was check cashing business.

18 Q. Dahabshiil?

19 A. Yes.

20 Q. On near Franklin and Nicollet Avenues in
21 Minneapolis?

22 A. Correct.

23 Q. All of these exhibits that I've just referred to,
24 would they be -- would there be compression in
25 these still images?

1 A. Yes.

2 Q. Okay. Is that just a necessary -- does that just
3 happen?

4 A. Well, due to the printing process, yes, it's an
5 unfortunate function of the printer that unless
6 it's an extremely resolution printer, you're
7 going to have some compression.

8 Q. Okay.

9 MR. STREITZ: Your Honor, the State
10 would offer into evidence at this time Exhibits
11 87, 88, 89.

12 THE COURT: Any objection?

13 MR. GOETZ: None, Your Honor.

14 THE COURT: Those are received.

15 MR. STREITZ: 82, 83, 84, 85, and 66.

16 THE COURT: Any objection?

17 MR. GOETZ: No objection, Your Honor.

18 THE COURT: 82 through 86 are received.

19 MR. STREITZ: 77, 78, 79, 00 and 81.

20 THE COURT: Any objection?

21 MR. GOETZ: No objection, Your Honor.

22 THE COURT: 77 through 81 are received.

23 BY MR. STREITZ:

24 Q. And another series of exhibits, 64 -- what's been
25 marked as 64, 65, 66, 68, 69, 70, 73, 74, 75, 76,

1 67, 72 and 71. Sorry I took those a little out
2 of order. If you can look at those, Mr. Johnson,
3 and tell me if you recognize that series of
4 photographs.

5 A. Yes, I do.

6 Q. And what are those?

7 A. Those would be prints from the disk I made from
8 what would be cameras within the business itself.

9 Q. The video surveillance that we just viewed
10 earlier this morning?

11 A. Yes.

12 Q. And those bear the timestamp as well as in the
13 bottom the camera number?

14 A. Yes.

15 Q. Are those fair and accurate still photographs of
16 that surveillance footage?

17 A. Yes.

18 MR. STREITZ: The State would offer
19 Exhibits 71, 72, 64, 65, 66, 67, 68, 69, 70, 73,
20 74, 75 and 76.

21 MR. GOETZ: Without objection.

22 THE COURT: Exhibits 64 through 76 are
23 received.

24 MR. STREITZ: Thank you.

25

1 BY MR. STREITZ:

2 Q. You indicated that you had received a CD said to
3 have contained surveillance footage from that
4 SuperAmerica store on Lyndale; correct?

5 A. Yes.

6 Q. And I take it you viewed it?

7 A. Yes.

8 Q. Because you made some still photographs from it?

9 A. Yes.

10 Q. Did you see anything when you viewed that
11 surveillance footage? Did you see a car in that
12 particular footage?

13 A. Yes, I did.

14 Q. What kind of car?

15 A. I couldn't tell you the make.

16 Q. Okay. Did you notice anything about the lighting
17 system in that car?

18 A. Yes, I did.

19 Q. What?

20 A. Persons -- first of all, persons that were in the
21 vehicle had been observed in the business itself
22 and were the same persons that I had taken the
23 still photos of. But as that car exited the lot
24 onto Lyndale Avenue, it stopped and then backed
25 up in the parking lot, made a left turn and went

1 out a different exit. When it backed up, I
2 noticed that the rear backup light on the right
3 side was not lit.

4 Q. Was the left backup light lit?

5 A. Yes.

6 Q. Was that consistent with what you believed you
7 observed on Camera 2, the footage we reviewed
8 just minutes ago?

9 A. Yes.

10 Q. The car on 25th Avenue?

11 A. Yes.

12 MR. STREITZ: If I can just have a
13 second, Your Honor?

14 THE COURT: You may.

15 MR. STREITZ: I have no further
16 questions at this time, perhaps counsel does.

17 THE COURT: Members of the jury, we're
18 actually going to take our 20-minute morning
19 break at this time because we have a technology
20 swap we have to do. So please remain in the jury
21 room area at the end of your break and you'll be
22 escorted back in the courtroom at that time. So
23 let's gather -- make sure we're back and ready to
24 go by, let's say 25 after. Thank you.

25 (Recess.)

1 THE COURT: Mr. Goetz.

2 **CROSS-EXAMINATION**

3 BY MR. GOETZ:

4 Q. Good morning, Mr. Johnson.

5 A. Good morning.

6 Q. I do have a few questions for you.

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

8 THE COURT: You may.

9 BY MR. GOETZ:

10 Q. Before we resumed in front of the jury I had a
11 chance to show you Exhibit 405. Would that
12 appear to be an accurate Google map of the
13 general location of the Seward Market?

14 A. Yes, it does.

15 MR. GOETZ: Offer 405, Your Honor.

16 MR. STREITZ: No objection.

17 THE COURT: 405 is received.

18 MR. GOETZ: Permission to publish, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. GOETZ:

22 Q. So just so we can orient, and you have the
23 diagram in front of you, but the Seward Market is
24 right there; correct?

25 A. Yes, that's correct.

1 Q. And the Camera 2 angle that we were looking at
2 would be down southbound on 25th Avenue South?

3 A. Yes.

4 Q. That would be Exhibit 102?

5 A. Yes.

6 Q. Okay. And across the street, we don't have this
7 yet, but across the street from the Seward Market
8 there is a church; is that right?

9 A. I couldn't say right now.

10 Q. You can't recall. All right. And that alleyway
11 is sort of just south of the Seward Market. Do
12 you recall whether it extends across the street
13 25th Avenue?

14 A. I'm not sure at this time if it does go all the
15 way across and down the other side.

16 Q. But at any rate, it's south of the Seward Market,
17 the alley?

18 A. Yes.

19 Q. With that as sort of our orientation, I want to
20 review with you just briefly Exhibit 102, kind of
21 switch places here. So I'm showing you Exhibit
22 102, does that appear to be the Camera 2 shot
23 that we talked about before?

24 A. Yes, it does.

25 Q. And we're looking southbound on 25th Avenue?

1 A. Correct.

2 Q. And if you look at the timestamp and those
3 headlights to the left, is this the vehicle that
4 then proceeds to make a U-turn?

5 A. I believe so. If you played it forward, we can
6 tell whether that is the exact one.

7 Q. Let's do that.

8 (Video played.)

9 MR. GOETZ: I'm going to pause it here.
10 Could I have permission to dim the lights so we
11 can perhaps see it a little better?

12 THE COURT: We can do that.

13 (Video played.)

14 BY MR. GOETZ:

15 Q. I pause it here again. Mr. Johnson, what you
16 believe might be the dome light coming on, I want
17 you to just flag that again for us, please.

18 A. There is a flash there, there is another flash
19 which could either be the dome light or could
20 have been the rear lights, also the brake lights
21 stepping on it.

22 Q. Pause it again now. Tell me when you first see
23 individuals walking northbound -- up to this
24 point have you seen any individuals walking
25 northbound from the area of the vehicle towards

1 the Seward Market?

2 A. No, not as yet.

3 Q. Okay. I'll resume the video.

4 A. There appears to be movement northbound at this
5 point.

6 Q. Okay. If you -- the pointer I left in front of
7 you, do you see that?

8 A. It's over here.

9 Q. Yeah. Can you look at the screen and just, the
10 large screen, and just circle those with the
11 pointer for me?

12 A. Right in this area, approximately now (pointing).

13 Q. So the first time we're able to pick up anybody
14 walking northbound, they're already on the
15 sidewalk on the west side of 25th Avenue walking
16 northbound?

17 A. From this particular video, yes.

18 Q. Okay. All right. I'll just resume it. I just
19 paused it now. They're paused by the alley
20 there?

21 A. It's hard to tell in your video, but it appears
22 that there are. If you'll play it forward, we
23 can tell a little better.

24 Q. Okay.

25 A. It would appear that they're stationary.

1 Q. And I'm going to pause it again to ask you this
2 question. Thinking back to our diagram, this
3 would be the alley just immediately to the south
4 of the Seward Market on the west side of 25th
5 Avenue; correct?

6 A. On the left side? It would be on the west side,
7 yes.

8 Q. That's what I said.

9 A. Yes.

10 (Video playing.)

11 A. And they appear out of camera range.

12 (Video playing.)

13 A. So someone appeared in the alley again going east
14 across the sidewalk and onto the street.

15 Q. I just paused that, they're sort of just at the
16 edge of the screen there, or even on your
17 monitor, if you can tell?

18 A. Well, they walk from that particular area here
19 out and out of sight over here (pointing).

20 Q. Okay. All right, sir. I resumed the video.

21 A. Someone is moving south on the sidewalk.

22 Q. Appears to be headed straight south?

23 A. Yes. And another person is moving south on the
24 sidewalk.

25 Q. Again straight south?

- 1 A. Yes. And there was a light flash over where that
2 vehicle had parked and someone went from what
3 appeared to be from the sidewalk towards the
4 vehicle just there, there was movement.
- 5 Q. And back it up just a little bit. Take us
6 through that again, please.
- 7 A. Okay. There is a person moving south on the
8 sidewalk. Now, another person is going south on
9 the sidewalk. Appears to be a light flash at the
10 vehicle or in that area.
- 11 Q. So I just stopped it, but is it true that that
12 flash around the area of the vehicle happens
13 while the second person is still headed
14 southbound on the sidewalk?
- 15 A. Yes. And now it appears that that particular
16 person moved west towards the street or east,
17 excuse me, towards the street. Another flash and
18 the lights come on the vehicle further down the
19 street.
- 20 Q. Okay. All right. Thank you. As I viewed the
21 video, and correct me if you saw something that I
22 did not, but you're not able to see people
23 getting into and out of the vehicle that makes
24 the U-turn, we don't have that clear of a view;
25 correct?

1 A. That's correct.

2 Q. Now, this camera itself is positioned outside the
3 store?

4 A. Yes.

5 Q. It's January, correct, January 6th?

6 A. Yes.

7 Q. Is it true that that camera actually sort of fogs
8 up at night?

9 A. Yes, it does.

10 Q. And that sort of provides some occlusion or makes
11 the image a little harder to view?

12 A. Yes.

13 Q. So from that camera angle we're not able to see
14 how many people are in the car after it stops;
15 correct?

16 A. That's correct.

17 Q. We're not able do see how many people get into or
18 out of the car; correct?

19 A. Correct.

20 Q. I want to ask you a last question about your
21 observation of the surveillance video from the
22 SuperAmerica store at 22nd and Lyndale, okay.
23 You looked at those videos; correct?

24 A. Yes, I did.

25 Q. You told us specifically about the taillights of

1 a vehicle that you observed leaving that
2 SuperAmerica?

3 A. It would have been the backup light.

4 Q. Backup light. Left one on, right one not on, the
5 backup light?

6 A. Correct.

7 Q. You did not mention anything about observing the
8 dome light go on or off. Is that because you
9 didn't see anything like that?

10 A. That's correct.

11 MR. GOETZ: Thank you, sir. I have no
12 further questions.

13 MR. STREITZ: May I have a second, Your
14 Honor?

15 THE COURT: Yes.

16 **REDIRECT EXAMINATION**

17 BY MR. STREITZ:

18 Q. Mr. Johnson, the two DVR systems which you got
19 footage from, do you know if those two DVR
20 systems were in sync with each other in terms of
21 the time?

22 A. Well, they were not.

23 Q. Okay. So the time on one system --

24 MR. GOETZ: Your Honor, objection,
25 scope, repetitious.

1 THE COURT: Overruled.

2 BY MR. STREITZ:

3 Q. So, for example, the time that we see on Camera 2
4 from the one system and the times that we see on
5 the footage from the other DVR system, they're
6 not in sync?

7 A. Correct.

8 MR. STREITZ: All right, sir. No
9 further questions.

10 MR. GOETZ: No questions.

11 THE COURT: Counsel approach.

12 (Discussion at the bench.)

13 THE COURT: Members of the jury, we have
14 a legal matter we have to discuss, so I'd ask
15 that you head to the jury room, or even the
16 hallway. Please don't leave the floor, however,
17 because this should be about ten minutes, no
18 longer, so I'd like you to stay fairly close.
19 Thank you.

20 (Jurors leave the courtroom.)

21 THE COURT: It was reported to the Court
22 at the break that one of the jurors, Mr. Conlon,
23 was seen speaking to this witness and so I have
24 advised counsel and we are now outside the
25 presence of the jury.

1 Mr. Johnson, do you recall having a
2 conversation at the break with a member of the
3 jury?

4 THE WITNESS: I don't know, a fellow
5 stopped and asked me what resolution was.

6 THE COURT: Okay. And was it a
7 gentleman in a white polo shirt?

8 THE WITNESS: I'd have to see him again,
9 I'm sorry.

10 THE COURT: All right. Let's --
11 assuming that was one of our jurors, could you
12 tell us the content of the conversation?

13 THE WITNESS: He just asked what would
14 be high resolution? All I said was normal
15 computer shows 72 dots per inch and
16 high-resolution could be 1,000 or more.

17 THE COURT: Okay. Did you know he was a
18 juror at the time?

19 THE WITNESS: No. When we broke, I
20 thought you said jurors were staying in the room
21 so I didn't expect any jurors out in the lobby.

22 THE COURT: I'm not implying any
23 misconduct on your part.

24 THE WITNESS: Okay.

25 THE COURT: Counsel approach.

1 (Discussion at the bench.)

2 THE COURT: Mr. Johnson, I'm going to
3 have you step down, and if you could have a seat
4 in the audience, we're going to pull the juror
5 up.

6 THE WITNESS: Okay.

7 MR. STREITZ: So we want Mr. Johnson
8 excused?

9 THE COURT: No. I'd like him to be able
10 to identify if that is the same person he talked
11 to.

12 (Juror Conlon enters courtroom.)

13 THE COURT: Mr. Conlon, I brought you
14 out because we had a concern that you may have
15 talked to one of the witnesses during the break.
16 Is that true?

17 JUROR CONLON: Oh, yes. Mr. Johnson.

18 THE COURT: Yes.

19 JUROR CONLON: I asked him what was high
20 resolution in terms of a copy machine.

21 THE COURT: Okay. And did he give you
22 an answer?

23 JUROR CONLON: Well, it was vague but,
24 yes.

25 THE COURT: Okay. Did you share the

1 information he gave you with any of the other
2 jurors?

3 JUROR CONLON: No.

4 THE COURT: At this point I would ask
5 you to not share that with any of the other
6 jurors at this point since it was outside the
7 normal course of the proceedings.

8 JUROR CONLON: I see.

9 THE COURT: And you can have a seat back
10 in the jury room. Thank you.

11 MR. GOETZ: Your Honor, may I make also
12 make a request that he not also share anything
13 what we just talked about here.

14 THE COURT: Yes.

15 JUROR CONLON: I understand. I
16 apologize.

17 THE COURT: You can have a seat back in
18 there.

19 (Juror leaves courtroom.)

20 THE COURT: Counsel approach.

21 (Discussion at the bench.)

22 THE COURT: Mr. Goetz.

23 MR. GOETZ: Your Honor, I'm making a
24 motion that Mr. Conlon be excused from this jury
25 given his failure to follow the Court's order in

1 this instance, also possibly in prior instances.

2 THE COURT: All right. I would note for
3 the record that Mr. Conlon did come into the
4 court before the jury was summoned back in to
5 retrieve an item he left overnight. The
6 defendant was not present, he had not been
7 brought up from holding yet. Nevertheless, it
8 was also a violation of the Court's order.

9 Any objection from the State or any
10 record from the State?

11 MR. STREITZ: No, Your Honor.

12 THE COURT: All right. Let's bring Mr.
13 Conlon back out, I'll advise him to go to the
14 jury room. He's being excused from this jury and
15 he's not to discuss anything from this case with
16 anyone.

17 MR. STREITZ: Your Honor, did you ask
18 him whether or not he had shared anything with
19 the --

20 THE COURT: He did, and he said he did
21 not, okay.

22 (Juror enters courtroom.)

23 THE COURT: Mr. Conlon, I'm going to
24 have to excuse you from this jury because you've
25 obtained information outside the normal course of

1 the proceedings. So I'm going to ask you to go
2 back to the jury room for further instructions.
3 You may be released from all your jury service
4 but I'm not sure if they have any other cases
5 that you need to sit on. If you can gather your
6 items and head downstairs, we'd appreciate that.
7 Thank you, sir. And you can leave the notes
8 here. I would advise you, sir, not to share
9 anything you've heard from the hearing since the
10 break with anybody from the jury or anybody else
11 for that matter. Thank you.

12 JUROR CONLON: Okay.

13 THE COURT: Mr. Conlon, do you have
14 anything back there?

15 JUROR CONLON: A jacket.

16 THE COURT: If you could retrieve that
17 and not speak with the other jurors.

18 MR. STREITZ: Can he retrieve that after
19 the other jurors have come back in?

20 THE COURT: He can go back. He's not
21 going to say anything.

22 All right. Mr. Conlon, thank you.

23 JUROR CONLON: Why don't you come with
24 me.

25 THE CLERK: Okay.

1 THE COURT: Okay. Let's bring the
2 jurors back in.

3 (Jurors enter the courtroom.)

4 THE COURT: Members of the jury, Mr.
5 Conlon has been excused from the jury for reasons
6 you don't need to know. But it is important that
7 you not discuss the case with him or the reasons
8 why he was excused, so if you see him around the
9 government center, please keep that warning in
10 mind.

11 We're ready to proceed.

12 MR. WEBER: State calls Peter Fleck.

13 THE COURT: Mr. Fleck, let's have you
14 start by coming in front of the bench.

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

18 THE COURT: Have a seat in the witness
19 chair. Before you begin, give us your full name
20 spelling each of your names.

21 THE WITNESS: Peter Michael Fleck;
22 P-e-t-e-r, M-i-c-h-a-e-l, F-l-e-c-k.

23 THE COURT: Mr. Weber.

24 MR. WEBER: Thank you, Your Honor.

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DIRECT EXAMINATION

BY MR. WEBER:

Q. Good morning, Mr. Fleck.

A. Good morning.

Q. Can you tell us in what neighborhood you live?

A. The Seward neighborhood in Minneapolis.

Q. Are you familiar with the Seward Market?

A. Yes. It's on the corner near my house.

Q. And were you living in the same area on January 6, 2010?

A. Yes.

MR. WEBER: Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. WEBER:

Q. Mr. Fleck, I'm showing you what's been marked for identification as Exhibit No. 291. Can you tell me what you see in this Exhibit?

A. I see an aerial photo of the block where I live along with the Seward Market on Franklin Avenue.

Q. Okay. And is this a fair and accurate depiction of the area in which you live?

A. Yes.

Q. And do you know, is this facing north?

A. Yes. The north is at the top of the photo, yes.

1 MR. WEBER: I would offer 291.

2 MR. GOETZ: No objection.

3 THE COURT: 291 is received.

4 MR. WEBER: May I publish?

5 THE COURT: You may.

6 BY MR. WEBER:

7 Q. Mr. Fleck, this is the map I just showed you?

8 A. Yes.

9 Q. Now, can you tell us the -- and there is a laser
10 pointer right in front of you -- if you don't
11 mind, would you point out approximately where you
12 live in relation to the Seward Market?

13 A. Yes, I live right there (pointing).

14 Q. And you're indicating about the middle of the
15 block of 24th Avenue South between East Franklin
16 and 22nd Street; is that right?

17 A. Yes.

18 Q. Now, do you specifically recall the night of
19 January 6, 2010?

20 A. Yes.

21 Q. And do you recall what you were doing around the
22 7:30, 7:45 that evening?

23 A. Yes, I was on my way to the Seward Co-op on 29th
24 Avenue and Franklin Avenue to have some dinner
25 and walking down the -- I generally take the

1 alleys down to the Co-op.

2 Q. Do you recall what the weather was like that day?

3 A. Not specifically, I mean, it was winter, it was
4 cold. I had my Sorels on, so it was probably
5 fairly cold.

6 Q. Were you carrying anything?

7 A. Yeah, I was -- I have a bicycle messenger bag
8 that I carry my computer in and I had that on my
9 back along with other junk inside there.

10 Q. Will you show us the general, using the laser
11 pointer, the general path you take when you go to
12 the Seward Co-op?

13 A. Yes. From this alley I proceed north on the
14 alley and then east behind the Seward Market and
15 then cross 23rd Avenue here -- or 25th Avenue
16 here and then proceed onward to the Co-op.

17 Q. And you've indicated the alley between 24th and
18 25th Avenue South; is that right?

19 A. Yes, right here (pointing).

20 Q. And as you indicated, you generally cross 25th
21 Avenue South and proceed behind the church which
22 is labeled 2511 East Franklin on our map; is that
23 right?

24 A. Yes.

25 Q. Now, do you recall something happening on January

1 6, 2010 that caught your attention?

2 A. Yes. As I was proceeding toward 25th Avenue,
3 somewhere back in here, I heard a loud sound and
4 it was an odd sound, I wasn't sure what it was,
5 and as I got closer to 25th, I thought it could
6 be a gunshot. And when I reached the sidewalk
7 here (pointing), I saw someone approaching me,
8 maybe jogging down the sidewalk towards me and
9 I -- then I thought this probably was a gunshot
10 and I didn't want to wait there to see if that
11 person had a gun. So I then ran across the
12 street and around the church back to Franklin
13 Avenue so I could go back and see if something
14 had happened at the Seward Market.

15 Q. If you will, I just want to take you through what
16 you just talked about.

17 A. Sure.

18 Q. Will you point out for the jury where you were
19 when you heard that noise that you thought may be
20 a gunshot?

21 A. I would say I was probably right about here just
22 coming up to the -- this is the parking lot
23 behind Seward Market, so just approaching, so
24 right in that area (pointing).

25 Q. So you're indicating basically right behind the

1 southwest corner of the store; is that fair?

2 A. Yes, yes.

3 Q. And where was it that you turned to your left and
4 looked north on 25th or --

5 A. Well, right here -- as soon as I got out from
6 behind the store to the sidewalk, I looked up to
7 see if anything was going on the corner
8 (pointing).

9 Q. And you said you saw an individual?

10 A. Yes. And he was running towards me, jogging
11 towards me, he wasn't moving very fast -- and,
12 yes.

13 Q. Will you show us on the map, if you can, where
14 that was?

15 A. He would have been proceeding right here
16 (pointing) coming towards me.

17 Q. And do you recall at all what the individual
18 looked like?

19 A. There is no -- there is no lighting along here.
20 There wasn't any lighting turned on that
21 evening -- I think they have lights there now --
22 so it was very dark and the person was dressed
23 in very dark clothing, so outside of the general
24 idea of height and the size of the person, I
25 don't have any other recollection of what they

1 looked like.

2 Q. What is your recollection as to the person's
3 height?

4 A. In the area of 5 foot 6 inches. Everything else
5 was very, very dark on them.

6 Q. And were you able to tell what they were wearing
7 in terms of outer clothing or jacket or anything
8 like that?

9 A. Not specifically, but probably a winter jacket is
10 what I would have guessed. I wondered if they
11 had a hood on, I wasn't sure about that.

12 Q. Now, if you will again, show us where you crossed
13 25th Avenue South and went behind the church.

14 A. So I would have crossed right here and then
15 proceeded along here and then through this
16 parking lot (pointing).

17 Q. That parking lot is just to the east of the
18 church?

19 A. Yes.

20 Q. And then you came back west on Franklin; is that
21 right?

22 A. Yes. I moved towards this way and saw some other
23 people approaching from this side of the avenue
24 (indicating). Do you want me to continue with --

25 Q. Where did you go back west on Franklin?

1 A. Because I looked to see if there was anybody
2 around the store and then I wanted to go back to
3 see what had happened or try to figure out what
4 to do and if I should maybe call in the police or
5 what was going on.

6 Q. And how long do you think that took you from the
7 time you crossed the street to the time you
8 doubled back?

9 A. Probably less than, probably less than a minute,
10 two minutes maybe to come here. I wasn't
11 running, I was just moving along the sidewalk
12 here at that point (indicating). And just kind
13 of looking to see what was going on at the Seward
14 Market then.

15 Q. And what did you see what was going on at the
16 Seward Market?

17 A. At that point there was no one and no individuals
18 near the market itself. There were two men
19 approaching from the west towards the market.

20 Q. What did you do?

21 A. I was moving towards this -- the market slowly.
22 These two guys went past the market and then came
23 across the street towards me and told me there
24 were bodies in the doorway.

25 Q. And are you indicating when you had this

1 conversation you were at 25th Avenue South and
2 East Franklin on the southwest corner?

3 A. No, we were the southeast corner. We would be
4 right here, right on the corner by the church
5 (indicating).

6 Q. And did you cross back over to the west side of
7 25th?

8 A. Yes. Their cell phones were dead so they -- I
9 started dialling 911 as I crossed the street.

10 Q. What did you see, if anything, in the Seward
11 Market?

12 A. As I moved across the street and came to the
13 doorway, there were three bodies in the door and
14 kind of in the doorway, still inside the store
15 but right near the doorway. And there were some
16 individuals in the back of the store, a couple of
17 people moving around in the back of the store.

18 Q. In terms of the bodies that you saw, did you see
19 any signs of life?

20 A. I didn't get close enough to see that, I was on
21 the phone with 911. One of the men that were
22 with me said that he thought one of them was
23 still alive but he didn't, I mean, he was looking
24 through the doorway, he thought maybe the guy was
25 still breathing.

1 Q. How far do you estimate you were from the front
2 door of the store?

3 A. The doorway is set back into a little corner
4 piece there so we were probably six feet away,
5 five or six feet away from the actual doorway.

6 Q. And you said you dialed 911 from your cell phone?

7 A. Yes.

8 Q. And do you recall doing that?

9 A. Yes.

10 MR. WEBER: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. WEBER:

13 Q. I'm showing you a compact disk which is marked
14 Exhibit 122.

15 A. Uh-huh.

16 Q. Do you recognize this disk?

17 A. Yes, I do.

18 Q. And there are the initials PF on there. Are
19 those your initials?

20 A. Yes, those are my initials.

21 Q. You came into my office a couple of weeks ago and
22 listened to this disk; is that right?

23 A. Yes, I did.

24 Q. And this contained the 911 call you made January
25 6; is that right?

1 A. Yes.

2 Q. Did this fairly and accurately depict the call as
3 you remember it?

4 A. Yes.

5 MR. WEBER: Your Honor, I would offer
6 Exhibit 122.

7 THE COURT: Any objection?

8 MR. GOETZ: No objection.

9 MR. WEBER: Ask to publish?

10 THE COURT: You may.

11 Members of the jury, in addition to
12 hearing the 911 tape or call, transcript will be
13 provided on the screen. The transcript is
14 provided merely as an aid to you on reviewing the
15 statement. Every effort has been made to ensure
16 that the transcript is accurate. However, you
17 should rely on what you believe you hear on the
18 tape and see -- or rather just hear in the tape,
19 even if it differs from the transcript that is
20 actually projected so rely on what you hear, not
21 what you see.

22 Mr. Weber.

23 (Audiotape played.)

24 MR. WEBER: I'm going to start it over,
25 sorry.

1 (Audiotape played.)

2 BY MR. WEBER:

3 Q. Mr. Fleck, it appeared from the audio that you
4 were talking with some other people that -- other
5 than the 911 operator; is that what you recall?

6 A. Yes.

7 Q. Who were those other people?

8 A. They were two visitors to Minneapolis, my memory
9 is that they said they were from Alabama, but I'm
10 not sure, for a conference, so I don't know their
11 names.

12 Q. Were those the two people you testified about
13 that were walking the opposite direction as you
14 were?

15 A. Yes, they crossed -- they saw the --they walked
16 in front of the market before I did.

17 Q. Did you go into the store?

18 A. No.

19 Q. Did you notice whether the other two men went
20 into the store?

21 A. No. My memory is that they -- that one of them
22 moved as close as he could to look inside, that's
23 when he saw the third person down.

24 MR. WEBER: Can I have one moment, Your
25 Honor?

1 (State's counsel confer.)

2 BY MR. WEBER:

3 Q. I'm going to put up on the screen Exhibit 92,
4 which has previously been received and is a
5 sketch of the Seward Market. Will you indicate
6 for us using that laser pointer where you were
7 standing when you made the 911 call in relation
8 to the store?

9 A. Okay. I would have been -- I started calling as
10 I crossed the street, and then I was standing
11 pretty much right here (pointing).

12 Q. So you are right in front of the door where there
13 is a green notation, looks like C6; is that fair?

14 A. Yeah, I can't quite see the notation, but, yeah,
15 this is the door right here, it's at an angle,
16 and I was right here (pointing).

17 Q. And then taking you back to when you first
18 passed, or first hit the sidewalk after you heard
19 the shot and you looked north and saw an
20 individual, where was that individual when you
21 initially saw him?

22 A. They would have been maybe here when I first saw
23 them (pointing).

24 Q. And will you show us again where you were?

25 A. I would have been -- this is the length of the

1 store, correct, and this is the alley?

2 Q. Yes.

3 A. Yeah, I would have been right here (pointing).

4 Q. And you -- so you're indicating at the bottom of
5 the diagram there?

6 A. Yes.

7 Q. And you saw the individual where?

8 A. He was -- I initially saw, he would have been
9 right here and then moving towards me (pointing).

10 Q. And at what point did you cross the street?

11 A. Pretty quickly after I saw him coming towards me
12 I started to run across the street.

13 Q. And after you did so, did you look back at all?

14 A. Yes. I did take a look back behind me and didn't
15 see anyone.

16 Q. When you came back around and crossed 25th Street
17 the second time, did you see anybody down 25th
18 Street, 25th Avenue?

19 A. No, I didn't.

20 MR. WEBER: Thank you. I don't have any
21 further questions, perhaps defense counsel does.

22 MR. GOETZ: Defense counsel does. Just
23 a few, though.

24

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CROSS-EXAMINATION

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BY MR. GOETZ:

Q. Good morning, Mr. Fleck. I'm Fred Goetz. We haven't met before.

A. Good morning.

Q. I'm defense counsel. I want to refer back to the exhibit that you were just discussing with Mr. Weber.

MR. GOETZ: May I approach Your Honor?

THE COURT: You may.

BY MR. GOETZ:

Q. So if I understand your testimony, you were here walking eastbound; correct?

A. Yes.

Q. When you see someone at the top just coming out the store?

A. Yes.

Q. Okay. When you make that observation, are you moving, are you walking?

A. Yes.

Q. At any time do you stop walking, and to be precise, as you're crossing the sidewalk do you recall at any time stopping walking in this area just sort of as the sidewalk is just to the south of the Seward Market?

1 A. I don't recall.

2 Q. Okay. As you're walking this direction, correct
3 me if I'm wrong, but your testimony is you
4 continued to head eastbound?

5 A. Yes.

6 Q. As you're walking eastbound you're getting
7 obviously farther and farther away from the
8 Seward Market?

9 A. Yeah.

10 Q. And did you pick up the pace a little bit?

11 A. Yes. I started to run as well as I could in
12 Sorel boots.

13 Q. Okay. I've tried that before. Then you cross
14 the street and the alley continues on the other
15 side; correct?

16 A. Yes.

17 Q. And you're still sort of looking back to see what
18 is happening at the Seward Market; correct?

19 A. No. I took one glance back to see if anyone was
20 coming after me.

21 Q. Okay. But the person that you saw coming out of
22 the market, they continued to head southbound; is
23 that right?

24 A. They -- I don't know, that's my assumption
25 because when I turned around I saw no one --

1 could recall seeing no one in the alley going
2 westbound.

3 Q. And that's when you told the 911 operators that
4 you thought the person was going southbound on
5 25th Avenue, right?

6 A. Yes.

7 Q. And then when you got across 25th Avenue in the
8 alley behind the church, you kept running;
9 correct?

10 A. Yeah, yes. I ran to the parking lot and then up
11 to Franklin Avenue.

12 Q. You went north, got to Franklin and then cut back
13 west?

14 A. Yes.

15 Q. As you're in the alley to the south of the
16 church, you never stopped, did you?

17 A. Not there as I recall, no.

18 Q. You didn't go up to the church and try to open
19 any doors or anything like that?

20 A. Oh, no, no. I just felt it would be better to
21 make my way to Franklin Avenue rather than stay
22 in the alley at that point.

23 Q. Okay. It's fair to say, is it not, that your
24 observation of the person coming towards you
25 southbound on 25th Avenue was rather fleeing?

1 A. Yes.

2 Q. You said in the general area of 5'6" as an
3 estimate, but that is just an estimate; correct?

4 A. Yes.

5 Q. As you -- I'm jumping a little different point in
6 the timeframe, but as you're walking eastbound in
7 the alley before -- behind the Seward Market --

8 A. Yes.

9 Q. Okay.

10 A. Yes.

11 Q. Before you come out on the sidewalk, are you sort
12 of looking, walking down the alley, you're sort
13 of looking in front of you?

14 A. No. I had heard something that I thought to be a
15 shot, so I immediately was looking to my left.

16 Q. Your senses were heightened?

17 A. Yes.

18 Q. Just sort of animal response?

19 A. Yes.

20 Q. Did you see anybody run in front of you on the
21 sidewalk before you reached the sidewalk to the
22 east of the Seward Market?

23 A. No.

24 Q. At any time did you see a second person running
25 southbound from the Seward Market behind the

1 first person?

2 A. No.

3 Q. How far, the person that you did see running
4 southbound from the Seward Market, how far did
5 they get southbound on 25th that you can last
6 recall?

7 A. I would -- I would recall, or I think almost to
8 the end of the building where the parking lot is,
9 getting -- approaching that, or at least midway
10 down the side of the building.

11 Q. Did you ever see that person change direction at
12 all?

13 A. No.

14 Q. You told the 911 operator, as we heard, that you
15 thought there might be two people involved?

16 A. Yes.

17 Q. You also said you saw some people running. Did
18 you have a sense that there were two people?

19 A. I -- I had a sense that there were somebody else
20 near the doorway as that person was coming
21 towards me, but I -- that -- I didn't stand there
22 to try to figure it out. I just got moving. But
23 there was a sense that maybe this was another
24 person back by the doorway.

25 Q. But you never saw that person running?

1 A. No.

2 Q. Lastly, the I want to get back to the description
3 as best as you can recall of the person that you
4 saw running.

5 A. Yes.

6 Q. Now, we are here on September 13, 2011, some 18,
7 19 months after the incident; correct?

8 A. Yes.

9 Q. You remember talking to a police officer at the
10 scene; correct?

11 A. Yes.

12 Q. When things were fresher in your mind than they
13 are today?

14 A. Yes.

15 Q. In the course of preparing to testify you met
16 with Mr. Weber from the prosecutor's office?

17 A. Yes.

18 Q. You reviewed a number of documents with him?

19 A. Yes.

20 Q. Did you review a summary of the officer's report
21 of your statement at the scene?

22 A. Yes.

23 Q. Do you recall telling the officer at the scene,
24 because he asked for a description of the person
25 that you saw running, right?

1 A. Yes.

2 Q. Do you recall telling the person, that's the
3 officer at the scene, you described the person as
4 being approximately 5'6" wearing all dark colored
5 clothing and possibly a dark colored hat?

6 A. Yes.

7 Q. Do you recall saying that?

8 A. Yes.

9 Q. You did not see the person or recall seeing the
10 person wearing a bright red hat, did you?

11 A. No.

12 MR. GOETZ: Thank you. That's all the
13 questions I have.

14 THE COURT: Mr. Weber.

15 **REDIRECT EXAMINATION**

16 BY MR. WEBER:

17 Q. Mr. Fleck, you had testified earlier when I spoke
18 with you that it was pretty dark outside, was
19 that what you said?

20 A. Yes.

21 Q. And what was your emotion when you heard that
22 shot and saw the figure coming towards you?

23 A. Well, the first thing was trying to figure out
24 what the sound was, and then as I got to the
25 sidewalk thinking it might have been shots and

1 saw the person running, I was in fear.

2 Q. And when you said when you crossed the street and
3 looked back, you did so for what reason?

4 A. To see if anyone was following me or chasing me.

5 Q. And was anyone?

6 A. No.

7 Q. What was your next reaction then?

8 A. To get to the Franklin Avenue, to get out of the
9 alley and up to Franklin Avenue. And I felt
10 safer, you know, so.

11 MR. WEBER: Nothing further, thank you.

12 THE COURT: Anything further?

13 MR. GOETZ: Nothing, Your Honor.

14 THE COURT: Mr. Fleck, you may step
15 down. Thank you.

16 (Witness leaves the stand.)

17 State may call its next witness.

18 MR. STREITZ: If I can just check, Your
19 Honor.

20 We call Basha Salah, please.

21 BASHA SALAH,

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

24 THE COURT: Have a seat.

25 Counsel approach.

1 (Discussion at the bench.)

2 THE COURT: Sir, before you begin, give
3 us your full name and spell each of your names.

4 THE WITNESS: My name is Basha Salah,
5 B-a-s-h-a, S-a-l-a-h.

6 MR. GOETZ: Your Honor, I'm sorry, may
7 we approach again?

8 THE COURT: You may.

9 (Discussion at the bench.)

10 THE COURT: Mr. Streitz.

11 **DIRECT EXAMINATION**

12 BY MR. STREITZ:

13 Q. Good morning, sir.

14 A. Morning.

15 Q. How are you?

16 A. Fine. Thank you.

17 Q. Sir, do you live in the metropolitan area?

18 A. Yes, I do.

19 Q. What do you do for a living?

20 A. I work at the Fairview University, and I work in
21 the -- I'm a financial rep.

22 Q. Okay. And are you originally from the United
23 States?

24 A. I'm from Ethiopia.

25 Q. How long have you been here?

1 A. Close to eight years, yes.

2 Q. Did you know an individual by the name of Anwar
3 Mohammed?

4 A. Yes, I do. He's my cousin.

5 Q. And how long had you known Mr. Mohammed?

6 A. I've known him from birth. I'm older than him
7 and he's much younger than I, so I know him from
8 childhood.

9 Q. He died. He was killed on January 6, 2010.

10 A. Yes, unfortunately.

11 Q. How old was he?

12 A. He was 30, 31.

13 Q. And from what country was he from?

14 A. From the same town, the same country, Ethiopia.

15 Q. How long had --

16 A. Close to ten years.

17 Q. And what did Anwar Mohammed do for a living?

18 A. He worked as parking attendant at the Target
19 Center in downtown.

20 Q. Downtown here?

21 A. Downtown here, yes.

22 Q. How long had he been working there?

23 A. He been working for many years, that's the only
24 place that he works for a long time since he came
25 here, so maybe six, seven years.

1 MR. STREITZ: May I approach, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. STREITZ:

5 Q. Showing you what I marked as Exhibit 17, do you
6 recognize this, sir?

7 A. Yes.

8 Q. And what is --

9 A. That's Anwar Mohammed.

10 Q. And do you know when this was taken by chance or
11 not?

12 A. Not exactly but about five, six years ago.

13 MR. STREITZ: Your Honor, State would
14 offer into evidence Exhibit 17.

15 THE COURT: Any objection?

16 MR. GOETZ: No objection to Exhibit 17.

17 THE COURT: 17 is received.

18 BY MR. STREITZ:

19 Q. Did Mr. Mohammed have a family of his own here?

20 A. Yes.

21 Q. And was he married?

22 A. He was newlywed actually. He got married and he
23 was in the process of bringing his wife over and
24 unfortunately he didn't get to see that day.

25 Q. Where was he living or going to be living with

1 his wife?

2 A. Well, he already in the process, his wife was
3 about to come. She got done with all the
4 paperwork, all the process, and she was about to
5 come. And he got an apartment for her for
6 themselves. He actually paid the deposit and he
7 was shopping for furniture and things that he
8 needed when she was about to come. She was just
9 close to come here at that time. And he was
10 looking forward to that and he was a hardworking
11 person that he got to that level, to that, you
12 know, to that level. So he unfortunately he
13 didn't get to see that day come because --

14 Q. What did he do enjoy doing when he wasn't
15 working?

16 A. Well, he -- he's a family guy. He stayed closely
17 with his mother and grandmother live here. He
18 was most assistant to them when he's not working
19 because they're elderly. His grandmother is in
20 90s and her mom was older, so he always tried to,
21 he does the shopping and a lot of things for them
22 so he always tried to stay closer to them.

23 Q. Do you know if he frequented the Seward Market on
24 Franklin Avenue?

25 A. Well, the Seward Market is closer to where his

1 building, the apartment building that his
2 grandmother lived. So, like I said, he likes to
3 visit her on a daily basis and most of the time
4 his mother live in different, it's within half a
5 mile, but they spend a lot of time with their
6 grandmother, so -- and that store was closer to
7 that building so he frequently, I don't know that
8 frequent, but he gets the stuff for them from
9 there and he -- also there is a calling card that
10 frequently we call back home so we get cards from
11 there so probably for different reasons that he
12 stops by there, yeah.

13 MR. STREITZ: Thank you, sir. I don't
14 have any further questions, perhaps counsel does.

15 THE COURT: Mr. Goetz.

16 MR. GOETZ: I do not.

17 THE COURT: Thank you sir. You are
18 excused.

19 MR. STREITZ: Thank you, sir. Careful
20 of the step there.

21 (Witness leaves the stand.)

22 MR. STREITZ: We call Jamal Hassan.

23 THE COURT: Okay.
24
25

1 JAMAL HASSAN,
2 called as a witness on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:

4 THE COURT: Have a seat.

5 Before you begin, give us your full
6 name, spelling each of your names.

7 THE WITNESS: My name is Jamal Hassan,
8 J-a-m-a-l; last name H-a-s-s-a-n.

9 THE COURT: Okay. Mr. Streit.

10 **DIRECT EXAMINATION**

11 BY MR. STREITZ:

12 Q. Sir, would you care for water while you're
13 testifying?

14 A. Sure.

15 Q. Let me get you a fresh cup there. If you want
16 more, just go ahead and help yourself. There you
17 go. Sir, do you work in the metropolitan area?

18 A. Yes, I do.

19 Q. What line of work are you in?

20 A. I'm the general manager of Seward Market, and I
21 also work for a different company, I'm director
22 for a transportation company.

23 Q. And are you from Somalia?

24 A. Yes, I have.

25 Q. How long have you been in the United States?

1 A. I came here in 1994, so probably 17, 18 years.

2 Q. Okay. Is there anyone else who is connected to
3 the Seward Market that's like an owner or
4 manager?

5 A. Yes.

6 Q. Who?

7 A. Faysal Warfa.

8 Q. And your relationship to him?

9 A. He's my distant cousin -- uncle, sorry.

10 Q. And is Mr. Warfa also from Somalia?

11 A. Yes, he is.

12 Q. And specifically we're talking about the Seward
13 Halal Meat Market and Halal Meat Store that's on
14 2431 East Franklin Avenue?

15 A. Yes.

16 Q. Back on January 6, 2010, tragic things happened
17 that you're aware of, obviously.

18 A. Yes.

19 Q. Had you been at the store that day or evening?

20 A. I was.

21 Q. When were you at the store?

22 A. My office is in the second floor in the same
23 building, and my normal hours were 9 a.m. to 6 or
24 7 p.m. at night. So I was second floor upstairs
25 most of the day, I came down to the store to

1 check something out, get something, water or
2 something and go back upstairs. So at that time,
3 I believe at around 7:20 is when me and Faysal
4 Warfa were both coming down from second floor.
5 And we came down to the store to say good-bye
6 because we were done for the --

7 Q. Do you need a second, sir, that's fine.

8 A. Because we were done for the night so we came
9 down and met Mr. Elmi, who was in the store at
10 that time.

11 Q. Is that Osman Elmi?

12 A. Osman Elmi, yes.

13 Q. He was the -- was he the only employee working at
14 that time?

15 A. No. He was -- there was someone else working
16 with him.

17 Q. And who is that?

18 A. Youb Ala.

19 Q. And who was Youb Ala?

20 A. He was a gentleman who came around. He was a
21 neighbor of the Seward Market and he came there
22 to help out especially in the evening time.

23 Q. Okay. What are the normal store hours for the
24 market? You've already told us for your business
25 that was on the second floor. But how about the

1 market itself?

2 A. The market, the winter time it's 8 to 9, and then
3 in the summertime we're open 9 -- 8 to 10.

4 Q. How many doors are there to the market?

5 A. Two doors.

6 Q. Two doors?

7 A. Yes.

8 Q. And can you describe where those doors are?

9 A. The main door is on Franklin Avenue facing north,
10 I believe facing north. And the other one is on
11 25th Avenue facing east.

12 Q. Are both of those doors open during normal hours?

13 A. The main door is mainly open, but the other one
14 is the employees use to take the garbage out.
15 It's not always open, no.

16 Q. So other than taking garbage out, it would be
17 locked?

18 A. It would be locked, yeah.

19 Q. And --

20 A. But you can open it from inside. If you're
21 inside -- you can't get in from outside, but if
22 you're inside, you can get out from there.

23 Q. Okay. When you and Mr. Warfa went downstairs to
24 talk to Osman Elmi, do you recall if there were
25 customers in the store or not at that time?

1 A. At that time, no.

2 Q. Okay. Do you recall -- in order to get from your
3 store and into the market, do you have to go
4 outside for a brief -- for a short period of --
5 for a short distance?

6 A. Yes. You came down from the stairs and there is
7 a door on the same side of the store door, that
8 is about 20 -- 20 to something away from it, you
9 get out of that door, and then you come outside
10 and then you can get into the store.

11 Q. So the door to the upstairs business is on
12 Franklin?

13 A. Yes, it is on Franklin.

14 Q. A short distance from the main entrance?

15 A. Yes, yes.

16 Q. Did you happen to note if there were people out
17 and about either driving or walking in the area?

18 A. Yeah, there were people driving. I mean,
19 Franklin is always busy street. The people
20 walking, always people driving around.

21 Q. Okay. When you and Mr. Warfa went downstairs,
22 what did you do then?

23 A. We came to inside the store, and I personally
24 started joking with Mr. Osman Elmi. He was on
25 the phone at that time talking to Mr. Warfa's

1 daughter and they were talking about going to
2 Nyrobi, Kenya. And I was telling like, you still
3 talking about this? And he said, I'm about to
4 get a ticket to go see my mom and probably get
5 married. And I was joking about it and I said,
6 you've been saying this for so long. He told me
7 that this time he's going there for sure.

8 Q. Did you and Mr. Warfa then leave the market?

9 A. Yeah. We stand there about five or ten minutes,
10 I'm not sure. Mr. Warfa also talked to him, and
11 then we left and we took my car together because
12 Mr. Warfa didn't have a car at that time, his car
13 was in the shop, I think.

14 Q. Where were you and Mr. Warfa going?

15 A. I took him to check his car at the shop, I
16 believe on down in Hennepin, 35 North and
17 Hennepin Avenue. We stopped there for about five
18 minutes. The car was not ready. I took him back
19 to his house down on 24 and Park Avenue.

20 Q. And then what did you do, sir?

21 A. Then I left. I went home.

22 Q. And do you live in the Minneapolis area?

23 A. No, I live in Burnsville.

24 Q. Did you get home that night?

25 A. No, I did not.

1 Q. Why?

2 A. I was on 35W South towards my home and about 7:40
3 something, I'm not sure 7:50, I got a call from
4 one of the employees called me and he said the
5 boys are dead, and he jokes a lot, so I hang up
6 the phone, I said, stop playing. Then he called
7 me again and he said there was something at the
8 store, he said he got a call from Youb and
9 someone is dead. And I said, please stop
10 playing, I'm going home, I'm tired. And then the
11 second time I call him back and I said, what is
12 going on? He say, the boys are dead. And I
13 said, what are you talking about? He said
14 somebody get into the store and he killed
15 everybody. So I get off the exit and turn back
16 and took 35 North, came back to the store.

17 Q. And when you got back to the store, were the
18 police officers there?

19 A. Yes. The whole scene was the police officers,
20 ambulance, everything was sealed and I couldn't
21 even get in.

22 Q. So you tried to get into the store to see what
23 happened?

24 A. Yes. I parked on the Franklin and 26th, I guess.
25 I get off -- I took 35 and to 94 and I get off

1 from 25th Avenue. I went -- I turned right, I
2 get on 26th, I turn right on Franklin, that's as
3 far as I could go. I park my car there. I tried
4 to walk. I couldn't go on Franklin. I go to
5 alleyway and came behind the church, came the
6 back of the store. It was sealed and I believe
7 there was two officers, a female officer, and I
8 tried to explain myself and I said, I'm the store
9 manager, I need to know what is going on. She
10 said, some people got shot. You can't go inside.

11 Q. Did you shortly thereafter learn who had been
12 shot?

13 A. I learned who was in the store, but I was not
14 sure if they were dead or shot or anything.
15 Because at that time I was forcing myself not to
16 believe that someone got killed in there.

17 Q. Who did you learn was in the store?

18 A. I knew Mr. Elmi was there when I left, and then I
19 was told Mr. Abdi -- Mohamed Abdi Warfa, also
20 distant uncle and brother and cousin of Mr. Warfa
21 was also there, so I learned these two, that they
22 were in there at that time.

23 Q. Did the police -- was Mr. -- was Faysal Warfa,
24 had he returned to the store?

25 A. I was told that he was in front, that -- if I

1 remember, the police officer told me that the
2 owner is in front of Franklin, so then I assumed
3 that was him.

4 Q. And is there surveillance equipment in the
5 market?

6 A. Yes, there is.

7 Q. And police wanted access to that?

8 A. Yes.

9 Q. And they were provided access to that?

10 A. I mean, I was not asked about it because I
11 couldn't get into the store, so I'm assuming that
12 they did get access to it.

13 Q. Okay. Your -- the business is on the second
14 floor, had that been locked for the evening?

15 A. Yes, I did lock it.

16 Q. Okay. This happened on January 6th, towards the
17 beginning of the month. Does -- did the market
18 have more money in the market any particular time
19 of the month more than other times of the month?

20 A. Yes. The beginning of the month, starting first
21 of the month until the 10th of every month,
22 that's the busiest time of the store.

23 Q. Why is that?

24 A. Number one, it's a payday, everybody gets paid,
25 and a lot of people do come there to send money

1 back home. That's when most of the people send
2 their monthly bills to their loved ones, they
3 send fees back home. So not only the store, but
4 the store had a money wiring business there too,
5 so both of them were actually busy and during
6 that time it's the busiest time of the month.

7 Q. Okay. Well, you kind of jumped to the next thing
8 I was going to talk to you about. Can you
9 explain to us exactly what type of business the
10 market does, you know?

11 A. The market has a grocery store where it sells a
12 lot of grocery stuff and mainly a lot of meat,
13 which a lot of the Muslim community prefer to buy
14 from there. The market also has money transfer
15 business that is also in there that sends money
16 all over the world, especially East Africa, where
17 most of the people who shop there are from.

18 MR. STREITZ: May I approach, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. STREITZ:

22 Q. I'm going to show you what's been marked as
23 Exhibit 1, ask you if you recognize that, sir?

24 A. Yes, I do.

25 Q. What is that?

1 A. That is a photo of Mr. Osman Elmi.

2 Q. And he, as you testified, is a relative of yours?

3 A. Yes, he is.

4 MR. STREITZ: State would offer Exhibit
5 1 into evidence, Your Honor.

6 MR. GOETZ: No objection.

7 THE COURT: Received.

8 BY MR. STREITZ:

9 Q. Was -- when had Mr. Osman Elmi come to the United
10 States?

11 A. 2004.

12 Q. Was he married or single?

13 A. He was single.

14 Q. Do you know if he had plans to get married to
15 anyone?

16 A. Yes. He was planning to go see his mom in
17 Nyrobi, Kenya, that -- we had that discussion
18 especially that night. So he was planning to
19 leave in a month from that time, around February
20 or the end of January to go there and get
21 married.

22 Q. And was he a regular employee of the market?

23 A. Yes.

24 Q. And how long had he worked at the market?

25 A. The market was open, I believe 2007, July of

1 2007, and he was the first employee there and he
2 was there since.

3 Q. What did Mr. Elmi enjoy doing when he wasn't
4 working at the store?

5 A. Mr. Elmi was off two days and he loved to help
6 people, to go around town and help --

7 Q. Take all the time you need, sir.

8 A. He would go to his family members or friends or
9 anyone who may need help, especially people who
10 may move around or people who need a ride
11 somewhere or someone who needs any kind of help.
12 So I personally used to ask him, do you have an
13 off day in your life, and he always smile and he
14 would drive around the city. He will tell you he
15 was in Wilmar and St. Cloud and when you ask him
16 what he was doing, he will tell you he was
17 picking up someone who was coming to Minneapolis.
18 Or he would go to St. Cloud and tell you he spent
19 the night there helping someone who was getting
20 married or someone moving around. He was kind of
21 people person.

22 MR. STREITZ: May I approach again, Your
23 Honor?

24 THE COURT: You may.

25 BY MR. STREITZ:

1 Q. Sir, I want to you show you as Exhibit 32. Do
2 you recognize that?

3 A. Yes, I do.

4 Q. And who -- and what is that?

5 A. That is a picture of a photo of Mr. Mohamed Abdi
6 Warfa.

7 THE COURT: I'm sorry, I --

8 THE WITNESS: That's Mohamed Abdi Warfa.

9 THE COURT: Thank you.

10 MR. STREITZ: State would offer Exhibit
11 32 into evidence.

12 MR. GOETZ: No objection.

13 THE COURT: Exhibit 32 is received.

14 BY MR. STREITZ:

15 Q. What was your relation to Mohamed Warfa?

16 A. Mr. Warfa was also my uncle, distant uncle.

17 Q. How old was he, sir?

18 A. About 30 years old.

19 Q. And I apologize if I asked you, how old was Mr.
20 Osman Elmi?

21 A. Twenty-eight.

22 Q. Did Mr. Warfa have any children?

23 A. Yes, he did.

24 Q. How many?

25 A. Three boys and one girl.

1 Q. Do you recall their ages?

2 A. Oldest one I believe is ten and the youngest one
3 was born in 2006.

4 Q. Was he an employee of the market?

5 A. No.

6 Q. Was he an occasional visitor at the market?

7 A. Yes, he always visit.

8 Q. What line of work was he in?

9 A. He was working for a GE, General Electric. I
10 believe he was line production.

11 Q. Line production?

12 A. Yeah.

13 Q. What did Mr. Warfa enjoy doing when he wasn't
14 working?

15 A. He had mostly -- he used to write poetry. He
16 used to recite poems and write poems about
17 people, about our homeland. He used to entertain
18 people on special occasions. He will be the
19 person to be called to remind people how things
20 look like back home and even describe in America
21 and compare lives -- American lives to life back
22 home and he was a big entertainer. And he also
23 loved to help out, and most of the time when he's
24 off he was dealing with his kids, taking them
25 somewhere, or he's either invited to special

1 occasion where he would be reciting some poem.

2 Q. Where was the money usually kept that you had on
3 hand at the market?

4 A. Under the counter.

5 Q. Did the market have a safe?

6 A. Yes.

7 Q. Where was that located?

8 A. That was also under the counter. There was two
9 safes, one of them was under the counter and then
10 there was one downstairs in the basement.

11 Q. To your knowledge, had any of the money been
12 taken on January 6, 2010 --

13 A. No.

14 Q. -- during the course of these events?

15 A. No, not that I know.

16 Q. There were two people charged in this case. Did
17 you know an individual by the name of Mahdi Ali?

18 A. I do.

19 Q. Back on January 6th of 2010, did you know him by
20 name?

21 A. No, I know him by face, but not by name.

22 Q. How would you know him by face?

23 A. He used to come to the store. I have seen him on
24 a lot of occasions. I didn't know his name. And
25 when the tragedy happen and I see him on TV, I

1 put the name on the face.

2 Q. Do you know where he lived?

3 A. He live across the street on 20 -- the Seward
4 Towers, I believe that's across the street from
5 Seward Market.

6 MR. STREITZ: If I can just have a
7 second?

8 THE COURT: Yes.

9 (State's counsel confer.)

10 MR. STREITZ: Your Honor, may I publish
11 those last three exhibits to the jury?

12 THE COURT: You may.

13 MR. STREITZ: For the record, Exhibit 31
14 is being published at this time, Osman Elmi.
15 Exhibit 32, Mohamed Warfa. And No. 3, Anwar
16 Mohammed.

17 BY MR. STREITZ:

18 Q. Did you know Anwar Mohammed?

19 A. I didn't know him by name, but I knew him and I
20 know his family, I knew his brothers, but not him
21 by name, I recognize his face.

22 Q. Was he a customer at the market?

23 A. Yes, he was.

24 MR. STREITZ: Sir, I don't have any
25 further question, perhaps counsel does.

1 MR. GOETZ: I do not, Your Honor.

2 THE COURT: Sir, you are excused.

3 MR. STREITZ: Thank you, sir. Be
4 careful of the step.

5 THE COURT: Counsel approach.

6 (Discussion at the bench.)

7 THE COURT: Members of the jury, it's an
8 appropriate time to take our lunch break. I have
9 a couple of matters at 1:15, so we'll reconvene,
10 please be in the usual place ready to go at about
11 1:45. Thank you.

12 (Jurors leave the courtroom.)

13 THE COURT: Mr. Goetz, it's my
14 understanding that you wanted to make a record
15 outside the presence of the jury?

16 MR. GOETZ: Yes, Your Honor. Thank you.
17 Just to clarify a bench discussion earlier, the
18 defense does not have an objection to non
19 sequestration of family members.

20 THE COURT: All right.

21 MR. GOETZ: But, any other witnesses we
22 would certainly, we would request that they be
23 sequestered.

24 THE COURT: All right. And that's
25 family members of both of the victim's family and

1 the defendant's family.

2 MR. GOETZ: That would be my request.

3 MR. STREITZ: I have no objection to
4 that. All my other fact witnesses are being
5 sequestered.

6 THE COURT: All right. And,
7 specifically, so we're all on the same page,
8 let's make sure that all the witnesses are aware
9 that they're not to discuss testimony -- their
10 testimony to witnesses who are still up in
11 coming. All right. Anything further?

12 MR. GOETZ: Nothing, Your Honor.

13 THE COURT: See you at 1:45.

14 (Court in recess for the noon hour.)
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1 (Afternoon session:)

2 THE COURT: Counsel, call your next
3 witness.

4 MR. STREITZ: Jamilla Ahmed.

5 THE COURT: Come right up here first.

6 THE WITNESS: Right here?

7 THE COURT: That's fine.

8 JAMIILA AHMED,

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

11 THE COURT: All right. Have a seat in
12 the witness chair.

13 Ms. Ahmed, before you begin, state your
14 full name and spell each of your names.

15 THE WITNESS: Jamiila Ahmed;
16 J-a-m-i-i-l-a, middle name, A-l-i, last name
17 A-h-m-e-d.

18 THE COURT: Okay. If you can pull the
19 microphone a little closer, you don't have to
20 speak directly into it, but just so that we make
21 sure we can hear you.

22 Mr. Streitz.

23 **DIRECT EXAMINATION**

24 BY MR. STREITZ:

25 Q. Good afternoon, Ms. Ahmed.

- 1 A. Good afternoon.
- 2 Q. How are you?
- 3 A. I'm okay.
- 4 Q. Little nervous?
- 5 A. Yeah.
- 6 Q. Okay. Well, like I said, I poured you some
7 coffee, or excuse me, some water. There is some
8 Kleenex up there, if you should need that, and if
9 at any time you just want to take a few seconds
10 or anything, just let me know, okay?
- 11 A. (Nods head.)
- 12 Q. And when I ask you, when any of us asks you
13 questions today, you're going to have to give us
14 answers, you just can't nod your head.
- 15 A. All right.
- 16 Q. All right. You live in the metropolitan area; is
17 that correct?
- 18 A. Yes.
- 19 Q. And are you from Somalia?
- 20 A. Yes. I'm from Somalia.
- 21 Q. How long have you been there?
- 22 A. To Minnesota?
- 23 Q. Let's start with the U.S.
- 24 A. About 20 years.
- 25 Q. Okay. And how about in Minnesota?

- 1 A. About 17 years.
- 2 Q. Okay. I want to take you back to January 6,
3 2010, in the evening hours, did you go to the
4 Seward Market?
- 5 A. Yes, I did.
- 6 Q. Why did you go to the Seward Market?
- 7 A. To buy some Somali coffee.
- 8 Q. Had you been to that market before?
- 9 A. I don't think so, no.
- 10 Q. And did somebody drop you off there?
- 11 A. We were -- me and my sister.
- 12 Q. Did you go in alone or did she go with you?
- 13 A. I went in by myself.
- 14 Q. Okay. Which -- do you recall what door you went
15 into to get to the market?
- 16 A. The Franklin door.
- 17 Q. Okay. And when you went in, did you see anybody
18 in the store when you first got in the store?
- 19 A. Yes.
- 20 Q. How many people did you see?
- 21 A. Three.
- 22 Q. Three?
- 23 A. Yeah.
- 24 Q. Okay. And where were they, those three people?
- 25 A. When I walk in, two were sitting, one was sitting

1 behind the counter and the second was sitting
2 right like behind the counter but it was a little
3 off sitting there, they were talking, and another
4 guy was standing right there and he had some
5 cleaning stuff there, like he was about to mop
6 or, I don't know, so those three, I walked in.

7 Q. Were they -- so were they three men?

8 A. Uh-huh.

9 Q. Were they Somalia men?

10 A. Yes, they were all Somalians.

11 Q. Do you know who they were?

12 A. No.

13 Q. Okay. Never met them before?

14 A. Huh-uh, no.

15 Q. And when you went in, did you ask them any
16 questions about Somali coffee?

17 A. Yes, I did.

18 Q. What did you ask them?

19 A. I walked in and I say, I would like to -- do you
20 guys sell Somali coffee? Yes, I would like to
21 buy, where is it? And then they direct me
22 inside.

23 Q. Where did they direct you, what part of the
24 store?

25 A. When I walk in, actually kind of right straight,

1 but a little right.

2 Q. Okay. Down an aisle?

3 A. Down an aisle, yeah.

4 Q. All right. And did you go down the aisle by
5 yourself?

6 A. Yes, I did.

7 Q. Did you -- did anybody give you any assistance or
8 help you?

9 A. When I walk a little further I couldn't --I asked
10 them, where? They say, down there. When I walk
11 down there, I asked him where is it because I
12 couldn't see it, and then they said, the older
13 guy, the guy who was standing there to assist me,
14 to show me where it is exactly, but by the time I
15 reached there it, I saw it, and he was right
16 there so.

17 Q. Ox. So the person that you said you thought was
18 kind of doing the cleaning --

19 A. Yeah.

20 Q. He was sent to help you?

21 A. To help me, yeah.

22 Q. And did you end up needing his help or?

23 A. I already -- well, once they send it, when I say,
24 I can't find it, they send it, but at the same
25 time, I was keep going forward and then I found

1 it. The time I saw and the time he came was
2 about the same time.

3 Q. Okay. When you and this man who was helping you,
4 or going to help you find the coffee, when you
5 were back there by the coffee, did something
6 happen?

7 A. Yes.

8 Q. What?

9 A. Once I found the coffee, this guy came and here's
10 the coffee, I already seen it, thank you. And
11 the guys behind the counter say, help us, in our
12 language, call the police. And once they said --
13 right when they say that, I tried to get my
14 phone, and another guy came in saying, give me
15 the phone right now. And I told him, I don't
16 have a phone.

17 Q. So you kind of lied to him because you didn't
18 want to give your phone?

19 A. I didn't want to give him the phone.

20 Q. Okay.

21 A. I want to call the police.

22 Q. Did you see where this man came from that said,
23 give me your phone?

24 A. What did you say?

25 Q. Did you see where the man had come from?

- 1 A. He came from, I was assuming he came from where I
2 came from but different turn because where Youb
3 came from this way, I came from this way, so once
4 we both standing by the coffee, the third man,
5 the third person came to us like where Youb came
6 from.
- 7 Q. Now, you mention the third person, you mean the
8 person, you --
- 9 A. With the mask. Me and Youb and the other guy.
- 10 Q. Youb was the gentleman who was helping you?
- 11 A. Yes.
- 12 Q. Okay. Was Youb Somalian?
- 13 A. I didn't know at the time until we all talk.
- 14 Q. You said this person had a mask?
- 15 A. Yeah.
- 16 Q. Can you describe the mask? What -- what color
17 was it?
- 18 A. The mask was black.
- 19 Q. Yes. How much of the face did it cover?
- 20 A. All the way here (indicating).
- 21 Q. So the only thing showing would have been what?
- 22 A. Eyes.
- 23 Q. When he -- do you know if it was a man or woman
24 who was behind the mask?
- 25 A. I know it was a man.

- 1 Q. Okay. How do you know?
- 2 A. Because he was speaking to us.
- 3 Q. Okay. You can tell?
- 4 A. Yeah. I could tell from his voice.
- 5 Q. Did he speak to you in English?
- 6 A. No. He speak to me in Somalian.
- 7 Q. Okay. And what was he saying to you?
- 8 A. Give me the phone.
- 9 Q. Can you describe the tone of voice he was using?
- 10 A. Give me the phone, give me the phone, and I was
- 11 like, I was scared, them guys saying that, call
- 12 the police, that we being robbed, in our
- 13 language, and this guy walked to me, I was so
- 14 scared, I didn't know what to do. I was like,
- 15 please don't kill us, please, I have children at
- 16 home, I'm a mother, don't kill us.
- 17 Q. What did this man wearing the mask do to you or
- 18 Youb when he was back by you?
- 19 A. Once I ask him not to kill us, he look away from
- 20 me and I think he hit Youb, but not me. He
- 21 didn't touch me or did any harm to me so -- pop,
- 22 pop, it starts from the other side, so he ran to
- 23 that side, so me and Youb, we ran back in the
- 24 store.
- 25 Q. Did the man who was back by you with the mask on,

1 did he have a gun?

2 A. I don't know. I hadn't seen a gun.

3 Q. You didn't see a gun?

4 A. I hadn't seen it, yeah.

5 Q. Where were the -- you made some noises like?

6 A. In the front where they were saying, help us,
7 that's where I heard the gunshot. I knew there
8 was a gunshot happening in the front of the
9 store, but behind us then that's when I run
10 towards the exit, but we didn't because I was
11 asking Youb what exit and he probably didn't
12 understand. So he showed me where else to hide,
13 so that's when we went into the freezer.

14 Q. You told us that the man with the mask who was
15 back by you and Youb, you didn't see a gun on
16 him?

17 A. No, I hadn't seen it, no gun.

18 Q. And he's wanting your phone?

19 A. That's right. Not to be able to call the police.

20 Q. And what is he doing to you, what is he doing to
21 Youb?

22 A. Youb, I don't remember what he did, I think he
23 hit him in the shoulder asking him to give
24 him -- once that he saw that I was so afraid of
25 him and asking him, please don't kill us, please

1 don't kill us, I'm a mother of children at home,
2 so please, I have kids like -- I'm just like your
3 mom, please don't kill us. And that's the time
4 he look away from me and maybe he felt it not
5 good, I don't know, anyway he looked at Youb and
6 he was asking Youb to get the phone from him and
7 I don't even know if Youb gave to him or not but
8 right in that talk there was gunshot happening at
9 the same time.

10 Q. What did that person with the mask, who was back
11 by you, what did he do when the gunshots
12 happened?

13 A. He rush to the where the gunshots happening and
14 at the same time he was talking to the -- his
15 friend or the other guys, I don't know, he was
16 saying that no killing or no this and that. It
17 was split second when he was talking to us and
18 when he left, rushed to the whatever, but I
19 haven't seen all, me and Youb we rushed to the --
20 run in the back in the freezer.

21 Q. Did you see anybody up in the front of the store
22 when you were back with Youb and the man with the
23 mask on?

24 A. I couldn't see it. It's little, I can't see it,
25 no, I didn't see it.

1 Q. Were you trying to look there or --

2 A. No. I just want to stay out of that place.

3 Q. Okay. What can you tell me about the person
4 who's back by you with the black ski mask. How
5 tall was he?

6 A. He slim build and kind of taller than me, I don't
7 know how much, but he was kind of taller than me.

8 Q. How tall are you?

9 A. 5'8".

10 Q. You said slim?

11 A. Yeah, slim build.

12 Q. Okay. Do you recall -- do you remember anything
13 about the clothing that he wore or shoes or
14 anything?

15 A. Huh-uh.

16 THE COURT: That's a no.

17 THE WITNESS: Didn't have time for all
18 those, looking what he has on.

19 BY MR. STREITZ:

20 Q. Okay. So when the gunshots started, the man with
21 a mask by Youb, did he run a different direction
22 than you ran with Youb?

23 A. Well, the guy who was with us?

24 Q. Yes.

25 A. He rushed to where I came from to the front.

1 Q. Okay.

2 A. Where the things happening, where the problems
3 happening, that's where he rush to. That's when
4 we gets a chance to go other way.

5 Q. Okay.

6 A. To the back of the store.

7 Q. The man who is back by you with the mask on, did
8 you hear him say anything or do anything to stop
9 the robbery?

10 A. Well, I don't know if he was saying --

11 MR. GOETZ: Objection, speculation, Your
12 Honor.

13 THE COURT: Sustained.

14 BY MR. STREITZ:

15 Q. Did you, for example --

16 A. Like, don't kill.

17 MR. GOETZ: Objection, Your Honor,
18 foundation.

19 THE COURT: Sustained as to foundation.

20 MR. GOETZ: Move that it be stricken.

21 Jury instructed to disregard.

22 THE COURT: You're to disregard the last
23 answer.

24 Mr. Streitz.

25

1 BY MR. STREITZ:

2 Q. Did he say anything that was directed towards the
3 front of the store?

4 A. Yeah.

5 Q. What did he say?

6 A. Okay. Don't kill, in Somalia language he said,
7 ha dilin, ha dilin. That means, don't kill,
8 don't kill. Loud voice and he rushed to that
9 side. No kill, don't kill, something.

10 Q. Okay. Do you recall the number of gunshots that
11 you heard?

12 A. It was a lot. I never heard something like that
13 in my life.

14 Q. You said that you and this older gentleman named
15 Youb went to the freezer?

16 A. Uh-huh, yes.

17 Q. And what happened once you were in the freezer,
18 what did you do?

19 A. Right when I walked in there I start calling the
20 police telling that we in here and this is what
21 is happening, please come and get us out.

22 Q. Prior to today's date, did you come to my office
23 and listen to a 911 call?

24 A. Yeah.

25 Q. And was that your call?

1 A. Yes.

2 Q. And it was marked as Exhibit 123. Did you
3 initial it and put the date on there that you
4 listened to it?

5 A. Yes, I did.

6 Q. Is that your initial and the date?

7 A. Yes.

8 Q. And when you listened to this, was that an
9 accurate copy of a recording of the 911 call you
10 made?

11 A. Yes.

12 MR. STREITZ: State would offer Exhibit
13 123, Your Honor.

14 MR. GOETZ: No objection.

15 THE COURT: 123 is received.

16 MR. STREITZ: Can I play for the jury,
17 Your Honor?

18 THE COURT: You may.

19 MR. STREITZ: We're going to listen to
20 it now, okay.

21 (Audiotape played.)

22 BY MS. STREITZ:

23 Q. You okay, Ms. Ahmed?

24 A. (Nods head.)

25 Q. When you first walked towards the door to get

1 into the market, did you happen to see anybody or
2 notice anybody outside?

3 A. (Shakes head.) Huh-uh, no.

4 Q. Okay. When you and Youb went to the freezer, did
5 you hear any gunshots while you were in the
6 freezer?

7 A. Yeah.

8 Q. I want to show you some things, some other videos
9 that you saw in my office back in August. Okay?
10 And when I show them to you, the jury can see
11 them behind you, but you can look right in front
12 of you there on that little monitor, okay? And
13 then I'm going to ask you some questions about
14 them, all right?

15 A. Okay.

16 Q. Okay.

17 THE COURT: And the Exhibit number?

18 MR. STREITZ: 96, Your Honor.

19 THE COURT: Thank you.

20 (Video played.)

21 BY MR. STREITZ:

22 Q. I'm going to stop this one at this point, do you
23 recognize that, Ms. Ahmed?

24 A. (Nods head.)

25 Q. Is that a yes?

1 A. Yes.

2 Q. And who is that? What did we just see?

3 A. The counter and the guy sitting behind the
4 counter.

5 Q. Was that you entering the store?

6 A. Yeah.

7 Q. Next I'd like to show you what we've marked at
8 Exhibit 97. Okay.

9 (Video played.)

10 BY MR. STREITZ:

11 Q. I'm going to stop it at this point. Who are
12 those people?

13 A. Me and Youb.

14 Q. And what were you and Youb doing?

15 A. Running back.

16 Q. Where were you running back to?

17 A. To the freezer.

18 Q. Okay. Then I want to show you what's been
19 received into evidence as Exhibit 99. Have you
20 look at this and I'll ask you some questions.

21 (Video played.)

22

23 BY MR. STREITZ:

24 Q. Okay. Did what we just saw, is that what
25 happened, as you've described it to us this

1 afternoon, when the masked man came up to you?

2 A. Yeah.

3 Q. And the gentleman that is -- that we first see
4 with you, is that Youb?

5 A. Yes.

6 Q. May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. STRETIZ:

9 Q. And I want to show you what's been received into
10 evidence as Exhibit 71. Do you recognize that
11 picture?

12 A. Yes.

13 Q. And what is that, Ms. Ahmed?

14 A. Me and Youb and the other guy.

15 THE COURT: I'm sorry. I can't hear.

16 THE WITNESS: Me and Youb and the other
17 guy.

18 BY MR. STREITZ:

19 Q. The other guy being the masked person?

20 A. Uh-huh, yes.

21 MR. STREITZ: If I can just have a
22 second.

23 (State's counsel confer.)

24 MR. STREITZ: Ms. Ahmed, I don't have
25 any other questions at this time, maybe the other

1 attorney does, okay.

2 THE COURT: Mr. Goetz.

3 MR. GOETZ: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. GOETZ:

6 Q. Good afternoon, Ms. Ahmed.

7 A. Good afternoon.

8 Q. Would you like a sip of water or anything before
9 we start?

10 A. I already did, no.

11 Q. You're up to answering a few more questions?

12 A. Yes.

13 Q. You met with the prosecutors beforehand, right?

14 A. Yeah.

15 Q. And they told you that the defense had a right to
16 ask you questions too, right?

17 A. Yeah.

18 Q. Okay. That's what I'm going to do, I'm going to
19 go over a few of the things you talked about with
20 the prosecutors, just to answer some questions
21 that I have in my mind. All right.

22 A. Okay.

23 Q. Now, we are here today talking about something
24 that happened over a year and a half ago, right?

25 A. Yes.

1 Q. Okay. Could you keep your voice up, please.

2 A. Yes.

3 Q. There is an elevator here and it makes it a
4 little hard to hear, and there's a microphone,
5 maybe you can just pull that close to you. Thank
6 you. Do you remember speaking with the officers
7 or different police officers on the evening that
8 this happened?

9 A. Yes.

10 Q. You talked to a police officer in the grocery
11 store?

12 A. Yes.

13 Q. They put you in a squad car?

14 A. Yes.

15 Q. You talked to another officer in the squad car?

16 A. I think only one officer talked to me.

17 Q. Okay. If we had a report from another police
18 officer that said they also talked to you in the
19 squad car, would you disagree with that?

20 A. No.

21 Q. And then from the scene of the store they brought
22 you to Downtown Minneapolis?

23 A. Yes.

24 Q. Put you in an interview room in City Hall
25 building?

1 A. Yes.

2 Q. And you talked with another police officer there,
3 right?

4 A. Yes.

5 Q. In fact, two of them?

6 A. Yes.

7 Q. A man and a woman?

8 A. Yes.

9 Q. And then you met with the prosecutors here a
10 number of times?

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. Now, today you told us that you seem to remember
15 the man in the mask saying after the shots were
16 fired something like, no killing, or something
17 like that?

18 A. Yeah.

19 Q. How sure are you that that's what you heard?

20 A. Very much sure.

21 Q. Okay. And the reason I'm asking that is because
22 when you talked to the officer at the scene in
23 the grocery store, you didn't tell him anything
24 about the man in the mask saying anything. Would
25 you agree with that?

1 A. Okay. When something happened to you --

2 Q. It's okay --

3 A. When something happened to you, you might not say
4 all of it at the same time.

5 THE COURT: Ms. Ahmed, listen carefully
6 to the questions and make sure you answer his
7 questions.

8 BY MR. GOETZ:

9 Q. If the prosecutors want you to explain, they can
10 ask you those questions. Just right now if you
11 can answer my question yes or no, that would be
12 fine, okay. If you can't, tell me that too. My
13 question is simply this, when you talked to the
14 officers -- the officer in the grocery store, he
15 asked you what happened; correct?

16 A. Yeah.

17 Q. And you didn't tell him about the man in the mask
18 saying anything to the other person about no
19 killing, you didn't say that, did you?

20 A. Whatever happened to me, that's what I talk about
21 it. Not what they saying to each other. I'm not
22 say all everything at the same time because I was
23 so fear I just want to get out of there and go
24 home. That's all I care.

25 Q. So you would agree with me you didn't say it

1 then?

2 A. I don't remember.

3 Q. Okay. When you were in the squad car, would you
4 agree with me that you also didn't say anything
5 in the squad car when they asked you what
6 happened about the man in the mask saying
7 anything to the other person?

8 A. I don't think they asked me any question when I
9 was in the squad car.

10 Q. Okay. But you do remember going down to the --

11 A. Downtown.

12 Q. Downtown. And as we're going through the
13 questions, it's very important we do not talk at
14 the same time, okay, because there is a woman to
15 your right who's taking everything down, so if
16 you can please wait until my question is done,
17 please.

18 A. Okay.

19 Q. Are you okay?

20 A. Yeah, I'm okay.

21 Q. Okay. When you went downtown, they asked you, I
22 guess more questions than you were asked at the
23 grocery store, right?

24 A. Yes.

25 Q. And did -- you knew that you were being

1 tape-recorded?

2 A. Yeah, they told me about it.

3 Q. And you, over the meetings that you had with the
4 prosecutors, have reviewed the statement that you
5 gave; correct?

6 A. Yes.

7 Q. And it's all printed out and you've looked at
8 that, right?

9 A. Yes, they gave to me, yes.

10 Q. You know this was a statement that you gave on
11 January 6th of 2010, that very same night?

12 A. That's right.

13 Q. When the events were much clearer in your mind
14 than they are today, would you agree with that?

15 A. That day, if I put you into my shoes, you
16 wouldn't even say a word to anybody because that
17 time of -- that time you cannot say everything
18 the way it's supposed to happen because you just
19 want to go home and sleep.

20 Q. Okay.

21 A. A lot of people died right in front of you and
22 you alive. Would you explaining and like nothing
23 happened? No.

24 Q. I understand what you've been through, I still
25 need to ask you questions.

1 A. It's okay. You can ask me questions, I'll be
2 able to answer.

3 Q. You were asked questions about the man in the
4 mask talking to the other person in the store.
5 Do you remember that? Maybe it would refresh
6 your recollection if I showed you the statement.

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

8 THE COURT: You may.

9 MR. STREITZ: Page, counsel?

10 MR. GOETZ: Just a moment.

11 BY MR. GOETZ:

12 Q. I'm showing you a transcript, this is your name,
13 correct, Jamiila Ahmed, is that right?

14 A. Uh-huh.

15 Q. Is that right?

16 A. Yes.

17 Q. And the date is January 6th of 2010?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes, that's yes.

21 Q. And the time we have here is 21:30 hours, which
22 I'll tell you is 9:30, 9:30 at night. Does that
23 seem about right?

24 A. Yeah.

25 Q. If we look on Page 4, do you see the question,

1 did you hear any other people in the store? And
2 your answer was, yeah, they talked but I can't
3 tell what language. I can't tell what they were
4 saying, but I can hear it was a little -- and
5 then they couldn't pick up the word -- and then
6 it goes on, they were like people talking but you
7 can't understand what they are saying. Did I
8 read that correctly?

9 A. Yes.

10 Q. Yes. And then you were asked, okay, so could it
11 have been English they were talking? And your
12 answer was, I don't know. Correct?

13 A. That's right.

14 Q. You were asked, could it have been Somali they
15 were talking? Your answer, I don't know. I
16 could be either one, I don't know, but it was
17 something that they could understand each other.
18 Did I read that correctly?

19 A. That's right.

20 Q. Then the question, meaning the employees? And
21 your answer was, and them. And the next
22 question, and the bad guys? And your answer
23 was --

24 A. Yes.

25 Q. Yes. Did I read that correctly?

1 A. That's right.

2 Q. And then on the next page, Page 5, you were asked
3 the question, but the language that they were
4 talking could have been Somali? And your answer,
5 it could be any language, I don't know. I can't
6 tell what they say to each other. Did I read
7 that correctly?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Thank you. I want to ask you questions about
12 something else now, okay? A different part of
13 the incident, all right. You were asked
14 questions about what happened with the man in the
15 mask, Youb and you when you were in the back of
16 the store, and I want to ask you about that now,
17 okay. Is that all right?

18 A. Yeah.

19 Q. And just so I'm clear, you think that the man in
20 the mask hit Youb in the shoulder?

21 A. Yes.

22 Q. And that's at the same time when he was trying to
23 get your cell phones from you?

24 A. That's right.

25 Q. Now, I want to ask you questions about what you

1 heard the shop workers saying. Okay. When you
2 came into the store there were two people at the
3 front of the store; correct?

4 A. Yeah.

5 Q. A man behind the counter, right?

6 A. Yeah.

7 Q. And a person sitting just on his right?

8 A. Yeah.

9 Q. These were the people that you later heard say,
10 call the police, we are being robbed, something
11 like that?

12 A. Yeah.

13 Q. Did you ever hear them say anything such as, we
14 know you, we know who you are?

15 A. No.

16 MR. GOETZ: Thank you. That's all the
17 questions I have.

18 THE COURT: Mr. Streitzi.

19 THE WITNESS: I couldn't hear whatever
20 they were saying.

21 THE COURT: Ma'am, that's okay.

22 Mr. Streitzi.

23 **REDIRECT EXAMINATION**

24 BY MR. STREITZ:

25 Q. Ms. Ahmed, could there have been some things that

1 were being said in the front of the store that
2 you didn't understand or you didn't hear?

3 A. I couldn't hear, I was in the back there,
4 whatever they were saying to each other. One
5 time we heard when they need help, please help
6 us, call the police. That was loud voice. But
7 whatever they were saying to each other, it was
8 lower and it was -- we were farther so we could
9 not hear.

10 Q. Okay. And are you scared at that point?

11 A. Very much, very much.

12 Q. You were asked some questions about the police
13 officers who were the first ones to get to the
14 store and they found you in the freezer; is that
15 correct?

16 A. Yes.

17 Q. Do you recall if they asked you a lot of
18 questions?

19 A. They didn't ask me a lot of questions that time.

20 Q. Do you recall if those officers asked you what
21 exactly the man with the mask by Youb had said?

22 A. They asked little question inside there, they
23 just say, we're here to help you, put the coffee
24 down, it's not yours. They took my driver's
25 license and put me in the vehicle. They asked me

1 little questions.

2 Q. Little questions about what?

3 A. About -- I don't remember.

4 Q. They ask you about what the person looked like
5 who was the masked man?

6 A. I think they asked me inside the store. I
7 think -- all the questions they asked me in the
8 Downtown Minneapolis, I remember that, but when I
9 was -- I was so sick, I was vomiting and I was so
10 sick once I saw all the blood and all that.

11 Q. You were asked some questions about the statement
12 that you gave to the police downtown and the
13 attorney came up and showed you that, do you
14 remember that, just a few minutes ago?

15 A. Yeah, yeah.

16 Q. What different languages did you hear people
17 using in the store that evening?

18 A. What different language?

19 Q. Yeah. Was anybody speaking in English?

20 A. I haven't heard English.

21 Q. Were people speaking in Somali?

22 A. Well, when the guys, when I first walked in they
23 were speaking Somalian, then when I went back
24 there I asked them in Somalian language, where's
25 the coffee at? They told me in Somali language.

1 And once they need help they speak to us in
2 Somali language saying that we need help, because
3 they -- sometimes you don't know who they are,
4 they can't understand that you asking to help
5 other people who can understand your language, so
6 I was assuming that they were not Somalian, but
7 when the guy came over and said, give me your
8 phone, that's when I fully understood that they
9 were Somalians that we dealing with because he
10 understood right away that them need help and him
11 asking me, give me the phone.

12 Q. Okay. Was the masked man speaking in --

13 A. Somalian. Yeah, everybody was speaking Somalian.

14 Q. Okay. I want to show you the same thing the
15 defense attorney showed you but I want you to
16 read something he didn't have you read -- One,
17 two, three, four, fifth page, counsel -- top of
18 the fifth page. Do you remember being asked the
19 question, so it's possible they were speaking
20 Somali? And your answer was, it could be, one
21 guy was with us, he speaks Somali.

22 A. That's right.

23 Q. The question was, that's the older gentleman?
24 And you said, no, no, one of the robbers.

25 A. That's right.

1 Q. And then you asked the question, one of the
2 robbers spoke Somalian? He spoke Somali to you?
3 And you said, yes. And he was Somalian?

4 A. Yes.

5 Q. Okay. The defense attorney had asked you these
6 questions about whether or not you told the
7 officers who showed up at the market that night,
8 you mentioned anything to them about the man by
9 Youb saying, no killing. And you -- your
10 testimony is that you did not tell them?

11 A. I don't remember if I tell them or not, but I
12 know for a fact that he was saying that and if I
13 didn't say it there and I think right after I say
14 that, but I think I said it. I explained to him
15 everything but some times when you are in that
16 condition, you might not say all of it.

17 Q. Okay. Do you remember couple weeks after that,
18 after this happened --

19 A. I think so, I'm not sure.

20 Q. -- that you came to my office and you signed a
21 piece of paper for me?

22 A. Yeah.

23 Q. Do you remember that?

24 A. Yeah.

25 MR. STREITZ: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. STREITZ:

4 Q. I'm going to show you a piece of paper.

5 MR. STREITZ: Affidavit, counsel.

6 BY MR. STREITZ:

7 Q. Do you see the signature at the bottom of it?

8 A. Yes.

9 Q. Is that your signature?

10 A. That's my signature.

11 Q. Okay. And the date?

12 A. January 25, 2010.

13 Q. Okay. And take a look at that, and read that and
14 then I'm going to ask you a question.

15 A. (Witness complies).

16 Q. Okay.

17 A. Yeah.

18 Q. Okay. And attached to this was your --

19 MR. STREITZ: Supplement 24, counsel.

20 BY MR. STREITZ:

21 Q. -- your statement that you gave to police
22 downtown after this happened?

23 A. Yes.

24 Q. And did I have you review your statement to see
25 if it was correct?

1 A. Yes.

2 Q. And did you tell me that you wanted to add
3 something to it that wasn't in there?

4 A. Yes. After we did this, no, before this, yeah.

5 Q. And is what you wanted to add in this statement?

6 A. Yes.

7 Q. This affidavit?

8 A. That's right.

9 Q. Okay. And could you just --

10 A. I will add that after the -- well --

11 Q. Just read that sentence to us, if you can.

12 A. I will add that after the shot the masked man
13 next to me say, no killing, but I had no idea
14 what he meant by that or who he was talking to.
15 The same masked man did nothing to prevent the
16 crimes.

17 MR. STREITZ: Thank you, I have no
18 further questions.

19 THE COURT: Mr. Goetz.

20 MR. GOETZ: Thank you, Your Honor.

21 **RE-CROSS-EXAMINATION**

22 BY MR. GOETZ:

23 Q. Just to be clear, Ms. Ahmed, when the prosecutor
24 just asked you who you knew was speaking Somalian
25 to you, in your statement that you gave on

1 January 6, 2010, you said the man with the mask,
2 you knew he was speaking Somalian; correct?

3 A. Yes, yes.

4 Q. All right. I was asking you about what the man
5 with the mask was saying to the other person.
6 And what you told -- what you said on January 6,
7 2010 was that you didn't know what language they
8 were speaking. You couldn't --

9 A. Back there, back in the store, not right in front
10 of me. I knew he was speaking Somalian back in
11 front of me.

12 MR. GOETZ: May I approach?

13 THE COURT: You may.

14 THE WITNESS: Sure.

15 BY MR. GOETZ:

16 Q. On Page 5, you were asked, but the language that
17 they were talking could have been Somali. It
18 could be any language, I don't know, I can't tell
19 what they say to each other. Did I read that
20 correctly?

21 A. I don't know what language they were speaking
22 back -- the people who were talking, not the guy
23 who was right in front of me. The guy right in
24 front of me spoke to me in Somalian, but I didn't
25 know what language they were -- because I can't

1 even hear what they were saying back there.

2 Q. So you couldn't understand --

3 A. I couldn't hear.

4 Q. You couldn't make out the language because you
5 couldn't really understand, you couldn't hear
6 what the man in the mask was saying to the other
7 person; is that right?

8 A. No, no, no, no. The guy in the mask. The guy
9 who was next to me, I knew he was speaking
10 Somalian, I knew he was Somalian. But the people
11 back there, how many people were with him, I
12 didn't know. What they were saying to each
13 other, I didn't know. Up to now today, I don't
14 even know what kind of language -- either English
15 or Somalian, both I understand, but I couldn't
16 hear, that's why I said I couldn't understand if
17 they were speaking in Somalian or English.

18 Q. Okay. Let me just review with you putting it
19 what the prosecutor asked you about in connection
20 with what I'm asking you about right there so
21 we'll have the whole thing. On Page 5, you were
22 asked, so it's possible they were speaking
23 Somali? And you said, it could be, one guy was
24 with us, he speaks Somali.

25 A. That's right.

- 1 Q. And you were asked, that's the older gentleman?
2 And you said, no, no, no, one of the robbers.
- 3 A. That's right.
- 4 Q. And you were asked, one of the robbers spoke
5 Somalian, he spoke Somali to you?
- 6 A. That's right.
- 7 Q. And you said, yes, and he was Somalian.
- 8 A. That's right.
- 9 Q. And the question, but the -- let me read, okay.
- 10 A. Okay.
- 11 Q. But the other, I don't -- and that was the
12 question. Question, but the other -- then you
13 said, I don't know if they were Somalian or not.
- 14 A. That's right.
- 15 Q. The question, but the language that they were
16 talking could have been Somali? Your answer, it
17 could be any language, I don't know, I can't tell
18 what they say to each other. Did I read that
19 correctly?
- 20 A. That's right.
- 21 Q. And you were also asked on Page 6, the last
22 question, do you remember anything else that we
23 might not have told you? And your answer was no.
24 Did I read that correctly?
- 25 A. Yes, you did.

1 MR. GOETZ: That's all the question.
2 Maybe the prosecutor will have some more.

3 THE COURT: Mr. Streitiz.

4 **FURTHER REDIRECT EXAMINATION**

5 BY MR. STREITIZ:

6 Q. Ms. Ahmed, could you hear what was going on, the
7 conversation that was going on in the front of
8 the store?

9 A. I couldn't hear.

10 Q. So when you say, you don't know the language, is
11 that because you couldn't --

12 A. I couldn't hear.

13 MR. GOETZ: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: I already told him.

16 MR. STREITIZ: I have no further
17 questions.

18 MR. GOETZ: Nothing, Your Honor.

19 THE COURT: Ms. Ahmed, you may step
20 down. Thank you.

21 (Witness leaves the stand.)

22 MR. STRETIZ: Your Honor, our next
23 witness is Youb Ala.

24 THE COURT: And Mr. Ala will the
25 assistance of the interpreter.

1 MR. STREITZ: Yes.

2 THE COURT: Interpreter will step
3 forward, and identify yourself for the record.

4 INTERPRETER: Abdul Aziz; A-b-d-u-l,
5 A-z-i-z.

6 THE COURT: Mr. Azia, have you been
7 sworn today?

8 INTERPRETER: This morning, Your Honor.

9 THE COURT: I'm going to swear you in
10 again since this is a witness.

11 (Interpreter duly sworn.)

12 THE COURT: Mr. StreitZ.

13 Sir, you can remain seated but would you
14 face me and raise your right hand.

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

18 THE COURT: Thank you. You may put your
19 hand down.

20 Mr. StreitZ.

21 **DIRECT EXAMINATION**

22 BY MR. STREITZ:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. How are you today?

1 A. I'm doing fine.

2 Q. You and I have met before, haven't we?

3 A. Yes.

4 Q. Do you live in the Seward Towers in Minneapolis?

5 A. Yes.

6 Q. And did you live in the Seward Towers back on
7 January 1, 2010?

8 A. Yes.

9 Q. Do you sometimes help out at the Seward Market?

10 A. Yes. I used to help the guys so I can, you know,
11 relax and exercise, just walk.

12 Q. Okay. Is the Seward Market close to the Seward
13 Towers where you live?

14 A. Yes, they're close.

15 Q. Are they across the street from each other?

16 A. There is a playground in between the building and
17 the Seward Market so they're next to each other.

18 Q. Were you at the Seward Market during the early
19 evening hours of January 6, 2010?

20 A. Yes, I was there.

21 Q. Some men were killed there?

22 A. Yes.

23 Q. How soon before they were killed had you gotten
24 to the market?

25 A. I would say roughly about an hour before the

1 killing.

2 Q. Okay. When you were at the market that evening,
3 was the market open for business?

4 A. Yes, it was open. Yes, for business.

5 Q. Do you remember if a woman came into the market
6 looking for coffee?

7 A. Yes.

8 Q. Do you remember if she was Somalian or not?

9 A. She was Somalian.

10 Q. At the time that the woman, the Somalian woman,
11 came in looking for coffee, who all was in the
12 store at that time?

13 A. Mr. Warfa, Mr. Elmi and myself. We were three.

14 Q. No one else until the woman came in then?

15 A. No.

16 Q. Do you remember where Mr. Warfa was when the
17 woman came in?

18 A. Warfa was sitting the counter, and I was sitting
19 next to him.

20 Q. And how about Mr. Elmi, where was he?

21 A. Elmi was sitting or standing the cashier's desk,
22 where people pay the money.

23 Q. Okay. When the woman came into the store, what
24 happened?

25 A. She proceed inside the store and she call Elmi

1 saying, where is the coffee? Elmi asking me to
2 help this lady so I can show where the coffee is.

3 Q. And did you go back to try and help her find the
4 coffee, sir?

5 A. Yes. I did that and I show her where the coffee
6 is.

7 Q. Did Mr. Elmi or Mr. Warfa leave the counter area
8 when you went back to help her?

9 A. No.

10 Q. When you got back to where the woman was who was
11 trying to find the coffee, did something happen?

12 A. Okay. When I come back from the lady trying to
13 stand in front of Warfa, two guys with the mask
14 came.

15 Q. Where did they come from?

16 A. There are two doors in the store, one on
17 Franklin. They entered the one the people enter
18 aisle.

19 Q. Would that be the one on Franklin?

20 A. Yes, the one heading to Franklin Street.

21 Q. So are you back by the woman when this happens?

22 A. No, I'm standing next to Warfa.

23 Q. What happened next?

24 A. He started shooting, he started shooting, the
25 short guy. Then I ran where the lady is.

1 Q. And where was the lady?

2 A. The lady never left where the coffee was.

3 Q. And when you went back where the lady was with
4 the coffee, what happened?

5 A. When I come back from where the lady is, this guy
6 is started shooting.

7 Q. You said there were two people that came in with
8 masks?

9 A. Yes.

10 Q. Where did the other person with the mask go?

11 THE INTERPRETER: I can't remember
12 everything so I guess we have to say it again, or
13 the question repeated.

14 THE COURT: Mr. Ala, if you can keep
15 your answers short so the interpreter can give us
16 all the information.

17 THE WITNESS: All right.

18 BY MR. STREITZ:

19 Q. Was one of the men in the mask close by you?

20 A. Okay. When I ran towards the lady, one of the
21 masked guys was near the lady and he stopped me.

22 Q. Oh --

23 A. He stopped me.

24 Q. Can you tell me --

25 A. He hold me. He hold me. That's what he said.

1 Q. Okay. Was else did he do to you?

2 A. When he hold me or stopped me and I hear the
3 gunshots and Elmi ask me to call the police.

4 Q. Did you call the police at that time?

5 A. When I tried to call the police he hit me on my
6 shoulder and he look at telephone in my pocket,
7 he check if I have a telephone in my pocket, he
8 started checking me.

9 Q. Did he -- did you have a phone in your pocket?

10 A. He look my trouser pockets, but the phone was in
11 my shirt.

12 Q. Was he able to get the phone from you?

13 A. No.

14 Q. Did the man who's next to you say anything else
15 to you?

16 A. The only thing he said to me, if you move, we'll
17 shoot you, don't move. That's all he said to me.

18 Q. What tone of voice did he use when he spoke to
19 you?

20 A. He was talking to me in Somali language.

21 Q. But how did his voice sound?

22 A. He was threatening me, scaring me, don't move,
23 don't move.

24 Q. Can you tell me more about the mask that he was,
25 wearing what color it was?

1 A. When you are afraid or you scared you don't
2 remember everything, but I think it looks like
3 black color.

4 Q. Okay. Do you remember anything else about his
5 clothing?

6 A. No.

7 Q. Did the man who was back by you and the woman,
8 did you ever see a gun in his hands?

9 A. No.

10 Q. Could you tell if the man who's back by you was
11 speaking to anyone else in the store other than
12 you and the woman?

13 A. While I was there, he wasn't talking to anybody.

14 Q. Okay. Could you hear any of the, could you hear
15 any of the -- anything that was being said up by
16 the counter area?

17 A. I only heard three times, Elmi, Elmi, one of the
18 guys, I hear it three times, his voice.

19 Q. And what was he saying?

20 A. One time he said, call the police, no -- make a
21 phone call. Catch the thief, or catch the
22 robber.

23 Q. The man with the mask who was back by you, can
24 you tell me a little bit about what he looked
25 like, was -- could you tell me like his body

1 build?

2 A. All I remember was a skinny, tall guy.

3 Q. You mentioned there was another masked man, was
4 he taller or shorter than the skinny, tall man
5 that was back by you?

6 A. He was shorter.

7 Q. Were you able to see what his body build was
8 like?

9 A. He was wasn't skinny and he wasn't fat. He was
10 medium build, short.

11 Q. Can you tell me anything else about the clothing
12 that the tall, skinny man by you was wearing?

13 A. No, I don't.

14 Q. Could you tell -- what language did the man who
15 was near you with the mask on, what language did
16 he use?

17 A. Somali.

18 Q. Did you hear or see that man who was near you do
19 anything or say anything to stop what was going
20 on in the store?

21 INTERPRETER: Could you repeat the
22 question again.

23 BY MR. STREITZ:

24 Q. The masked man who was near you, did he say or do
25 anything to stop the robbery?

- 1 A. I didn't hear anything else while he was with me.
2 I didn't notice anything else while he was with
3 us.
- 4 Q. Okay. Did he take anything from you?
- 5 A. No.
- 6 Q. You mentioned there was -- did you hear any
7 gunshots?
- 8 A. Yes, I hear guns while I was there.
- 9 Q. When you heard the gunshots, what did the tall,
10 skinny man near you do?
- 11 A. He was holding us.
- 12 Q. And what did he do once the gunshots started?
- 13 A. And previously I tell you I hear three times
14 something say about Elmi. I answered two things
15 but I didn't answer the third one.
- 16 Q. Okay. Well, let's go back to that. What was the
17 third thing that you heard Elmi say?
- 18 A. I heard like ah, and I thought he hit Elmi, Elmi
19 fell down and the guy who was standing with us
20 left, he ran away.
- 21 Q. Mr. Ala, you take all the time you need. There
22 are some Kleenexes next to you, sir.
- 23 A. It kind of remind me what happened so that's why.
- 24 Q. We understand. That's okay. You just let us
25 know when you're ready to start again.

1 A. Yes, go ahead, sir.

2 Q. We were talking about what the man with the mask
3 on who was standing by you and the woman did when
4 the gunshot start. Did he go somewhere?

5 A. When Elmi started making noise like crying, the
6 gentleman who next to us left, he ran.

7 Q. What direction did he run in the store?

8 A. He -- he run towards the front door, the entrance
9 that day, enter first.

10 Q. What did you and the woman do?

11 A. We ran into the fridge.

12 Q. And why did you do that?

13 A. That's the only option we have to run in the back
14 because that's the only way.

15 Q. And when you and the woman ran back to the back
16 of the store, was that in the freezer or the
17 cooler area?

18 A. Yes.

19 Q. And what did you do once you got back there?

20 A. I talked to the lady and I said, please call the
21 police, please call police and tell them maybe
22 two guys die and we are in dangers.

23 Q. And did she call the police?

24 A. I think she speak good English and she talk to
25 the police with English.

1 Q. And did the police come and find you and the
2 woman in the freezer?

3 A. While she was calling the police, I left the
4 freezer, well, I was kind of hiding just to look
5 if they are still alive or if they are here.

6 Q. And when you looked, what did you see or find?

7 A. I saw Warfa falling down in front door and Elmi
8 is sleeping on the floor.

9 Q. You told us that you never saw a gun with the man
10 who was next to you and the woman; is that
11 correct?

12 A. I didn't see any weapon.

13 Q. Did you see a gun in anybody else's hands?

14 A. No. Except the man who shoots us.

15 Q. And where did that man, where was that man when
16 you saw the gun?

17 A. That's when came and he started shooting us.

18 Q. What did the gun look like?

19 A. I believe it was a dark pistol.

20 Q. Did either of those men, those people with masks,
21 say anything in English while there were in the
22 store?

23 INTERPRETER: Can I have the question
24 again? I'm sorry.

25

1 BY MR. STREITZ:

2 Q. Did either of the person who came into the store
3 that had masks on say anything in English?

4 A. The guy with the gun.

5 Q. And what did he say?

6 A. He said, hurry up and hands up.

7 Q. Now this afternoon you're using a translator, but
8 do you speak and understand some English?

9 A. Yeah, I understand like -- some words I
10 understand, yes.

11 Q. Okay. When the first police officers got to the
12 market, did she take you somewhere?

13 A. Yes.

14 Q. Where did they take you?

15 A. I wasn't sure of everything, but I believe they
16 took us to a building in downtown.

17 Q. Okay. When they first took you out of the store,
18 out of the market, did they put you some place?

19 A. When we come out from the freezer, we sit
20 somewhere and he said, don't be scared, we are
21 the police, you don't have to be afraid from us,
22 relax.

23 Q. Okay. Did the police officers at the store ask
24 you any questions?

25 A. They asked us where is your ID, where is your

1 documents? I don't have my documents, I don't
2 know where I put it but the lady have her ID and
3 she give it to them.

4 Q. Did the police then take you downtown to speak
5 with you?

6 A. About 30 minutes I sit inside the police car and
7 the other lady was sitting also in another car.
8 After 30 minutes then they took us.

9 Q. Okay. And when they took you downtown, did they
10 ask you some questions about what had happened at
11 the market?

12 A. Yes.

13 Q. And was there somebody who was acting as an
14 interpreter for you?

15 A. Yes. Big Somalian guy was interpreter.

16 Q. Was he a police officer?

17 A. He looked like police, yes.

18 Q. Okay. How many robbers did you think were
19 involved at first?

20 A. I believe all I saw was two. I haven't seen more
21 than two.

22 Q. Did you think there were more people involved at
23 first when you spoke to the police?

24 MR. GOETZ: Objection, repetitive, Your
25 Honor.

1 THE COURT: Overruled.

2 THE WITNESS: When the officer ask me,
3 do you know three people died in the store, do
4 you know? And I told them I know two guys, maybe
5 the third guy maybe one of the robbers, but I
6 don't know.

7 BY MR. STREITZ:

8 Q. Did you know the third person that was killed?

9 A. No, I don't.

10 Q. Okay. So you didn't know if he was involved or
11 not?

12 A. Later on I heard --

13 MR. GOETZ: Objection, Your Honor,
14 hearsay.

15 THE COURT: Approach.

16 (Discussion at the bench.)

17 THE COURT: The objection is sustained.

18 BY MR. STREITZ:

19 Q. The man that you've told us had the gun, was his
20 face covered also?

21 A. He was covered.

22 Q. Do you remember anything about his clothing?

23 A. I believe he was wearing something dark but the
24 top of his nose, it was like a blue color,
25 something blue.

1 MR. STREITZ: This might be a good time,
2 Your Honor.

3 THE COURT: Members of the jury, we're
4 going to take our afternoon break. Please be at
5 the usual place by 3:45. Thank you.

6 (Recess.)

7 THE COURT: Mr. Streit.

8 BY MR. STREITZ:

9 Q. Sir, I want to show you a couple of things, and
10 the jury will see them on the screen behind you
11 but you can look in the monitor in front of you.
12 The first thing I'd like to show you an item of
13 evidence that's numbered 96. We're going to see
14 it right now. Do you recognize who that person
15 is in the middle of that video?

16 (Video playing.)

17 A. Yes.

18 Q. What are you doing?

19 A. I was pointing out the lady where the things are.

20 Q. We're going to continue. Okay. Stop there.

21 From where you were in the store, were you able
22 to see this that was going on towards the front
23 of the store?

24 A. I only hear the noises but not sight.

25 Q. Okay. We're going to go to another exhibit and

1 that is Exhibit 97. I'm going to have you look
2 at that.

3 (Video playing.)

4 BY MR. STREITZ:

5 Q. Do you recognize the people in this picture?

6 A. Yes.

7 Q. Who is it and what are they doing?

8 A. Me and the lady.

9 Q. And what are you doing?

10 A. That's when we running when the man release us.

11 Q. I'm sorry, I didn't hear the last part.

12 A. When we running and the man let us go or release
13 us.

14 Q. And now I want to go to another exhibit, Exhibit
15 99.

16 (Video played.)

17 BY MR. STREITZ:

18 Q. And do you recognize who was in this picture?

19 A. Yes.

20 Q. Who is that?

21 A. The lady and myself and me.

22 Q. Okay. And we're going to continue.

23 (Video played.)

24 BY MR. STREITZ:

25 Q. And can you tell us what is happening at this

1 time?

2 A. I was running and the man -- me and the lady stop
3 us.

4 Q. And the man is the one you've described to us who
5 is near you when this all happened?

6 A. Yeah, yes.

7 Q. Okay. We're done with this one at this point.

8 MR. STREITZ: If I can just have a
9 second.

10 I don't have any further questions, but
11 perhaps the other attorney has some questions for
12 you.

13 THE COURT: Mr. Goetz.

14 MR. GOETZ: Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. GOETZ:

17 Q. I do have some questions. How are you, Mr. Ala?

18 A. I'm fine.

19 Q. You've met with the prosecutors before?

20 A. Yes.

21 Q. And they told you that you would be getting
22 questions from both sides in this case?

23 A. Yes.

24 Q. I'm going to ask you some questions now. If you
25 don't understand a question I ask, will you let

1 me know, please?

2 A. Yes.

3 Q. The guys who robbed the store, you did not see
4 either of their faces, did you?

5 A. I didn't see, they have masks.

6 Q. And the person in the front of the store, the
7 robber in front of the store, you remember him
8 wearing dark clothing?

9 A. Yes.

10 Q. A little bit of blue by his nose?

11 A. Yes, when he enter -- when he enter the building
12 when he have the gun.

13 Q. You don't remember him wearing anything that was
14 bright red in color, do you?

15 A. No, I haven't seen anything else.

16 MR. STREITZ: I'm sorry I didn't hear
17 the last.

18 THE WITNESS: I didn't see anything
19 else.

20 BY MR. GOETZ:

21 Q. Now, I want to ask you about the man in the mask
22 that was with you and the woman in the back of
23 the store. That person demanded that he give
24 you -- that you rather, he demanded that you give
25 him your phone?

- 1 A. Yes, he said, give me the phone.
- 2 Q. He punched you and said, give me the phone?
- 3 A. Yes.
- 4 Q. And then he began looking through your pockets,
5 right?
- 6 A. Yes, the lower pockets.
- 7 Q. Taking things from you?
- 8 A. No. I don't think he took anything from me.
- 9 Q. Do you remember him taking documents from you?
- 10 A. No, he didn't take it.
- 11 Q. Do you remember him taking money from you?
- 12 A. No.
- 13 Q. Do you remember him taking your identification,
14 your ID?
- 15 A. No, he didn't.
- 16 Q. Do you remember him taking your keys?
- 17 A. No, he never took it.
- 18 Q. This obviously was a very upsetting incident for
19 you for many reasons; correct?
- 20 A. Well, you don't scared somebody show you a gun.
- 21 Q. When you were, well, the day that this happened,
22 you were asked to go to the police station?
- 23 A. Yes.
- 24 Q. The police gave you a ride in one of their squad
25 cars?

1 A. Uh-huh. Yes.

2 Q. When you were there they put you in an interview
3 room?

4 A. Yes.

5 Q. And two police officers were asking you
6 questions, a man and a woman?

7 A. Yes.

8 Q. And there was another police officer there, a
9 Somali officer, a big Somali guy, he was
10 translating?

11 A. Yes.

12 Q. And the officers were asking you questions about
13 what had just happened?

14 A. Yes.

15 Q. And you were doing the best you could to tell
16 them everything that you knew, right?

17 A. Yes.

18 Q. In your meetings with the prosecutors, have you
19 gone through what you said in that interview?

20 A. Yes.

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

22 THE COURT: You may.

23 BY MR. GOETZ:

24 Q. I have a transcript of that interview.

25 A. Okay.

1 Q. Does that look familiar?

2 A. No. I don't know anything about it.

3 Q. Okay. On Page 4, at one point you told the
4 officers, the bandit is standing by me. Do you
5 see that?

6 A. I don't think I said that. What I remember
7 saying -- when I see the guy I was standing next
8 to the lady and I saw the guy and I ran.

9 Q. Let me just tell you what this paper says you
10 said, all right. Here it says that you said,
11 quote, then he punched me here and said, give me
12 your telephone. Did that happen?

13 A. Yes.

14 Q. And you said that?

15 A. Yes.

16 Q. And then it continues, quote, I said, I do not
17 have it. Then he put his hand into this pocket,
18 and took out my documents, five dollars and took
19 my --

20 THE COURT: Mr. Goetz, you have to break
21 that up.

22 BY MR. GOETZ:

23 Q. Let me start over, I apologize. Then it says
24 that you said the following, I'm quoting, I said
25 I do not have it, then he put his hand into this

- 1 pocket and took out my documents, five dollars
2 and my ID. And then it continues and it
3 indicates you said the following, I'm quoting
4 now, keys, everything, he snatched from me. Is
5 that what you told the police?
- 6 A. He put his hands in my pockets, but I don't think
7 he took something from me.
- 8 Q. But do you remember telling that to the police
9 that he snatched everything from you, the man
10 with the mask?
- 11 A. I said, he put his hands in my pocket, he
12 couldn't find anything and the phone was my
13 pocket in the shirt.
- 14 Q. But you do remember him going through your
15 pockets?
- 16 A. Yes.
- 17 Q. The man with the mask?
- 18 A. Yes.
- 19 Q. Now, I see that you have glasses on today?
- 20 A. Yes.
- 21 Q. Are those glasses that help you see in some way?
- 22 A. Yes.
- 23 Q. Do they help you see things near to you? I use
24 these for reading. Do they help you read or is
25 it to see things far away?

1 A. Basically reading.

2 Q. In the videos that we watched with the
3 prosecutor, you were not wearing glasses; is that
4 right?

5 A. No, I didn't have my glasses.

6 Q. Do you usually wear your glasses every day?

7 A. Sometimes I took -- sometimes I take --

8 Q. Have you had your glasses the whole time you've
9 been in the court building today?

10 A. Yes.

11 Q. To help you see as you walk around the building?

12 A. Yes. Yeah, basically to show me how to -- when
13 I'm reading.

14 Q. You told us about how the man with the mask who
15 was close to you how he looked, his description,
16 you said he was sort of skinny?

17 A. Yes.

18 Q. And you told us about the guy in the front, the
19 guy that had the gun. Do you remember that you
20 also told the officers on the day that this
21 happened what the guy in the front looked like?

22 A. I said, he's not fat, he's not skinny, he's a
23 little bit tall.

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

25 THE COURT: You may.

1 BY MR. GOETZ:

2 Q. The transcript that I have of what you said it
3 shows that you described the man as follows:
4 Quote, they did not look skinny, I saw slightly
5 burley black men. Does that sound accurate?

6 A. I didn't see his skin so I cannot say he is
7 black. I was saying his color of the clothes.

8 Q. Let me read the whole description. It reads as
9 follows: For may be they were slightly built,
10 they did not look skinny. I saw slightly burley
11 black men. Burley. Did you use that word,
12 obviously in Somali, but did you use the word
13 burley?

14 A. All I remember saying is he was wearing gloves
15 and he's wearing black clothes, so I don't see
16 his color of his skin.

17 Q. I understand that. And I'm not asking you about
18 the color of his skin. I'm asking you about his
19 body type.

20 A. I didn't see his skin. But all I said, he's not
21 big, he's not skinny, he's medium build.

22 Q. And did you describe him as burley?

23 THE COURT: Can counsel and the
24 interpreters approach? Can I have both the
25 interpreters and counsel approach.

1 (Discussion at the bench.)

2 BY MR. GOETZ:

3 Q. Mr. Ala, I appreciate your patience.

4 A. Me too.

5 Q. I'm going to ask that the interpreter read the
6 Somali version of what you said that day.

7 (Interpreter reading in Somali from
8 report.)

9 THE WITNESS: He instructed me not to
10 look around and I was not looking around.

11 BY MR. GOETZ:

12 Q. My question is this, you heard what was just read
13 to you in Somali?

14 A. Yes.

15 Q. Is that the description that you gave of the man
16 in the front of the store?

17 A. Do you mean the guy that was with me?

18 Q. No, the other guy?

19 A. He was a short guy wearing dark clothes.

20 Q. I'm sorry, this is -- I'm going to ask you just
21 one last time, and you're not doing anything
22 wrong, this is just difficult. I'm going to have
23 the interpreter read in Somali what you said, and
24 you just tell me if you said that or not. Okay.
25 This is how you describe the person that you saw

1 in the front of the store with the gun.

2 (Interpreter reading in Somali from
3 report.)

4 BY MR. GOETZ:

5 Q. Is that how you described him?

6 A. I did not say I was looking around, but he
7 instructed me clearly not to look around.

8 Q. Is that how you described the man in the front of
9 the store?

10 A. He was a shorter guy wearing --

11 THE COURT: Mr. Ala, I'm going to
12 interject here. The question is not what was the
13 man looking like, the question is, the Somali
14 statement that was just read to you, is that --

15 THE WITNESS: Do you mean the
16 description I gave, the color?

17 THE COURT: The interpreter just read a
18 description, and the question is, did you say
19 what the interpreter just read off the paper?

20 THE WITNESS: I did not talk about their
21 color. What I said was, one guy was short and
22 the other guy was tall.

23 THE COURT: Could you interpret for the
24 record in English that Somali statement that was
25 read to the witness.

1 INTERPRETER: It seems to me they were
2 hiding. They did not seem skinny, one of the
3 guys was dark skin and short. There was other
4 guy who was punching me from back. I was not
5 able to look around.

6 THE COURT: Mr. Goetz.

7 MR. GOETZ: Thank you.

8 BY MR. GOETZ:

9 Q. I want to ask you a few final questions about the
10 things the man in the mask said or did not say.

11 Okay.

12 A. Yes.

13 Q. The man in the mask was talking to you in Somali?

14 A. Yes. The guy who was with me.

15 Q. And as we saw on the video, the woman was right
16 next to you, the customer?

17 A. Yes. By the time we were trying -- we were
18 trying to get out, he hold us back and he just
19 bring us together.

20 Q. While the man in the mask was with you and the
21 woman, you never heard him say anything to the
22 man in the front of the store with the gun?

23 A. I didn't.

24 Q. Specifically, the man in the mask never said
25 anything such as, no killing?

1 A. I haven't heard that word.

2 MR. GOETZ: Thank you, sir. I have no
3 more questions. The prosecutor might.

4 MR. STREITZ: If I can just have a
5 second, Your Honor.

6 Mr. Ala, I have no further questions.

7 THE COURT: Mr. Ala, you may step down.
8 You are excused.

9 (Witness leaves the stand.)

10 THE COURT: Members of the jury, we'll
11 take our break for the day. I'd like you back
12 here at 9:30 tomorrow at which time we'll resume.
13 I would ask at this time that you gather your
14 things, there is a legal issue I have to discuss.
15 I would ask spectators in the courtroom to remain
16 and, Ms. Gibson, if you would remain. Everyone
17 else, please, see you tomorrow at 9:30.

18 (Jurors leave the courtroom.)

19 MR. GOETZ: Your Honor, may we approach,
20 first?

21 THE COURT: You may.

22 Ms. Gibson, do you have any daycare or
23 buses you have to worry about? It won't be long,
24 you're not in trouble or anything. I just want
25 you to remain.

1 (Discussion at the bench.)

2 THE COURT: Ms. Gibson, just wanted to
3 ask you a question. Obviously in a case like
4 this we're very concerned that the jury not talk
5 with anybody or have anybody talk to them. Has
6 anybody approached you during any of the breaks
7 to say anything that may have been a spectator
8 or not -- a witness, anything like that?

9 JUROR GIBSON: No.

10 THE COURT: Okay. So no one has spoken
11 to you at all?

12 JUROR GIBSON: No. That's in here?

13 THE COURT: Or someone you may have see
14 as a spectator in the courtroom?

15 JUROR GIBSON: No.

16 THE COURT: Nobody has spoken to you
17 about the case?

18 JUROR GIBSON: No.

19 THE COURT: Could have just been an
20 inadvertent passing and somebody thought words
21 were spoken and perhaps not.

22 JUROR GIBSON: Okay. No.

23 THE COURT: Okay. That's all we want to
24 check out. We want to be very careful. And
25 don't take this as -- I hate to single people

1 out.

2 JUROR GIBSON: That's fine.

3 THE COURT: We just want to make sure.

4 JUROR GIBSON: Okay.

5 THE COURT: We'll have you back at 9:30
6 tomorrow.

7 (Juror leaves the courtroom.)

8 THE COURT: Mr. Elmi, will you translate
9 for me as well.

10 Be seated.

11 I'm going to give a warning to everyone
12 in the audience, I'm not singling out any one
13 person or any one side, but if anyone in this
14 courtroom has contact with the jury in any way,
15 shape or form, I'm guarantee you that you will
16 spend the rest of this trial in jail on contempt
17 charges. If anyone so much as approaches a juror
18 in this case I will consider it misconduct. The
19 only one who may have any contact with the jury
20 in this case is my clerk, Ms. Lutz. No one else.
21 We have already lost one juror because of contact
22 between a juror and a witness. I do not wish to
23 have any further contact or contamination of the
24 jury.

25 We are adjourned until 9:30.

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

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