

ORIGINAL

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

3 -----

4 State of Minnesota)

5 Plaintiff,)

6 v.)

7 Mahdi Hassan Ali)

8 Defendant.)

JURY TRIAL

D.C. File 27-CR-10-2076

App. Court No. A12-0173

Volume VIII of XIV

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

15 APPEARANCES:

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

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

22 Mahdi H. Ali, defendant.

23 Abdi Elmi, Interpreter.

24 Erin Lutz, Law Clerk.

25 Dana Carmichael, Court Reporter.

1 (In open court:)

2 THE COURT: Record should reflect we're
3 outside the hearing of the jury on the issue of
4 what information may be elicited regarding the
5 co-defendant's cooperation, to what extent the
6 defense can cross-examine him about the specific
7 numbers in his plea negotiation.

8 Mr. Goetz, any further argument?

9 MR. GOETZ: Yes, Your Honor. Your
10 Honor, it's the defendant's intention to
11 cross-examine Mr. Ahmed Ali about his powerful
12 motivation, bias and interest in not dying in
13 prison and how the plea agreement makes that not
14 happening and it gets him a definite release
15 date, which would be no more than 180 months.

16 The case law that the prosecutor brought
17 to us this morning when the issue was raised does
18 not support the broad exclusion that the State
19 would ask the Court to impose. As I read those
20 cases, Your Honor, they talk about -- well, first
21 of all, it's your -- you have discretion, you
22 have a great deal of discretion in this area.
23 What the cases talk about is that the Supreme
24 Court has held that -- the Minnesota Supreme
25 Court has held that it's not fair to prohibit the

1 defense from cross-examining the defendant, or a
2 witness rather about the exact number of months
3 that they're getting for a plea reduction.
4 Courts have allowed percentages. The Greenleaf
5 case allowed a 75 percent reduction. This is 725
6 N.W. 2d 505, but did not allow the defense
7 attorney in that case to say the exact number of
8 months.

9 In State versus White, a case I gave the
10 Court, while the Court said it was not a matter
11 of constitutional error to prohibit the exact
12 number of months from being discussed in that
13 case, the Supreme Court did warn that, and note
14 that the defendant's interest in fully
15 cross-examining the witness about the maximum
16 prison term faced if not for the favor of plea
17 agreement outweighed the State's interest in
18 letting the jury indirectly know the maximum
19 penalty.

20 Another case I've given the Court is
21 United States versus Turner from the fourth
22 circuit, which talks about the inquiry into the
23 maximum penalty that a witness might receive is
24 being as a general proposition highly relevant to
25 testing the witness's credibility. And, again, I

1 wants to emphasize, Your Honor, that here what
2 we're not -- I'm not driving at an exact number
3 of months. I'm not going to cross-examine Ahmed
4 Shire Ali about you're getting, you know,
5 200-month reduction or a 51, 50 reduction, that's
6 not it, but it's the motive, the powerful motive
7 of not dying in prison versus ever getting
8 outside those prison walls. So in this case it
9 is a matter of constitutional significance to
10 prohibit that cross-examination, Your Honor,
11 would violate Mr. Mahdi Ali's right under the 5th
12 Amendment, the 14th Amendment, due process, the
13 6th Amendment, right to confrontation, his right
14 to a fair trial, his right to offer evidence.

15 So what I ask, Your Honor, is that you
16 allow me to cross-examine Mr. Ahmed Shire Ali
17 that he was charged initially with first-degree
18 murder with premeditation, that he knew he would
19 be facing life in prison, maybe die in prison,
20 but under the plea agreement he's pled guilty to
21 specific terms, six counts -- or three counts
22 rather of attempted aggravated robbery. He gets
23 a sentence -- a total sentence of 180 months.
24 That would be the extent of what I would
25 cross-examine him on.

1 THE COURT: Mr. Streit.

2 MR. STREITZ: Your Honor, the cases that
3 the State provided the Court this morning do
4 address the balancing of any constitutional
5 issues that counsel has raised. The crux of
6 those cases is that we start allowing the jury to
7 know what the potential sentences are, it
8 invades -- the jury is then operating on issues
9 that really aren't there, the issue of sentencing
10 and penalties is up to the Court, their
11 determination is guilt or not guilt. And that is
12 the concern that the Supreme Court of Minnesota
13 has voiced in allowing the actual number of
14 months or years of sentences, and they allow the
15 court, the trial courts to limit that so that the
16 jury doesn't get information about sentencing
17 that would improperly influence them.

18 I'm proposing that the parameters of any
19 agreement be that Mr. Ahmed be asked if he
20 entered into such an agreement with the State and
21 that agreement requires him to provide truthful
22 information, to cooperate with the police and
23 prosecution in the investigation and prosecution
24 of the case, to include testifying truthfully,
25 giving -- cooperating with the police, in

1 exchange he was allowed to plead guilty to three
2 lesser counts, three counts of attempted
3 aggravated robbery involving a firearm, aiding
4 and abetting another, Mahdi Ali, and that he is
5 going to prison as a result.

6 THE COURT: All right.

7 MR. STREITZ: And that his, you know,
8 and that his prison sentence is less than he
9 ordinarily -- that he would have gotten had he
10 been convicted of the original charges.

11 MR. GOETZ: If I may make one
12 suggestion?

13 THE COURT: You may.

14 MR. GOETZ: I think if the State has any
15 concern about misuse of the evidence, the Court
16 could instruct the jury that the evidence about
17 any plea agreement is just solely to be used to
18 provide them in evaluating the testimony of this
19 witness.

20 THE COURT: Well, the State has read the
21 following, and is relying on the following cases:
22 State versus Patterson, 577 N.W. 2d 494, State
23 versus Dobbins, D-o-b-b-i-n-s, 725 N.W. 2d 492,
24 State versus Ferguson, 742 N.W. 2d 651, State
25 versus Greenleaf, 591 N.W. 2d 488, State versus

1 Yang, Y-a-n-g, 774 N.W. 2d 539, and State versus
2 Deverney, D-e-v-e-r-n-e-y, 592 N.W. 2d 837, and
3 State versus White, which is cited by defense
4 counsel.

5 In summary, those cases seek to strike a
6 balance between the defendant's right to
7 confrontation and the jury should know that the
8 co-defendant received a substantial reduction in
9 his sentence, or what he was facing to what he
10 was actually going to receive. Some of the cases
11 allowed percentages without stating what the
12 months were. That has to be balanced against the
13 fact that if the jury finds out that the
14 co-defendant was facing a sentence of life
15 without parole, it is a very quick jump to
16 knowing that that is what Mr. Ali is facing. And
17 we take great pains that the jury does not know
18 the potential penalties on most cases for fear
19 that they will factor that into their
20 deliberations when jurors are in fact told that
21 they are not to consider the consequences of the
22 verdict.

23 Given that, I will not allow the defense
24 to elicit that co-defendant was facing life
25 without parole. However, I'll allow the defense

1 to elicit the numbers of months that the
2 co-defendant is receiving as part of his
3 negotiation and that number of months is a
4 substantial reduction from what he was facing
5 with the original charges. The problem with
6 percentages in this case clearly is we are not
7 dealing with 180 months versus 360 months or some
8 other number. We're dealing with a life
9 sentence, so the number of actual months cannot
10 be calculated, but I think it is appropriate that
11 defense counsel be able to characterize the 180
12 months as a substantial, or even a very
13 substantial reduction in the amount of time he
14 was facing.

15 To get into whether someone is going to
16 die in prison or not injects even more improper
17 factors for the jury to consider in deciding
18 whether the case has been proven beyond a
19 reasonable doubt. So that's the Court's rulings.
20 Any questions or clarifications?

21 MR. GOETZ: Yes, Your Honor.

22 THE COURT: Mr. Goetz.

23 MR. GOETZ: Your Honor, I understand the
24 Court's ruling about using the phrase life
25 without parole. However, with a life sentence he

1 would have had -- a defendant convicted of a life
2 sentence in Minnesota has to serve at least 30
3 years in prison, that's serve 30 years in prison.
4 If we use that number as a basis to give the jury
5 some idea of the reduction, this would be over
6 two-thirds reduction in his sentence in terms of
7 the time served with good time. So I'd ask the
8 Court to at least, you know, he could have been
9 looking at being in prison -- in prison, locked
10 up for at least 30 years, and that he's not
11 going -- that's not going to happen, that's going
12 to be substantially less than that. Now, that
13 doesn't interject life, but I think gives the
14 jury a more realistic version of the significance
15 of the reduction. Just saying substantial, very
16 substantial, I think doesn't give the magnitude
17 of reduction in this case and therefore doesn't
18 allow for proper impeachment of this witness.

19 THE COURT: Mr. Streit.

20 MR. STREITZ: Your Honor, I would oppose
21 it. I think the Court's initial reaction is that
22 he receive -- he's receiving a substantial
23 reduction fits the balance that our Supreme Court
24 deems appropriate.

25 And, by the way, Your Honor, the plea

1 agreement is for 216 months or 18 years.

2 THE COURT: Oh, I thought it was 180.

3 MR. GOETZ: I misspoke, Your Honor. I
4 had 18 years not 180 months.

5 THE COURT: I will allow you to elicit
6 the number of months and that is a very
7 substantial reduction from what he was facing
8 originally. And I will maintain that as the
9 Court's ruling.

10 MR. STREITZ: And the other parts of
11 that agreement, Your Honor, providing truthful
12 testimony, if you don't fulfill it, you would --
13 the plea agreement is withdrawn is proper?

14 THE COURT: That is proper as the case
15 law says so. I would note the reason why I'm
16 trying to strike this balance is the important
17 thing for the jury to know, it's clear from the
18 case law, is not the exact number of months, it's
19 not a mathematical calculation, it's the
20 knowledge that a co-defendant who is cooperating
21 is receiving a substantial benefit. And by
22 stating what the prison sentence he's getting and
23 that it is a very substantial reduction to what
24 he's facing, it will be very clear to the jury
25 that he's receiving a very substantial benefit

1 for his cooperation, and that is the basis for
2 the Court's ruling.

3 Mr. Goetz.

4 MR. GOETZ: Your Honor, I understand the
5 Court's ruling. So my record is clear, I'm going
6 to adjust my cross-examination, but it's
7 different than I otherwise would have presented.
8 I think I've outlined before how I would have
9 otherwise presented it before the Court's ruling,
10 so I state the legal basis for my position.

11 THE COURT: Position is noted.

12 Anything further?

13 MR. STREITZ: No.

14 THE COURT: Members of the audience, if
15 there is not a seat available, you may not stand
16 in the courtroom, you must leave until there is a
17 seat available. So if you're standing in the
18 back, you must leave.

19 MR. STREITZ: Your Honor, may we
20 approach?

21 THE COURT: You may.

22 (Discussion at the bench.)

23 (Jurors enter the courtroom.)

24 THE COURT: State may call its next
25 witness.

1 MR. STREITZ: Your Honor, the State is
2 calling Ahmed Ali as its next witness.

3 THE COURT: Mr. Ali, if you can stand
4 and raise your right hand.

5 AHMED ABDI ALI,
6 called as a witness on behalf of the State, having been
7 first duly sworn, was examined and testified as follows:

8 THE COURT: You may have a seat. And
9 there is a microphone there. You don't have to
10 speak very closely to it but if you can speak in
11 the direction so that everybody can hear you.
12 And also answer yes and no opposed to mummering,
13 like uh-huh. Any questions?

14 THE WITNESS: Nope.

15 THE COURT: All right. Mr. Streitz.

16 **DIRECT EXAMINATION**

17 BY MR. STREITZ:

18 Q. Just like the Judge mentioned to you, Mr. Ali, I
19 want to make sure you talk right into the
20 microphone so we all can hear you. If you need
21 to slide it towards you or however, that's fine.

22 A. All right.

23 Q. Can you give us your complete name and spell it
24 please.

25 A. Ahmed Ali, A-h-m-e-d A-l-i.

1 Q. Is there a middle name?

2 A. Abdi, A-b-d-i.

3 Q. Sir, how old are you right now?

4 A. Nineteen.

5 Q. And presently are you in custody?

6 A. Yes.

7 Q. And where are you in custody?

8 A. St. Cloud.

9 Q. St. Cloud what?

10 A. Correctional Facility.

11 Q. Prison?

12 A. Yep.

13 Q. On January 6th of 2010 in the evening hours, did
14 you enter the Seward Market on Franklin Avenue in
15 Minneapolis?

16 A. Yes.

17 Q. Who did you enter that market with?

18 A. Mahdi.

19 Q. Mahdi who?

20 A. Mahdi Ali.

21 Q. Is he related to you?

22 A. Nope.

23 Q. Is Mahdi Ali in this courtroom?

24 A. Yes.

25 Q. Can you indicate by pointing to him and

1 describing what clothing he is wearing?

2 A. He's right there. He's wearing black (pointing).

3 Q. Black what?

4 A. Black shirt.

5 MR. STREITZ: May the record reflect

6 he's identified the defendant, Your Honor?

7 THE COURT: Any objection?

8 MR. GOETZ: No objection.

9 THE COURT: It will.

10 BY MR. STREITZ:

11 Q. Three people were killed in that store, weren't
12 they?

13 A. Yes.

14 Q. Did you and Mahdi Ali go in there to rob that
15 store?

16 A. Yes.

17 Q. Did you have a gun?

18 A. No.

19 Q. Did he have a gun?

20 A. Yes.

21 Q. We're going to come back to what happened on
22 January 6th, okay?

23 A. Okay.

24 Q. I want to talk about something else first. After
25 that murder on January 6, did you turn yourself

1 in?

2 A. Yes.

3 Q. Do you remember what date?

4 A. The 9th or the 10th.

5 Q. And why did you turn yourself in?

6 A. Because I heard police or somebody was looking
7 for me.

8 Q. And did you come down to the police station?

9 A. Yes.

10 Q. Did anybody come with you?

11 A. Yes, my family.

12 Q. Did the detectives speak to you?

13 A. Yes.

14 Q. Did you speak to them?

15 A. No.

16 Q. Why?

17 A. I wanted a lawyer present.

18 Q. Did you get a lawyer a couple of days after that?

19 A. Yes.

20 Q. What's your lawyer's name?

21 A. Paul Edlund.

22 Q. Did you and Mr. Edlund together reach a decision
23 on what you should do about your involvement in
24 the murders at the market?

25 A. Yes.

1 Q. And was that to cooperate with the State?

2 A. Yes.

3 Q. And did you enter into an agreement with the
4 State?

5 A. Yes.

6 Q. Some people call it a plea bargain, could be an
7 agreement, but that's what you did?

8 A. Yes.

9 Q. With the advice of your attorney?

10 A. Yes.

11 Q. And was part of that agreement that you have to
12 provide the police and the prosecution truthful
13 information about what happened in the market
14 that night of January 6, 2010?

15 A. Yes.

16 Q. Did that agreement also require you to continue
17 to cooperate with the police and the prosecution
18 if they had questions or wanted information from
19 you?

20 A. Yes.

21 Q. And that that information had to be truthful?

22 A. Yes.

23 Q. Did that agreement also require you to testify
24 against anyone who would be indicted for their
25 participation in the crimes?

1 A. Yes.

2 Q. Including the defendant, Mahdi Ali?

3 A. Yes.

4 Q. Was part of that agreement that in the event that
5 you decided not to go through with the agreement
6 or were untruthful or anything, that you would
7 then face the charges that you would be indicted
8 for?

9 A. Yes.

10 Q. And you were indicted for six counts of murder,
11 weren't you?

12 A. Yes.

13 Q. In exchange for your cooperation, the State,
14 specifically myself, agreed to allow you to plead
15 to three counts of attempted aggravated robbery,
16 aiding and abetting Mahdi Ali when a firearm was
17 used; is that correct?

18 A. Yes.

19 Q. And that your sentence in prison would be 218
20 months?

21 A. Yes.

22 Q. And it was -- is it your understanding that that
23 sentence is a substantial reduction from what you
24 otherwise would be facing if you were convicted
25 of the indicted counts of murder?

1 A. Yes.

2 Q. Did you then plead guilty to those charges that
3 I've outlined, the attempted robbery charges?

4 A. Yes.

5 Q. Have you been sentenced yet?

6 A. No.

7 Q. But it's your understanding that you wouldn't be
8 sentenced until all cases that were indicted in
9 this matter were resolved?

10 A. Yes.

11 Q. Was it your further understanding that you could
12 be prosecuted for perjury and/or contempt charges
13 if you made any false statements regarding a
14 material fact?

15 A. Yes.

16 MR. GOETZ: Objection.

17 THE COURT: Overruled.

18 BY MR. STREITZ:

19 Q. Was it your understanding that if you perjured
20 yourself for giving a false statement regarding a
21 material fact the agreement could be taken away?

22 A. Yes.

23 Q. Okay. As part of the agreement did you have to
24 provide the police with a statement first so they
25 could determine whether or not you're providing

1 accurate, truthful information?

2 A. Yes.

3 Q. And did you do that?

4 A. Yes.

5 Q. And was your attorney present when you gave that
6 statement?

7 A. Yes.

8 Q. After that statement did your attorney, you, and
9 myself sign an agreement?

10 A. Yes.

11 Q. Now, we're going to go back to Wednesday, January
12 10, 2010. Ready to talk about that?

13 A. Yes.

14 Q. Were you in school that day?

15 A. Yes.

16 Q. Where did you go to school at that day?

17 A. Volunteers of America.

18 Q. Also known as VOA?

19 A. Yes.

20 Q. What grade were you in that day?

21 A. I believe I was a junior.

22 Q. And what time did you get out of school that day?

23 A. 2:25.

24 Q. Do you know a person by the name of Abdisalan
25 Ali?

- 1 A. Yes, that's my cousin.
- 2 Q. Okay. And was he younger than you?
- 3 A. Yes.
- 4 Q. Did he go to school there also?
- 5 A. Yes.
- 6 Q. Was he in school that day?
- 7 A. Yes.
- 8 Q. After school got out, did you meet up with your
9 cousin?
- 10 A. Yes.
- 11 Q. Do you call him Abdi?
- 12 A. I call him by his full name.
- 13 Q. Abdisalan?
- 14 A. Yes.
- 15 Q. When you and Abdisalan got out of school that
16 day, what did you do?
- 17 A. We went with Mahdi Ali.
- 18 Q. And that's the defendant who you identified
19 today?
- 20 A. Yes.
- 21 Q. Where were you going to go?
- 22 A. We went to a gas station or something. He
23 grabbed some drinks or something, and he dropped
24 us off back at school.
- 25 Q. Okay. So did Mahdi Ali have a car that day?

1 A. Yes.

2 Q. What kind of car?

3 A. A red Crown Vic.

4 Q. Crown Vic?

5 A. Yeah.

6 Q. Okay. And is that what he -- did he pick you and
7 your cousin Abdisalan up at school?

8 A. Yes.

9 Q. Did you know he was going to pick you up that
10 day?

11 A. Yes.

12 Q. How did you know that?

13 A. I talked to him the day before.

14 Q. And what was the plan? Why was he going to pick
15 you up?

16 A. I was going to go to him to the impound lot to
17 get a car out or something.

18 Q. Whose car?

19 A. His car.

20 Q. What kind of car?

21 A. Chevy Caprice.

22 Q. Okay. When Mahdi Ali picked you up that
23 afternoon after school, was there anyone else in
24 the car when he picked you and your cousin up?

25 A. No.

1 Q. So the three of you were in the car?

2 A. Yes.

3 Q. Where did you go first?

4 A. A gas station.

5 Q. And to do what?

6 A. I don't remember. He wanted to do something,
7 grab something from the store or something like
8 that. I didn't want anything from it.

9 Q. And after you went to the store, where did the
10 three of you go?

11 A. He dropped us back off at the school. He said he
12 had to go pick up the owner of the car and take
13 him to work.

14 Q. And what did you and your cousin do when you were
15 dropped back at the school?

16 A. We just stayed inside the school.

17 Q. And why were you staying back in the school?

18 A. Wait for him to take the owner of the car to
19 work.

20 Q. Did Mahdi Ali come back?

21 A. Yes.

22 Q. Approximately how many -- how long did it take
23 him to come back?

24 A. Ten to 15 minutes.

25 Q. When he came back, what car was he driving?

1 A. He was driving the same car, a red Crown Vic.

2 Q. Was there anybody else in the car with him when
3 he came back to the school?

4 A. No.

5 Q. Did you and your cousin get in the car with him?

6 A. Yes.

7 Q. Your cousin, Abdisalan, back then, 2010, January
8 6, 2010, do you recall how tall he was?

9 A. About 6 -- yeah, about 6'.

10 Q. How tall were you back then?

11 A. We were about the same height, so about 6 --

12 Q. I'm sorry?

13 A. So about 6.

14 Q. What was his body build like back then?

15 A. He was heavy, a little heavy, bigger than both of
16 us actually.

17 Q. What was your body build?

18 THE COURT: I'm sorry, Mr. Streit, I
19 didn't understand the last part.

20 THE WITNESS: He was bigger body wise
21 than both of us, me and Mahdi.

22 THE COURT: Thank you.

23 BY MR. STREITZ:

24 Q. How about your body build?

25 A. I was slim.

1 Q. Okay. How would you describe you and your
2 cousin's height compared to Mahdi Ali back then?

3 A. We were taller.

4 Q. How much taller would you estimate?

5 A. About four or five inches.

6 Q. And back then how would you describe Mahdi Ali's
7 build?

8 A. About the same.

9 Q. Same as he is now?

10 A. Yeah.

11 Q. Okay. So you've told us that Mahdi Ali picked
12 you and your cousin Abdisalan back up at school
13 in the red Crown Victoria; correct?

14 A. Yes.

15 Q. Where did you go?

16 A. We went to a Coat Factory in North Minneapolis.

17 Q. Why did you -- just the three of you?

18 A. Yes.

19 Q. And did you go to that Coat Factory?

20 A. Yes.

21 Q. Did everybody go into the Coat Factory?

22 A. Yes.

23 Q. And what did the three of you do in the Coat
24 Factory?

25 A. We looked around for some jackets.

- 1 Q. Okay. Did you do something inside the Coat
2 Factory?
- 3 A. Yes, I tried to take a jacket.
- 4 Q. By take, what do you mean by take?
- 5 A. Like steal the jacket.
- 6 Q. Were you successful?
- 7 A. No.
- 8 Q. What happened?
- 9 A. I ended up returning the jacket.
- 10 Q. You got caught?
- 11 A. Yeah.
- 12 Q. How about your cousin Abdisalan?
- 13 A. I don't remember, I was in the back of the store,
14 so I seen him in a new jacket at the impound lot.
- 15 Q. Okay. Did you later learn he stole the jacket?
- 16 A. Yes, I later learned, yeah.
- 17 Q. When you got caught trying to steal a jacket, who
18 caught you, do you know if it was a male or
19 female?
- 20 A. A female.
- 21 Q. Okay. Did you say something to her about a BB
22 gun?
- 23 A. Yes.
- 24 Q. What did you say?
- 25 A. I told her that I had a BB gun, that's why the

1 thing went off, the metal detector. Something
2 like that.

3 Q. Did you have a BB gun?

4 A. No.

5 Q. Was it cold out that day?

6 A. Yes.

7 Q. When you were with your cousin Abdisalan, do you
8 recall what he was wearing that day?

9 A. Before the Coat Factory?

10 Q. Before the Coat Factory.

11 A. A big jacket or something.

12 Q. Describe that jacket for us.

13 A. It was dark in color. It had a little hood on
14 it.

15 Q. Was it a light coat, a big coat?

16 A. It was a big coat.

17 Q. Okay. Do you remember anything else about what
18 he was wearing that day?

19 A. I believe like a black or white shirt.

20 Q. Do you know if he had a cap on?

21 A. Yeah. He had a black -- a black skull cap on.

22 Q. Do you remember -- well, let me go back. You
23 said, when I asked you this question, you said,
24 before the Coat Factory. Did something change
25 after the Coat Factory in terms of what Abdisalan

- 1 was wearing?
- 2 A. Yes. He was wearing a different jacket.
- 3 Q. Can you describe that jacket to us.
- 4 A. It was long coat. It had like fur around the
- 5 collar.
- 6 Q. Is that the one he stole?
- 7 A. I believe so, yes.
- 8 Q. What did he do with the other coat that you
- 9 described that he was wearing?
- 10 A. I believe he left it in the car.
- 11 Q. What was Mahdi Ali wearing that day before you
- 12 went to the Coat Factory?
- 13 A. Like a vest or a dress shirt, something like
- 14 that.
- 15 Q. Do you recall the color of the shirt at all?
- 16 A. No.
- 17 Q. Was he wearing a coat at that time?
- 18 A. No.
- 19 Q. Do you recall the type of pants or color of the
- 20 pants he was wearing?
- 21 A. Blue or black. I don't remember.
- 22 Q. Do you remember anything about any shoes that he
- 23 was wearing?
- 24 A. Like flat shoes, Vans. They look like they're
- 25 Vans.

- 1 Q. I'm sorry?
- 2 A. It was flat, kind of look like some dress, or
3 Vans.
- 4 Q. Vans?
- 5 A. Yeah.
- 6 Q. And what color?
- 7 A. Grey or red.
- 8 Q. Was he wearing anything on his head?
- 9 A. Yes, a hat.
- 10 Q. What color?
- 11 A. Red.
- 12 Q. Anything else about that cap that you remember?
- 13 A. It had strings on the side.
- 14 Q. How about you, what were you wearing at the time
15 that you went to the Coat Factory?
- 16 A. A sweater and a jacket and some white and black
17 shoes.
- 18 Q. What kind of shoes?
- 19 A. Some Jordan's, some white and black. It had
20 black bottoms.
- 21 Q. Okay. The tops were white?
- 22 A. Yep.
- 23 Q. Did you have a shirt on?
- 24 A. Yes.
- 25 Q. Tell us about that shirt.

- 1 A. It was white black and red. It was horizontal
2 striped shirt.
- 3 Q. How about pants?
- 4 A. Dark blue pants.
- 5 Q. Were they jeans or dress slacks?
- 6 A. Jeans.
- 7 Q. After the Coat Factory, when you attempted to
8 steal a coat and your cousin did steal a coat,
9 where did you go next?
- 10 A. The impound lot.
- 11 Q. Who went?
- 12 A. Me, Mahdi and Abdisalan.
- 13 Q. How did you get there?
- 14 A. We drove.
- 15 Q. Who drove?
- 16 A. Mahdi drove.
- 17 Q. Same car?
- 18 A. Yes.
- 19 Q. When you got to the impound lot, did any of you
20 leave the car and go into the impound lot?
- 21 A. Yes, all three of us.
- 22 Q. And what again was the purpose of going to the
23 impound lot?
- 24 A. To try and get the car out.
- 25 Q. And if the car was gotten out, what was going to

- 1 happen to the car?
- 2 A. He said he was going to let me borrow the car.
- 3 Q. Did you have a license?
- 4 A. Yes.
- 5 Q. Did you have a car of your own?
- 6 A. No.
- 7 Q. Did your parents ever let you use a car?
- 8 A. Sometimes.
- 9 Q. Did you have to have their permission?
- 10 A. Yeah.
- 11 Q. What happened in the impound lot?
- 12 A. The guy must have said -- Mahdi must have only
- 13 had like \$180, and the car was like \$360,
- 14 somewhere around there.
- 15 Q. So what happened?
- 16 A. So he didn't have enough money so we left.
- 17 Q. All three of you leave?
- 18 A. Yes.
- 19 Q. Did you leave in the same car, the red Crown
- 20 Victoria?
- 21 A. Yes.
- 22 Q. Where did you go next?
- 23 A. I kind of went to sleep, and when I woke up I
- 24 believe we were at a gas station.
- 25 Q. Do you know where the gas station was?

1 A. At that time I believed it was at St. Paul or
2 somewhere around there.

3 Q. And at the gas station, did you do something?

4 A. Yes, I went inside.

5 Q. Why did you go inside?

6 A. To pay for gas.

7 Q. Okay. What about the other two, Mahdi Ali and
8 Abdisalan, where were they?

9 A. They stayed in the car.

10 Q. And did you pay for some gas?

11 A. Yes.

12 Q. And once you paid for the gas, what did you do?

13 A. I went back inside the car.

14 Q. Who pumped the gas?

15 A. I think I did.

16 Q. Okay. After you got some gas in the car, where
17 did you go?

18 A. I think Nicollet and Franklin.

19 Q. And who was in the car?

20 A. Me, Mahdi and Abdisalan.

21 Q. Who drove the car?

22 A. Mahdi.

23 Q. And what was going to happen at Franklin and
24 Nicollet?

25 A. After we parked, me and Mahdi stepped outside and

1 he said, I know this one place, let's go inside
2 or something.

3 Q. Go inside and do what?

4 A. Try to rob them.

5 Q. Now, you said you and Mahdi stepped out of the
6 car and had that discussion, where is Abdisalan?

7 A. He was at that point, he was inside the car.

8 Q. Okay. Did you see him leave the car?

9 A. He said he was going to go inside of a building.
10 When we came back he was still inside the car so
11 I don't know if he went inside the building or
12 not.

13 Q. Do you know what building he was going to go
14 inside?

15 A. A friend's building.

16 Q. He mention the friend?

17 A. Yes, I know by his nickname. Bullethead or
18 something like that.

19 Q. Bullethead?

20 A. Yeah.

21 Q. And when you and Mahdi got out of the car, did
22 you notice if Mahdi was wearing anything
23 different than he had been wearing up to that
24 point?

25 A. Yes. He put on the jacket that was inside the

1

car.

2

Q. What jacket that was inside the car?

3

A. The big kind of dark color puffy jacket.

4

Q. Whose jacket?

5

A. Abdisalan's old jacket.

6

Q. What was Abdisalan wearing?

7

A. The new jacket he must have gotten from the Coat

8

Factory.

9

Q. Was Mahdi Ali wearing anything on his head?

10

A. Yes, a hat.

11

Q. Same hat you described?

12

A. Yes.

13

Q. Had he done anything to the hat?

14

A. I believe he wore it inside out or something.

15

Q. When it was inside out, what color was it?

16

A. Black.

17

Q. You had mentioned earlier that the hat had

18

strings. Did you still see the strings?

19

A. Yes.

20

Q. So, you and Mahdi Ali are going to go into this

21

business and you're going to rob it; correct?

22

A. No. That's what he said, but I said, no.

23

Q. Well, we're going to get to that.

24

A. All right.

25

Q. Did you and Mahdi Ali go into that business?

1 A. Yes. We eventually went in there, yep.

2 Q. And when you got in there, what did you do?

3 A. I just walked in and walked out.

4 Q. And who walked in and walked out with you?

5 A. Mahdi.

6 Q. Why did you walk in and walk out if the plan was
7 to rob it?

8 A. I don't remember.

9 Q. Were there a lot of people in there at the time?

10 A. Yes.

11 Q. So you didn't end up robbing the place?

12 A. No.

13 Q. Did either of you, that is Mahdi Ali or yourself,
14 have anything covering your faces when you were
15 inside that building?

16 A. No.

17 Q. Did you know if Mahdi Ali had a gun with him at
18 that time?

19 A. No. He never mentioned that he had a gun.

20 Q. Did you think he had a gun?

21 A. Yes. I believed he had a gun, but I wasn't for
22 sure.

23 Q. Why do you think he had a gun?

24 A. I don't know, if you thinking about robbing a
25 place, you're going to have some type of weapon.

1 Q. Did the two of you walk into the store together?

2 A. Yes.

3 Q. Did the two of you walk out of the store
4 together?

5 A. Yes.

6 Q. Anybody else with you other than you and Mahdi
7 Ali?

8 A. No.

9 Q. Did Abdisalan come into the store with you?

10 A. No.

11 Q. After you left the store, where did you and Mahdi
12 Ali go?

13 A. We dropped -- we went back to the car and we
14 dropped Abdisalan off at home.

15 Q. When you got back to the car, was Abdisalan in
16 the car?

17 A. Yes.

18 Q. You said that you went somewhere then and that
19 was where?

20 A. (No response.)

21 Q. Where did you go after you got back in the car?

22 A. We dropped Abdisalan at home.

23 Q. Why did you drop him off?

24 A. He asked to go home.

25 Q. Why did he want to go home?

1 A. I don't remember. To probably get home before
2 his dad or something.

3 MR. GOETZ: Objection, Your Honor,
4 speculation.

5 THE COURT: Sustained. Disregard the
6 last answer.

7 BY MR. STREITZ:

8 Q. Did you -- who drove the car --

9 A. Mahdi.

10 Q. Let me finish. Who drove the car from Nicollet
11 and Franklin to where you dropped your cousin
12 off?

13 A. Mahdi.

14 Q. Did you ever drive that car that day?

15 A. Nope.

16 Q. Do you ever see Abdisalan drive the car that day?

17 A. Nope.

18 Q. When you -- did you go straight from Nicollet and
19 Franklin to where your cousin lived?

20 A. Yes.

21 Q. Did you stop along the way?

22 A. We stopped at Auto Zone like half a block at the
23 end of the block by his house.

24 Q. Why did you do that?

25 A. He asked to be dropped off over there.

1 Q. Did you do that?

2 A. Yes.

3 Q. So now there is only you and Mahdi Ali in the
4 car?

5 A. Yes.

6 Q. What did you and Mahdi Ali do?

7 A. We left -- we drove and we parked at a building.

8 Q. So after you dropped your cousin off, what did
9 you and Mahdi Ali do?

10 A. We drove by the building.

11 Q. By what building?

12 A. By his building.

13 Q. Where is his building?

14 A. On Franklin.

15 Q. Do you know where it is in relationship to the
16 market?

17 A. Yes. Right across the street from the market.

18 Q. And what did you do when you went by his place?

19 A. We parked and we started talking.

20 Q. You started talking. What did you start talking
21 about?

22 A. He was like, let's do a mission or something, I
23 know had one place that has a lot of money.

24 Q. Who's telling you this?

25 A. Mahdi.

- 1 Q. A mission. You know what a mission meant?
- 2 A. Not at that point.
- 3 Q. What do you think he meant?
- 4 A. I don't know until he really explained it.
- 5 Q. And what did he explain to you?
- 6 A. He said some type of robbery or something.
- 7 Q. Okay. And he said he knew some kind of place?
- 8 A. Yeah.
- 9 Q. What kind of place?
- 10 A. I don't remember -- I don't remember what he
- 11 said, but he said it had some money or something
- 12 like that.
- 13 Q. And so what did that have to do with you?
- 14 A. He said he wanted me to help.
- 15 Q. Did you agree to help him right away?
- 16 A. No.
- 17 Q. Why?
- 18 A. Because I never done anything like that before
- 19 and so I wasn't really down with it in the
- 20 beginning.
- 21 Q. Down with it?
- 22 A. Yeah. To go along with the plan or something.
- 23 Q. Did he say anything to you to encourage you to
- 24 participate?
- 25 A. He was like, come on, let's do it, it's going to

1 take a minute or something like that, I'm giving
2 you a car or something like that.

3 Q. I'm giving you a car?

4 A. Yes.

5 Q. What did that mean?

6 A. Like he was going to give me his car or
7 something.

8 Q. Is that the one at the impound lot that you
9 didn't get out?

10 A. Yes.

11 Q. So what was the money -- what was the plan for
12 what the money was going to be used for?

13 A. Try to take out the car or something.

14 Q. So you talked about that. Did you agree then
15 that you were going to help him out?

16 A. Yes, I ended up agreeing.

17 Q. What did you do then?

18 A. We drove around and then we parked like half a
19 block or somewhere from the market.

20 Q. Was it on the same street as the market?

21 A. I think so. Yeah, I believe so, yep.

22 Q. Only the two of you in the car?

23 A. Yes.

24 Q. When you drove around, did you stop the car?

25 A. Yes. We ended up stopping half a block and

1 parking.

2 Q. What did you do once you park the car?

3 A. He gave me a ski mask.

4 Q. Let me stop you right there, back up. Can you
5 describe how you drove over to this area that you
6 eventually started parking?

7 A. His building, it had the ramp, so you drive down
8 the ramp and drive a couple of blocks around
9 because it's a one-way so you have to drive
10 around it and that's how you get there.

11 Q. When you drove down the street, did you have to
12 do anything before you parked?

13 A. You just drove around the building like once or
14 twice. Oh, yeah, and we had to make a U-turn to
15 park.

16 Q. Where did you make the U-turn?

17 A. Like by the alley.

18 Q. Who is driving?

19 A. Mahdi.

20 Q. And after the U-turn, what happened?

21 A. We parked and he handed me a ski mask.

22 Q. What kind of ski mask?

23 A. A black ski mask.

24 Q. How much of your face or head did it cover?

25 A. Basically everything except the eyes.

- 1 Q. You said it was black?
- 2 A. Yes.
- 3 Q. What did he do?
- 4 A. I think he pulled out the bandana or something.
- 5 Q. What kind of bandana?
- 6 A. Light blue bandana.
- 7 Q. Did you and he put those things -- what did he do
- 8 with the bandana?
- 9 A. At that point I think he put it in his pocket or
- 10 something.
- 11 Q. Okay. Did you and -- was he wearing that cap
- 12 that you described for us earlier?
- 13 A. Yes.
- 14 Q. Was it still turned inside out?
- 15 A. At that point, no.
- 16 Q. Okay. You said at that point, did that change?
- 17 A. Yes, I think it ended up changing when we got
- 18 outside.
- 19 Q. Changed how?
- 20 A. I think he turned it inside out or something.
- 21 Q. Was he wearing a jacket?
- 22 A. Yes.
- 23 Q. Or a coat?
- 24 A. Yeah. He was wearing that big puffy jacket.
- 25 Q. And did that jacket have a hood on it?

- 1 A. Yes.
- 2 Q. Did either of you have any gloves on?
- 3 A. Yes, I had one glove on.
- 4 Q. Why did you only have one glove?
- 5 A. Because I only had one glove.
- 6 Q. Did Mahdi Ali have gloves?
- 7 A. Yeah, I believe he had two gloves.
- 8 Q. Did the two of you get out of the car?
- 9 A. Yes.
- 10 Q. Where did you go?
- 11 A. We walked to the side of the building and I
- 12 crossed the street.
- 13 Q. You walked -- how did you get from the car down
- 14 the street?
- 15 A. Uh --
- 16 Q. I mean, were you on the sidewalk, the street?
- 17 A. The sidewalk.
- 18 Q. In what direction were you walking?
- 19 A. Toward the market.
- 20 Q. Anybody else with you other than you and Mahdi
- 21 Ali?
- 22 A. No.
- 23 Q. You said you got by the side of the building,
- 24 what building?
- 25 A. Side of the market.

1 Q. The market is kind of a long building, what part
2 of the building were you alongside?

3 A. Near the end.

4 THE COURT: I'm sorry?

5 THE WITNESS: Near the back of the
6 building.

7 BY MR. STREITZ:

8 Q. Was there an alley back there?

9 A. Yes.

10 Q. So the portion back by the alley?

11 A. We wasn't standing in the alley but near it.

12 Q. Okay. You mentioned you crossed the street?

13 A. Yes.

14 Q. Where did you go?

15 A. To a building next that -- across the street.

16 Q. What building is that?

17 A. I believe it was a church.

18 Q. What did you do that for?

19 A. I don't remember, I think to put on the ski mask
20 or something.

21 Q. You hadn't put your ski mask on yet?

22 A. No, not until I got across the street.

23 Q. So you put the mask over your face?

24 A. Yes.

25 Q. Where was Mahdi Ali when you were doing that?

- 1 A. He was still standing at the side of the
2 building.
- 3 Q. Do you know if he had put anything over his face
4 at that point?
- 5 A. No.
- 6 Q. What did you do after you put the ski mask on?
- 7 A. I came back from across the street.
- 8 Q. And where did you go when you came back across
9 the street?
- 10 A. To the place I was standing before.
- 11 Q. And who was there?
- 12 A. Mahdi.
- 13 Q. What did you and Mahdi do?
- 14 A. I believe at that point he put on the bandana or
15 something.
- 16 Q. And?
- 17 A. And we walked into the market.
- 18 Q. Did Mahdi Ali have a gun?
- 19 A. Yes. I believe I seen a gun when we was going
20 inside the building.
- 21 Q. Can you tell us anything about that gun, what it
22 looked like or anything?
- 23 A. I just seen the handle, it was black.
- 24 Q. Before you got to the market, had there been any
25 discussion about how this was going to all take

1 place?

2 A. Yes. He said all I have to do is hold anybody
3 that's in the back.

4 Q. Hold the people in the back?

5 A. Just something, yeah, he was saying --

6 THE COURT: Sir, keep your voice.

7 THE WITNESS: Yes.

8 BY MR. STREITZ:

9 Q. What did that -- what do you mean, hold the
10 people in the back?

11 A. Just keep them in a place where he can see them
12 or something.

13 Q. And why would you do that?

14 A. So they wouldn't interfere with anything that was
15 going on in front.

16 Q. Okay. And what had Mahdi Ali told you what he
17 was going to do?

18 A. Hold up the people in the front.

19 Q. What door did you enter the market?

20 A. The front door.

21 Q. Both of you?

22 A. Yes.

23 Q. When you entered the market, do you recall seeing
24 anybody at the front of the store?

25 A. I believe I seen two people.

- 1 Q. Could you tell what race they were?
- 2 A. There were Somali.
- 3 Q. And where were they in the front of the store?
- 4 A. In the back of the cashier, the desk.
- 5 Q. Where did you go when you entered the store?
- 6 A. I went to the back of the store.
- 7 Q. And did you see -- did Mahdi Ali follow you or
- 8 did he stay somewhere?
- 9 A. No, he stayed in the front.
- 10 Q. And did you go to the back of the store?
- 11 A. Yes.
- 12 Q. When you got to the back of the store, what
- 13 happened?
- 14 A. I seen two people back there, I told them to come
- 15 with me.
- 16 Q. And could you tell us about those people, were
- 17 they a woman, man?
- 18 A. Man and a woman -- one man and a woman.
- 19 Q. Can you describe the man for us?
- 20 A. I don't remember, I don't remember.
- 21 Q. Was he young, old?
- 22 A. I didn't really get a good chance to look at his
- 23 face.
- 24 Q. Did you have a gun?
- 25 A. No.

1 Q. Did you say you had a gun to these people?

2 A. No.

3 Q. What happened when you saw the man and the woman
4 back there, what did you do?

5 A. I told them to come over here and stand over
6 here.

7 Q. Okay. Did you do something to help get them to
8 stay?

9 A. I think I might have just touched them and told
10 them where to stand.

11 Q. Did they want to stay there or did you have to do
12 some things?

13 A. Yes. They wanted to stay there but -- go --

14 Q. I didn't hear that last part.

15 A. I said go ahead. I was going to say something
16 but.

17 Q. Go ahead.

18 A. I was going to say the lady was stayed over there
19 but the man --

20 MR. GOETZ: Objection, at this point,
21 narrative.

22 THE COURT: It is. Ask another
23 question.

24 BY MR. STREITZ:

25 Q. Did the man and the woman stay with you?

- 1 A. Yes.
- 2 Q. Did either of them move away?
- 3 A. Yes. When I was talking to the lady, the man
4 tried to move away.
- 5 Q. And what did you do?
- 6 A. I put my arm in front of him.
- 7 Q. Were -- did you say -- did you speak to the man
8 and the woman?
- 9 A. Yes, I spoke to the woman.
- 10 Q. What were you saying to them?
- 11 A. She asked me, like, please don't hurt me, and I
12 was like, I'm not going to hurt you.
- 13 Q. Did you speak to her in Somali?
- 14 A. Yes.
- 15 Q. Did she speak to you in Somali?
- 16 A. Yes.
- 17 Q. What happened when you were dealing with this man
18 and woman?
- 19 A. She tried, I believe, she tried to hand me an EBT
20 card or something and I refused.
- 21 Q. Did you ask either of them for something?
- 22 A. Yes. I asked them for their cell phones.
- 23 Q. Why did you ask for their cell phones?
- 24 A. So they wouldn't call anybody.
- 25 Q. Who were you worried they were going to call?

- 1 A. The police.
- 2 Q. As you were dealing with this man and woman, what
3 happened?
- 4 A. I heard gunshots.
- 5 Q. Where were they coming from?
- 6 A. I believe, at that point, I believed they was
7 coming from outside.
- 8 Q. When you heard the gunshots, what did you do?
- 9 A. I ran.
- 10 Q. Where did you run?
- 11 A. To -- where I came in from the front entrance.
- 12 Q. When you got to the front entrance, what did you
13 say?
- 14 A. I seen somebody laying there.
- 15 Q. Where were they laying?
- 16 A. By the door entrance.
- 17 Q. When you ran up towards the front of the store,
18 do you remember seeing Mahdi Ali?
- 19 A. No.
- 20 Q. When you got to the front door, you saw the body
21 lying there, what did you do?
- 22 A. I had to jump over the body.
- 23 Q. Where did you go?
- 24 A. I ran towards the car.
- 25 Q. Did you get to the car?

- 1 A. No. Actually, I kind of ran past the car, I had
2 to come back.
- 3 Q. Why was that?
- 4 A. Confused, shocked at what just happened.
- 5 Q. And then did you make your way to the car?
- 6 A. Yes.
- 7 Q. And did -- once you got to the car, what did you
8 do?
- 9 A. Took off the mask.
- 10 Q. And where did you put the mask?
- 11 A. I don't remember.
- 12 Q. Okay. Did you keep it with you?
- 13 A. No.
- 14 Q. When you -- were you the first one to the car?
- 15 A. Yes.
- 16 Q. What door did you get in?
- 17 A. The front seat passenger.
- 18 Q. Where was Mahdi Ali?
- 19 A. He came in like a couple of seconds behind me.
- 20 Q. When he came in a couple of seconds behind you,
21 did he have anything over his face at that time?
- 22 A. No.
- 23 Q. What -- you told us earlier he put on a light
24 blue bandana?
- 25 A. Yes.

1 Q. Where was that?

2 A. I don't know.

3 Q. Did you see the gun?

4 A. Yeah, I seen something sticking out.

5 Q. Sticking out where?

6 A. Like around, like the waist area.

7 Q. Whose waist?

8 A. His waist.

9 Q. And did you ever see that gun again?

10 A. No.

11 Q. When you got back in the car, did you ask him
12 anything?

13 A. I asked him, why did you shoot those people?

14 Q. And did he tell you?

15 A. Yeah, he said they knew or something.

16 Q. They knew what?

17 A. They knew.

18 Q. How would they know him? Did he tell you how
19 they would know him?

20 A. No. He never told me how they would know him
21 but --

22 MR. GOETZ: Objection, Your Honor,
23 speculation, foundation.

24 THE COURT: The answer that he never
25 said why stands. The remainder of the answer

1 will be stricken.

2 BY MR. STREITZ:

3 Q. You told us earlier that -- do you know where
4 Mahdi Ali lived? Did you tell us earlier that he
5 lived just across the street from the market?

6 A. Yes.

7 Q. Okay. Did you get any money or property from the
8 store?

9 A. No.

10 Q. To your knowledge, did Mahdi Ali get any money
11 from the store?

12 A. No.

13 Q. You're both back in the car, where does Mahdi get
14 into the car?

15 A. The front seat in the driver's seat.

16 Q. What happened next?

17 A. We pull off.

18 Q. Where do you go?

19 A. We park, I believe, a couple of blocks away.

20 Q. Where did you park?

21 A. I don't remember the exact building.

22 Q. Can you describe something about the area to us?

23 A. It was near Perkins.

24 Q. Perkins, like a Perkins restaurant?

25 A. Yeah.

1 Q. When you got to the parking lot, what did the two
2 of you do?

3 A. We sat down and I asked him to take me home.

4 Q. Was there any discussion between the two of you
5 about what to do with clothes or the gun or
6 anything like that?

7 A. No.

8 Q. When you drove away after the robbery and the
9 murders, drove away from where you were parked to
10 get to the parking ramp, how was Mahdi driving,
11 was it fast, slow?

12 A. Say normal.

13 Q. You said -- did he take you home then?

14 A. Yes.

15 Q. About how long would you say you sat in that
16 parking lot? I realize you probably didn't have
17 a stopwatch on, but an estimate.

18 A. Probably ten minutes.

19 Q. What's going on in your head at this time, I
20 mean, all this stuff just happened?

21 A. I was shocked, mostly shocked at what just
22 happened.

23 Q. When you got home, were you dropped off right at
24 your house?

25 A. Yes.

1 Q. Did you go inside the house right away?

2 A. Yes.

3 Q. What did Mahdi Ali do?

4 A. I don't know what he did. He pulled off.

5 Q. Had there been anybody else that got in the car
6 between the time you left by the market to when
7 he dropped you off?

8 A. No.

9 Q. Once you got home, what did you do?

10 A. Changed my clothes.

11 Q. Changed your what?

12 A. My clothes.

13 Q. Your clothes?

14 A. Yes.

15 Q. Why did you change your clothes?

16 A. I don't remember.

17 Q. Did you stay home the rest of the night?

18 A. Yes.

19 Q. Did you talk to anybody that night about what had
20 happened?

21 A. Nope, not that night.

22 Q. The next day, Thursday, did you go to school?

23 A. Yes.

24 Q. That's the VOA school that you talked about?

25 A. Yes.

1 Q. When you went to school, was your cousin
2 Abdisalan there?

3 A. Yes.

4 Q. What did you tell him?

5 A. I told him what happened inside the store that
6 day.

7 Q. Tell us exactly what you recall telling him.

8 A. Basically everything I told you guys.

9 Q. Do you remember telling him about how you left
10 the store?

11 A. Yes.

12 Q. What did you tell him about how you left the
13 store?

14 A. I had to jump over somebody.

15 Q. Did you tell him anything about why the people
16 were killed?

17 A. I believe telling him that somebody tried to grab
18 Mahdi or something like that.

19 Q. Did you tell him anything about what Mahdi had
20 told you that people recognized him?

21 A. Yes.

22 Q. Did you tell him what happened when Mahdi and --
23 somebody tried to grab Mahdi?

24 A. Yes.

25 Q. What did you tell him?

1 A. That they started wrestling for the gun or
2 something and he ended up shooting them.

3 Q. Did you tell anybody else about what happened?

4 A. Yes. A couple of days later I told my brother.

5 Q. What happened to the clothing that you were
6 wearing the night that you went into the market?

7 A. I throw them away.

8 Q. Where did you throw them?

9 A. Uh, Minnehaha.

10 Q. When did you throw them away?

11 A. The next day.

12 Q. Why did you throw them away?

13 A. First instinct or something, I don't remember.

14 Q. So the jacket and shirt, your shoes, you threw
15 those away?

16 A. Yes.

17 Q. What about the pants you were wearing?

18 A. I couldn't find them. I don't know, I might have
19 misplaced them.

20 MR. GOETZ: Your Honor, I missed that
21 last thing.

22 THE WITNESS: I couldn't find the pants.

23 BY MR. STREITZ:

24 Q. When you couldn't find them, what do you think
25 happened to them?

1 A. I told my brother what I was wearing so I thought
2 he threw them away or something.

3 Q. Do you know somebody by the name Mahamud Galony?

4 A. No.

5 Q. Yesterday I met with you and your attorney and a
6 detective. Did they show you a picture of
7 somebody?

8 A. Yes. I told you that I might have seen -- I
9 might have seen him before, but I don't know.

10 Q. Where have you maybe seen him before?

11 A. Like the gym at Brian Coyle Center.

12 Q. Did you recognize that person as somebody you
13 were related to?

14 A. No.

15 Q. I want to show you some things, okay?

16 A. All right.

17 THE COURT: Counsel, approach.

18 (Discussion at the bench.)

19 BY MR. STREITZ:

20 Q. I'm going to show you some things, okay? And
21 when I show them to you, Mr. Ali, you can watch
22 in that little monitor there, okay?

23 A. Yes.

24 Q. All right, sir. The jury is going to see them on
25 that screen over your left shoulder. I may ask

1 you to point some things out.

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

4 THE COURT: You may.

5 BY MR. STREITZ:

6 Q. When I do that I'm going to have you pick this up
7 and press this red button, and see how it makes a
8 dot there?

9 A. Yes.

10 Q. To point to things and tell us what you're
11 pointing to, okay? I want to show you what's
12 been received as an item of evidence numbered 77,
13 okay? Do you recognize what that picture is?

14 A. Yes.

15 Q. Can you take that pointer for us. Point and tell
16 us who those people are.

17 A. That's me, that's Mahdi, and that's Abdisalan
18 (pointing).

19 Q. And where is that?

20 A. That's the impound lot.

21 THE COURT: I can't hear. Pull the
22 microphone close to you as you speak.

23 THE WITNESS: That's the impound lot.

24 BY MR. STREITZ:

25 Q. I want to show you Exhibit 78, okay? And do you

1 recognize that?

2 A. Yes, that's me, Mahdi and Abdisalan.

3 Q. Okay. Now, you pointed to this person Abdisalan.

4 Is that the coat that he got from the Coat

5 Factory?

6 A. Yes.

7 Q. Okay. And can you point out if Mahdi Ali is

8 wearing a cap at that time?

9 A. Yes, right there (pointing).

10 Q. Okay. And now I want to show you Exhibit 87.

11 Who do we see in that picture?

12 A. That's Mahdi and that's, kind of see me behind

13 him.

14 Q. Is Mahdi wearing a coat in that picture?

15 A. Yes.

16 Q. Whose coat?

17 A. Abdisalan's coat.

18 Q. And where is this picture taken from?

19 A. I think the business at Nicollet.

20 Q. Showing you Exhibit 88, who is that?

21 A. That's me.

22 Q. And were you wearing a mask at that time?

23 A. No.

24 Q. Is that also at that same business?

25 A. Yes.

- 1 Q. I'll show you 89. Do you see anybody you
2 recognize in that picture?
- 3 A. Yes. Kind of see me and Mahdi in the background.
- 4 Q. Is that same business at Nicollet and Franklin?
- 5 A. Yes.
- 6 Q. The one you were thinking of robbing?
- 7 A. No, I wasn't. Yeah, you can say that, but I
8 wasn't thinking of robbing it.
- 9 Q. But that was the plan?
- 10 A. No.
- 11 Q. Well, what was the plan?
- 12 A. You can't say it was the plan because we never
13 went in there and robbed it.
- 14 Q. I know you didn't rob it, but that's why you had
15 entered the store, to see if you could rob it?
- 16 A. No, I never agreed to rob it.
- 17 Q. Is that why you left?
- 18 A. Yes.
- 19 Q. I want to show you some other pictures. Who is
20 in that picture?
- 21 A. That's me at the SuperAmerica.
- 22 Q. What's sticking out under your jacket?
- 23 A. A shirt.
- 24 Q. What kind of shirt?
- 25 A. A red, black and white shirt.

1 Q. And I want to show you Exhibit 84. Who is in
2 that picture?

3 A. That's me.

4 Q. Point which one is you?

5 A. (Pointing).

6 Q. And Exhibit 86, what is this a picture of?

7 A. That's the car we was driving that day, and
8 that's me stepping out.

9 Q. And where is that?

10 A. At the gas station.

11 Q. Okay. Now, I want to show you Exhibit 65. Who
12 do we see in that picture?

13 A. That's Mahdi, and that's me.

14 Q. Where are you two?

15 A. At the market.

16 Q. Exhibit 75, who is that?

17 A. That's me jumping over the body.

18 Q. Exhibit 71, who is that?

19 A. That's me standing by the two people.

20 Q. I want to show you a little part of a video,
21 okay? Exhibit 99. I want you to watch it and
22 I'm going to stop it at some point and ask you
23 some questions.

24 (Video played.)

25 BY MR. STREITZ:

1 Q. Now, who do we see in that picture?

2 A. That's me.

3 Q. And who else?

4 A. The two people.

5 Q. Okay. Continue.

6 (Video played.)

7 BY MR. STREITZ:

8 Q. Stop there. What are you doing with those two
9 people?

10 A. I believe I'm holding, or I'm standing by them.

11 Q. You went back towards the man, what were you
12 doing?

13 A. I'm putting my hand in front of him and told him
14 to come back over here.

15 Q. What are you doing now?

16 A. I heard gunshots and that's when I'm leaving the
17 business.

18 Q. And I want to show you Exhibit 94, part of it.

19 (Video played.)

20 BY MR. STREITZ:

21 Q. What did we just see?

22 A. Mahdi coming in and pointing the gun at that guy.

23 Q. Are you in that picture?

24 A. Yes.

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 what's been marked as
5 Exhibit 90. Do you recognize that picture?

6 A. Yes. I believe that is the car we were driving.

7 Q. The red Crown Vic?

8 A. Yes.

9 Q. Showing you what's been marked as Exhibit 263,
10 who is that?

11 A. That's me.

12 Q. Is that what you looked like back then?

13 A. Yes.

14 Q. Back then meaning January 6, 2010, around that
15 time?

16 A. Yes.

17 Q. And 262, who is that?

18 A. That's Mahdi.

19 Q. Is that how he kind of looked around that time?

20 A. Yes.

21 MR. STREITZ: Your Honor, the State
22 would offer into evidence Exhibits 90, 262, and
23 263.

24 MR. GOETZ: No objection.

25 THE COURT: 92, 262 and 263 are

1 received.

2 MR. STREITZ: Thank you.

3 BY MR. STREITZ:

4 Q. Mr. Ali, as you thought about what you did in
5 that store with Mahdi Ali, do you blame anybody
6 for what you did?

7 MR. GOETZ: Objection, 401, 402, 403,
8 Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 BY MR. STREITZ:

12 Q. Are you to blame for what you did in that store?

13 A. I'm not to blame, but I'm going to take
14 responsibility. I had a choice not to go in
15 there, but I did.

16 Q. Nobody forced you to go in there?

17 A. No.

18 Q. How do you feel about what happened?

19 MR. GOETZ: 401, 402, 403, Your Honor.

20 THE COURT: Sustained.

21 MR. STREITZ: If I can have a second,
22 Your Honor?

23 THE COURT: You may.

24 MR. STREITZ: Mr. Ali, I don't have any
25 further questions at this time, but perhaps the

1 other attorney might, okay?

2 THE WITNESS: All right.

3 THE COURT: Members of the jury, this is
4 an appropriate time to take our morning break.
5 Please be ready in the usual place at 11:10.
6 Thank you.

7 (Recess.)

8 THE COURT: Mr. Goetz.

9 MR. GOETZ: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. GOETZ:

12 Q. Mr. Ali, I want to start with asking you some
13 questions about why you are here, okay? On
14 January 7, 2010, the day after the murders, you
15 knew that the police were looking for you, didn't
16 you?

17 A. No.

18 Q. You didn't have any idea that the police might be
19 interested in talking to you about murders?

20 A. Not at that point.

21 Q. Didn't you get calls from your family saying,
22 Ahmed, the police are looking for you, what
23 happened, where are you?

24 A. Yeah, a couple of days later. That was around
25 the time I turned myself in.

1 Q. You didn't -- you weren't around. You said I
2 went to school on January 7th; is that right?

3 A. Yes.

4 Q. You didn't go home that night though, did you?

5 A. No.

6 Q. You didn't go home because you knew the police
7 might be looking for you?

8 A. No.

9 Q. You were 16 years old at the time, right?

10 A. 17.

11 Q. Your birth date is March 1, 1992?

12 A. Yes, sir.

13 Q. On January 6th of 2010, you would have been 16;
14 is that right?

15 A. No, that's wrong. I was 17 turning 18.

16 Q. Okay. You're right. By the next day, the 8th of
17 January, you knew the police were looking for you
18 then, right?

19 A. No. I didn't know until the 9th or the 10th. It
20 was the day I turned myself in.

21 Q. Weren't family members calling looking for you?

22 A. No. They called the day the police was looking
23 for me and that is the same day I turned myself
24 in.

25 Q. Did you know that Mahdi Ali had gotten arrested

1 on January 8th of 2010?

2 A. No.

3 Q. So you weren't home on January 7th, you weren't
4 home on January 8th, you don't turn yourself
5 until January 9th; correct?

6 A. That's correct.

7 Q. Three full days after the murders, right?

8 A. That's correct.

9 Q. And during that time you had talked with your
10 family about what you were going to do?

11 A. The day I talked to them, the day I was turning
12 myself in.

13 Q. It was part -- you had a plan with your family
14 about how you were going to handle this
15 situation, right?

16 A. You wouldn't really call it a plan, you just turn
17 yourself in.

18 Q. You went down to the police station with your
19 family, did you not?

20 A. Yes.

21 Q. And when the police put you in a room and asked
22 you questions, you said, no, I'm waiting for my
23 family to get me a lawyer?

24 A. That is correct.

25 Q. You said, in fact, I'm waiting for the family

- 1 lawyer?
- 2 A. That's correct.
- 3 Q. And that was part of the plan, right?
- 4 A. Because I'm a minor so they said it's best if I
- 5 have a lawyer present.
- 6 Q. Question is, sir, that was part of the plan,
- 7 that's what your family has told you to do and
- 8 that's what you did, right?
- 9 A. That's correct.
- 10 Q. And your family lawyer came to talk with you some
- 11 days after that, right?
- 12 A. That's correct.
- 13 Q. And that's Mr. Edlund, Mr. Paul Edlund; correct?
- 14 A. Yes.
- 15 Q. He's here with you today?
- 16 A. That's correct.
- 17 Q. Seated in the first row; is that right?
- 18 A. Yes.
- 19 Q. And you knew Mr. Edlund to be a good lawyer;
- 20 correct?
- 21 A. Yes.
- 22 Q. And he started working on your case right away,
- 23 right?
- 24 A. That's correct.
- 25 Q. Started reaching out to the prosecution to try to

1 make a deal for you right away; correct?

2 A. That's correct.

3 Q. You were aware before you sat down the next time
4 with the police officers on January 14, 2010 that
5 you faced three counts of murder in the
6 first-degree with premeditation?

7 A. That's correct.

8 Q. And that you faced another three counts of
9 first-degree murder felony murder; correct?

10 A. That's correct.

11 Q. You knew, certainly know now, that there are
12 no -- there is no more serious charges under
13 Minnesota's criminal laws than premeditated
14 first-degree murder; correct?

15 A. That's correct.

16 Q. And you knew exactly what you were facing if you
17 were convicted of those charges; correct?

18 A. Yes.

19 Q. And you didn't want to do that kind of time at
20 all, did you?

21 A. Yeah, you could say that.

22 Q. You didn't want to do that time. You knew what
23 you were facing if you're convicted of those
24 charges?

25 A. Yes.

1 Q. And you've told us that when you went into the, I
2 guess there were two events, two robbery related
3 events, we'll talk about those more, but
4 certainly by the time you go into the Seward
5 Market, you knew or suspected that the person
6 with you had a gun, right?

7 A. That's correct.

8 Q. And it was certainly foreseeable to you that in
9 the course of that robbery, an armed robbery,
10 something might go wrong and maybe that gun could
11 be used and maybe somebody could be killed,
12 right?

13 A. Nope.

14 Q. That's your answer under oath today, no?

15 A. Yeah. I never did anything like that before so I
16 wouldn't know the consequences that follows.

17 Q. This is not the first time you've testified under
18 oath about what happened that day, is it?

19 A. Yes.

20 Q. It is not the first time; correct?

21 A. That's correct.

22 Q. On April 20th of 2010 you came before another
23 judge of this court and entered a guilty plea,
24 did you not?

25 A. That's correct.

1 Q. And before you entered that guilty plea, you took
2 an oath to tell the truth just as you took an
3 oath today?

4 A. That's correct.

5 Q. And as parts of that guilty plea your lawyer
6 asked you questions when you were under oath
7 about what happened that day, did he not?

8 A. That's correct.

9 MR. GOETZ: Page 11. May I approach,
10 Your Honor?

11 THE COURT: You may.

12 BY MR. GOETZ:

13 Q. And you were asked a question on Page 11, Line 4
14 by your lawyer, "And it's foreseeable that when
15 there is a gun being used in a robbery that
16 somebody could get hurt?" And what was your
17 answer -- could you read that?

18 A. "Yes, sir."

19 Q. And then the question was asked, "And, in fact,
20 that is what happened here is that the gun was
21 being used in this attempted robbery and these
22 there people were killed?" And what was your
23 answer?

24 A. "Yes, sir."

25 Q. And the next question, "And looking back now,

1 although that wasn't your plan to have that
2 happen, you can see that a robbery being a very
3 dangerous behavior or an attempted robbery being
4 dangerous behavior could, in this case did, lead
5 to the death of the people involved?" And your
6 answer?

7 A. "Yes, sir."

8 Q. And you knew that because this was foreseeable,
9 the consequences could be foreseeable, that even
10 though you may not have pulled the trigger, you
11 could be criminally liable to the same extent as
12 the shooter, you knew that, right?

13 A. At that point, no.

14 Q. I'm talking about, and thank you for the
15 clarification, January 14th 2010, by the time you
16 sit down, you've had a chance to talk to your
17 lawyer, he explained what you're facing, you knew
18 by that point when you go talk to the police that
19 even though you didn't pull the trigger, you
20 could be criminally liable to the same extent as
21 the person who did; correct?

22 A. Yes.

23 Q. But under the deal that you've struck with the
24 prosecutors you're not going to be convicted of
25 three counts of premeditated murder, are you?

- 1 A. No.
- 2 Q. You're not going to be convicted of three counts
3 of felony murder, are you?
- 4 A. No.
- 5 Q. You're going to be convicted of three counts of
6 attempted aggravated robbery; correct?
- 7 A. That's correct, yes.
- 8 Q. And under the deal your sentence is basically 18
9 years; correct?
- 10 A. That's correct.
- 11 Q. But you also know about good time; correct?
- 12 A. That's correct.
- 13 Q. You know that for an 18-year sentence you get
14 your good time, you'll be out in 10 or 12 rather?
- 15 A. Twelve.
- 16 Q. Twelve, right?
- 17 A. That's correct.
- 18 Q. But in order to get this deal you have to come in
19 and fulfill the terms of that plea agreement;
20 correct?
- 21 A. Yes.
- 22 Q. And one of the terms of the plea agreement is
23 that you tell the truth; correct?
- 24 A. That's correct.
- 25 Q. And it's the prosecutor's office who decides

1 whether or not you're telling the truth?

2 A. That's correct.

3 Q. If they don't think that you're doing that then
4 they pull the deal?

5 A. That's correct.

6 Q. I don't have control of that, the Judge doesn't
7 have control of that, the prosecutors have
8 control over that, right?

9 A. That's correct.

10 Q. And part of the deal is that you come in and
11 testify against this person, Mahdi Ali?

12 A. That's correct.

13 Q. Now, the prosecutor made mention of cases
14 indicted in this matter, but you know there is
15 only one other case besides yours, right?

16 A. What case -- I don't understand.

17 Q. Just to be clear, the prosecutor asked a question
18 that you have to cooperate under the terms of
19 your plea agreement in cases, plural, indicted in
20 this matter. But to be clear, there is only one
21 other case besides yours arising out of the
22 Seward Market shootings and that is the case
23 against Mahdi Ali?

24 A. That's correct.

25 Q. As far as you know?

1 A. Yes.

2 Q. And you want to do everything you can to make
3 sure you get that deal; correct?

4 A. That's correct.

5 Q. To make sure you get your 18 years, get out in
6 12?

7 A. That's correct.

8 Q. And you know that that amount of time is
9 substantially, substantially less than what
10 you're facing, if you're convicted of the murder
11 counts?

12 A. That's correct.

13 Q. And to your attorney's credit and hard work, you
14 agree he got you a very good deal in this case,
15 did he not?

16 A. Not really. I still have to spend 18 years in
17 prison.

18 Q. Get out in 12, you're what then, 29?

19 A. 30, around 30.

20 Q. Still a young man with plenty of life ahead of
21 you, right?

22 A. Yeah.

23 Q. Now, you met with the police the first time on
24 January 10, 2010; correct?

25 A. That's correct.

1 Q. You weren't ready to talk to them then so you
2 next met with them January 14, 2010 and you
3 talked to them at that time; correct?

4 A. That's correct.

5 Q. And it was on that same day that the agreement
6 was entered into with the prosecution; correct?

7 A. That's correct.

8 Q. And you met with the police as well as the
9 prosecutors on January 31, 2011; is that correct?

10 A. Correct.

11 Q. And you met with them again --

12 THE COURT: Mr. Goetz, what year?

13 MR. GOETZ: January 31, 2011.

14 THE COURT: Thank you.

15 BY MR. GOETZ:

16 Q. You met with them again in preparation for your
17 testimony today; correct?

18 A. That's correct.

19 Q. A number of times?

20 A. Yes.

21 Q. You've gone over and over and over what you'd be
22 testifying to in court today?

23 A. That's correct.

24 Q. Now, let's talk about -- a little bit about what
25 happened at the Seward Market. When you went

1 into that store, Mr. Ali, you did not have any
2 sort of premeditated plan to go in there and kill
3 three people, did you?

4 A. No.

5 Q. And to be honest, in your wildest nightmares
6 going into that store, you never imagined that
7 three people -- never even thought that three
8 people would be killed; correct?

9 A. No.

10 Q. But when things went bad, they went bad very,
11 very quickly; correct?

12 A. That's correct.

13 Q. And in an instant things changed, your life
14 changed, the lives of the three people killed
15 were ended; correct?

16 A. That's correct.

17 Q. And you ran out of the store; correct?

18 A. That's correct.

19 Q. And your mind was so blinded by fear and
20 confusion and emotion that you just kept running
21 and running and running down that street, right
22 past that car, right?

23 A. That's correct.

24 Q. You weren't even thinking of what you were doing,
25 you were just acting, would that be fair?

1 A. That's correct.

2 Q. Essentially, you were in a state of panic, shock,
3 from the moment you heard that first shot and you
4 started running out of the store, right?

5 A. That's correct.

6 Q. Now, I want to talk about a different point in
7 time with the Seward Market shooting, I want to
8 talk about before. Just so I understand your
9 testimony, it's your testimony that you were in
10 the red Crown Victoria; correct?

11 A. That's correct.

12 Q. And did you drive around the Seward Market
13 building a couple of times, one or two times?

14 A. That's correct.

15 Q. And that would be on Franklin and then down 25th
16 Avenue and then 21st Street up 24th Avenue and
17 back on Franklin, that block?

18 A. I can't tell you. I don't really know the
19 streets that well, like the numbers.

20 Q. Okay. But whatever street it was, it would be --
21 would you have turned right in front of the
22 Seward Market?

23 A. No, actually, I think a left or something because
24 you have to make a U-turn to park on the street
25 of the market, so I would say we went around.

- 1 Q. All right. Just so I'm clear, you testified you
2 went around the block of the building. Was that
3 the building that the Seward Market is in?
4 A. That's correct.
- 5 Q. And then finally you parked the car and it was
6 your testimony you got out of the car; correct?
7 A. That's correct.
- 8 Q. And the person with you, the shooter, got out of
9 the car; correct?
10 A. That's correct.
- 11 Q. And you're walking down the street towards
12 Franklin; correct?
13 A. That's correct.
- 14 Q. The same side of the street that the market is
15 on; correct?
16 A. That's correct.
- 17 Q. And you got back, you got near the alley, right?
18 A. That's correct.
- 19 Q. And you said you stopped at that point; correct?
20 A. Yes.
- 21 Q. And that would be both you and the person that
22 you were with?
23 A. That's correct.
- 24 Q. And then it's your testimony, correct me if I'm
25 wrong, it's your testimony that as you're at that

1 point, standing at the alley, then you turn and
2 you walk across the street; is that right?

3 A. That's correct.

4 Q. You said you walked across the street to a
5 church?

6 A. Yes, I believe the building was a church.

7 Q. Did you actually walk up the stairs of that
8 church?

9 A. Yes.

10 Q. How long were you at the stairs -- up the stairs
11 of that church?

12 A. A couple of seconds.

13 Q. Were you walking or running across the street?

14 A. Walking.

15 Q. And then you're up the stairs of the church for a
16 couple of seconds, then what do you do?

17 A. I step down across the street.

18 Q. Walking again?

19 A. Yes.

20 Q. So if I were standing on the corner of 25th
21 Avenue and Franklin and just sort of looking down
22 the street, I would see you stop by the alley and
23 then cross the street, walk up the church steps,
24 wait a couple of seconds and then walk back to
25 the point where you were, where you left the

1 other person; is that right?

2 MR. STREITZ: Objection, Your Honor,
3 that's speculation. Counsel is --

4 THE COURT: Approach.

5 (Discussion at the bench.)

6 THE COURT: Objection is overruled.

7 Mr. Goetz, why don't you ask again.

8 BY MR. GOETZ:

9 Q. So if someone, if I was standing on the corner at
10 25th and Franklin looking down 25th Avenue, I
11 would see you and the other person stop by the
12 alley and then you walked across the street up to
13 the church steps, wait a couple of seconds and
14 then walk back across the street, back near the
15 alley, and then the two of you would walk, resume
16 walking north or towards the Seward Market; is
17 that right?

18 A. That's correct.

19 Q. Do you know the name Tony Sniper?

20 A. No, sir.

21 Q. Not a name you've used in the past?

22 A. No.

23 Q. So I'm going to ask you some questions now to
24 right -- to the point right after the Seward
25 Market shootings. You run out of the store, you

1 run down to the car, you said you ran past the
2 car, but then you come back to the car; is that
3 right?

4 A. That's correct.

5 Q. You got in the front passenger's seat; is that
6 right?

7 A. That's correct.

8 Q. Are you the first person, out of the two people
9 that went in the store, are you the first person
10 to get to the car?

11 A. Yeah, that's correct.

12 Q. Are you the first person to run down towards the
13 car?

14 A. That's correct, yes.

15 Q. I want to ask you some questions about the gun.
16 You told us today that you don't know anything
17 about that gun; is that right?

18 A. That's correct.

19 Q. You don't know what it is, what kind of gun it
20 was?

21 A. That's correct.

22 Q. You don't know where it came from?

23 A. That's correct.

24 Q. Isn't it the case, sir, that your brother gave
25 you that gun?

1 A. No, sir.

2 Q. How many brothers do you have?

3 A. I have two brothers.

4 Q. Abdirahman and what's your other brother's name?

5 A. Moman (ph), that's my little brother.

6 Q. Moman?

7 A. Yep.

8 Q. How much older is Abdirahman than you?

9 A. Four years.

10 Q. What's his middle name?

11 A. Abdi, A-b-d-i.

12 Q. What's his street name?

13 MR. STREITZ: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. GOETZ:

16 Q. Is it your testimony that you don't know anything
17 about where the gun went to after the robbery --

18 A. That's correct.

19 Q. -- the attempted robbery?

20 A. That's correct.

21 Q. So you don't know anything about the gun, you're
22 putting that all on Mahdi; is that right?

23 A. That's the person who had the gun.

24 Q. And as I understand your testimony, your role in
25 this was only doing what you were told to do in

1 this robbery; is that right?

2 A. That's correct.

3 Q. All you were doing was just watching the people
4 inside; is that right?

5 A. That's correct.

6 Q. And you told us that you did that by talking to
7 them using words and maybe touching them, putting
8 an arm in front of the man and that's it
9 basically?

10 A. That's correct.

11 Q. That's not true, is it?

12 A. That's true.

13 Q. Isn't it true that you punched that man?

14 A. That's false.

15 Q. Isn't it true that you went through that man's
16 pockets?

17 A. That's false.

18 Q. Now, there were -- the man and the woman were
19 right back there; correct?

20 A. That's correct.

21 Q. Can you think of any reason why they would come
22 in and tell this jury that you punched that man
23 and that didn't actually happen?

24 A. You seen the video, I never punched that man.

25 Q. Can you think of any reason why the man would say

1 you went through his pockets if that didn't
2 actually happen?

3 A. I don't know, sir.

4 Q. I want to ask you some questions now, jumping
5 back in time to about the Coat Factory, okay?
6 Now, you knew, Mr. Ali, that when you went to
7 that Coat Factory with your cousin Abdisalan and
8 Mahdi Ali, it was your plan to rip that store off
9 and steal coats, was it not?

10 A. That's false.

11 Q. That's not true?

12 A. Nope.

13 Q. Can you think of a reason why Abdisalan would
14 come in and tell this jury that was your plan?

15 A. I don't know.

16 Q. He's your cousin, right?

17 A. Yes.

18 Q. And that's what you did, right, try to rob that
19 store, steal a coat?

20 A. That's correct.

21 Q. So is it your testimony in front of the jury this
22 is something you kind of dreamed up on your own?

23 A. I never dreamed up nothing. I went in there and
24 I tried to take a jacket.

25 Q. So it just popped into your head out of the blue,

1 oh, I'll just steal a coat?

2 A. Yep, you can say that.

3 Q. But you got caught, didn't work out too well, did
4 it?

5 A. That's correct.

6 Q. You found yourself in a little bit of a jam,
7 right?

8 A. That's correct.

9 Q. So you lied to get your way out of it; correct?

10 A. That's correct.

11 Q. You looked that manager from the store in the eye
12 and said, oh, the metal detector went off because
13 I have a BB gun or something like that; correct?

14 A. That's correct.

15 Q. And even though that was a small matter of
16 shoplifting a coat, you had no hesitation about
17 lying to protect yourself, did you?

18 A. That's correct.

19 Q. Now, when you went from the Coat Factory then you
20 next went to the impound lot; correct?

21 A. That's correct.

22 Q. And your cousin Abdisalan was wearing a fancy new
23 coat, right?

24 A. That's correct.

25 Q. You knew he didn't pay for that coat, did you

1 not?

2 A. At that point, no.

3 Q. This was a Sean John coat with a fur collar;
4 correct?

5 A. That's correct.

6 Q. Abdisalan was what, 16 years old?

7 A. Like I said, I was in the back of the store so I
8 didn't know anything that was happening in the
9 front.

10 Q. You knew he didn't have that kind of money to buy
11 that coat, did you not?

12 A. I don't know.

13 Q. You knew he stole that coat, but when you talked
14 to investigators on January 14th of 2010, you
15 lied to them and you told them that Abdisalan
16 bought the coat?

17 A. At that point, I thought he bought it too.

18 Q. So this whole thing about Abdisalan stealing a
19 coat and coincidentally you decided to steal a
20 coat, now it's just a new revelation to you that
21 he actually stole his coat?

22 A. That's correct.

23 Q. Between the time when you told the investigators
24 on January 14th of 2010 to today, did you have
25 this revelation that your cousin in fact stole

- 1 the coat?
- 2 A. That's correct.
- 3 Q. When did you have the revelation, sir?
- 4 A. Found out when I got my paperwork.
- 5 Q. The paperwork that had everything about your case
- 6 in it?
- 7 A. That's correct, some of the things on the case.
- 8 Q. From the impound lot to the next place you went
- 9 to was the SuperAmerica store; correct?
- 10 A. That's correct.
- 11 Q. The one on 22nd and Lyndale; correct?
- 12 A. That's correct.
- 13 Q. You went in, paid for the gas, got back in the
- 14 red Crown Victoria and left; correct?
- 15 A. That's correct.
- 16 Q. By this time it's getting dark, is it not?
- 17 A. Yeah, that's correct.
- 18 Q. So you drive down Franklin until you get to
- 19 Nicollet; correct?
- 20 A. That's correct.
- 21 Q. And you parked; correct?
- 22 A. That's correct.
- 23 Q. And you knew at that point that you were going to
- 24 go in and case, if you will, case a place for a
- 25 robbery?

- 1 A. No.
- 2 Q. It wasn't your plan, didn't you know it was the
3 plan when you walked into that Dahabshiil store
4 on the second floor there to try to see if you
5 can rob that place?
- 6 A. When we parked, yes, but not when we was driving
7 there.
- 8 Q. Okay. When you parked, get out of the car, when
9 you're walking into that building where that
10 money wiring place or the business is located,
11 Dahabshiil, you knew at that point it was the
12 plan to commit a robbery; correct?
- 13 A. No. I never went in there planning to commit a
14 robbery.
- 15 Q. You knew going into that store, that building
16 where Dahabshiil money exchange is located, or
17 money wiring business is located, that you were
18 going to rob the place; correct?
- 19 A. No, sir.
- 20 Q. And that's your testimony under oath?
- 21 A. Yes. I never went in there to rob, as you could
22 see -- if I was planning on robbing it, I would
23 have mask on like I did in the market.
- 24 Q. Okay.
- 25 A. It was not my plan to rob it.

1 Q. I want to take you back to January 14th of 2010;
2 correct?

3 A. That's correct.

4 Q. You're in that interview with the two law
5 enforcement officers; correct?

6 A. That's correct.

7 Q. Your lawyer is there; correct?

8 A. That's correct.

9 Q. You're being asked questions about what happened
10 that day; correct?

11 A. That's correct.

12 Q. You're asked questions about what the plan was
13 when you were going to be at the Dahabshiil
14 building; correct?

15 A. That's correct.

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

17 THE COURT: You may.

18 MR. GOETZ: Page 17.

19 BY MR. GOETZ:

20 Q. You were asked the question by Sgt. Kjos, "But
21 you knew going in there that you were going to
22 rob that place?" And you nodded your head yes,
23 did you not?

24 A. Yes. That was outside, but as you can see, if
25 you look further --

1 Q. The question is, sir, you were asked that
2 question, "But you knew going in there that you
3 were going to rob that place?" And you nodded
4 your head yes. Is that correct?

5 A. That's correct.

6 Q. So let's talk now about what you did inside that
7 place. You talked about you didn't have a mask
8 on, right?

9 A. That's correct.

10 Q. But when you walked up the stairs, you're walking
11 down a hall, there is doorways to various
12 businesses; correct?

13 A. That's correct.

14 Q. And as you were walking by one of those
15 businesses, there was a woman in or near the
16 doorway from another business; correct?

17 A. That's correct.

18 Q. And you had your hood up; correct?

19 A. That's correct.

20 Q. And you knew you were there for no good reason,
21 up to no good, so what you did is you pulled your
22 hood around your face to try to cover your face
23 so she couldn't see you; correct?

24 A. Not really. I seen her when I was leaving. I
25 never seen her when I was walking in.

- 1 Q. When you're walking by the woman, you
2 deliberately tried to conceal your face from her;
3 correct?
- 4 A. No. Because we walked past each other and that's
5 when I saw her.
- 6 Q. And you never made any effort to pull your hood
7 around your face so she couldn't see your face?
- 8 A. No. I had my hands in my pocket the whole time.
- 9 Q. The whole time?
- 10 A. I believe so, yes.
- 11 Q. What's your clan?
- 12 A. Me? What do you mean my clan?
- 13 Q. Your clan, you're from Somalia.
- 14 A. Marjeerteen.
- 15 Q. Can you spell that, please?
- 16 A. I don't have to spell it.
- 17 Q. Pronounce it again, would you?
- 18 A. Marjeerteen.
- 19 Q. Marjeerteen?
- 20 A. Marjeerteen.
- 21 Q. Marjeerteen is that a sub clan of the Hartree
22 clan?
- 23 A. I don't know, sir.
- 24 Q. Is that part of the Darod clan?
- 25 A. I don't know.

1 Q. You're not the same clan as Mahdi Ali; correct?

2 A. I don't even know what clan he is.

3 Q. Okay. As far as you know, do you have any
4 relation to him?

5 A. Yes, we used to go to school together.

6 Q. Family relation?

7 A. No.

8 Q. I'm going to ask you a question about when you
9 dropped off Abdisalan. Was it light or dark out
10 when you dropped off Abdisalan?

11 A. Dark.

12 Q. Sun had already set?

13 A. Yes.

14 Q. And you testified today that the day after the
15 shooting, you pretty much told Abdisalan
16 everything about what had happened inside the
17 Seward Market?

18 A. That's correct.

19 Q. Can you think of any reason why he would come in
20 and tell this jury that you didn't tell him
21 anything?

22 A. I don't know.

23 Q. And you testified that when you got home that day
24 after the Seward Market shootings, first thing
25 you did was change your clothes; is that right?

1 A. That's correct.

2 Q. And then those clothes you ultimately got rid of;
3 is that correct?

4 A. That's correct.

5 Q. With your brother's help; correct?

6 A. No, that's not correct.

7 Q. You think your brother might have helped you; is
8 that right?

9 A. I said I don't know what happened to the pants.

10 Q. And you think your brother was the person who
11 disposed of those?

12 A. That's what I thought.

13 Q. You got rid of that because you didn't want those
14 clothes around as evidence, right?

15 A. That's correct.

16 Q. And you did that before you turned yourself in;
17 correct?

18 A. That's correct.

19 MR. GOETZ: May I just have a moment,
20 Your Honor?

21 THE COURT: You may.

22 MR. GOETZ: No further questions.

23 THE COURT: Mr. Streitz.

24 MR. STREITZ: A few questions.
25

REDIRECT EXAMINATION

1

2 BY MR. STREITZ:

3 Q. When you sat down for the first time and talked
4 to the detectives and gave them the statement on
5 January 14th, do you remember that day?

6 A. Yes.

7 Q. And the deal was you had to tell the police what
8 you knew first; correct?

9 A. That's correct.

10 Q. And then, and only then, if they believed what
11 you said was the agreement going to be signed?

12 MR. GOETZ: Objection, Your Honor, 401,
13 402, 403.

14 THE COURT: Overruled.

15 THE WITNESS: That's correct.

16 BY MR. STREITZ:

17 Q. Okay. When you sat down with your attorney, did
18 you know what evidence the police had gathered up
19 to that point?

20 A. No, sir.

21 Q. Did you believe that if you told them something
22 that was contrary to the evidence they had
23 gathered that the deal wasn't going to go
24 through?

25 A. That's correct.

1 Q. The defense attorney asked you if in order to get
2 the deal you had to come in and testify against
3 the defendant.

4 A. That's correct.

5 Q. And that is true, right?

6 A. Yes.

7 Q. But you have to testify truthfully, don't you?

8 A. That's correct.

9 Q. The defendant's attorney asked you some questions
10 about when you went into the market, what you
11 were thinking, and what you were thinking when
12 you ran out of the market. Remember those
13 questions?

14 A. That's correct.

15 Q. He used the word premeditation.

16 A. Yes.

17 Q. Do you know what the word premeditation means?

18 A. At that point, no.

19 Q. Well, those were questions about what you were
20 thinking. Did you have any idea what Mahdi Ali
21 was thinking in his head when he went into the
22 market or when he ran down the street afterwards?

23 A. No, sir.

24 Q. You were asked some questions about where you
25 drove before you made the U-turn to park the car.

1 Are you sure of the streets where you went?

2 A. I can't say, I don't know the numbers, but I know
3 around the place we went.

4 Q. Okay. Were you driving?

5 A. No, sir.

6 Q. The defense attorney asked you about where you
7 were when you went across the streets by the
8 market, do you remember that?

9 A. Yes.

10 Q. What did you tell me when I asked you that
11 question? Where were you in relation to the
12 market when you crossed the street?

13 A. On the side of the building.

14 Q. Were you in the alley when you did that, or were
15 you by the building?

16 A. I was by the building.

17 Q. The building being the market?

18 A. Yes.

19 Q. The defense attorney asked you some questions and
20 showed you part of your statement, do you
21 remember that?

22 A. That's correct.

23 Q. There were some questions about when you and
24 Mahdi Ali were going into the business by
25 Nicollet and Franklin, do you remember that?

1 A. That's correct.

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

4 THE COURT: You may.

5 BY MR. STREITZ:

6 Q. You indicated there was some more to it you
7 wanted to have read to you. What the defense
8 attorney asked you was --

9 MR. STREITZ: Page 17, counsel.

10 BY MR. STREITZ:

11 Q. He read to you, "But you knew going in there that
12 you were going to rob that place?" And then you
13 nodded your head yes; is that correct?

14 A. That's correct.

15 Q. Okay. And was that a correct answer?

16 A. Yes.

17 Q. Okay. But then the next question, "Once you got
18 there, you didn't want to do it and why?" And
19 what was your answer?

20 A. "I was kind of nervous and scared."

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

22 THE COURT: You may.

23 BY MR. STREITZ:

24 Q. Before you turned yourself into the police --

25 A. Yes.

1 Q. -- were there any deals?

2 A. No.

3 Q. When you turned yourself in, you said your family
4 came with?

5 A. Yes.

6 MR. STREITZ: I have no further
7 questions, Your Honor.

8 THE COURT: Mr. Goetz.

9 MR. GOETZ: Just a few.

10 **RECROSS-EXAMINATION**

11 BY MR. GOETZ:

12 Q. When you talked to the police on January 14,
13 2010, and answered all their questions, you
14 already knew at that time that they had Mahdi Ali
15 in custody as being the other person who they
16 thought was involved in this; correct?

17 A. Correct.

18 Q. And you knew Mahdi Ali from school; is that
19 right?

20 A. Yes.

21 Q. Roosevelt High School; correct?

22 A. Yes.

23 Q. You were in the same grade together?

24 A. Yes.

25 Q. The prosecutor asked you questions about when you

1 were waking down and you said, when you went
2 across the street you were by the building. You
3 were by the building near the alley when you went
4 across the street; correct?

5 A. That's correct.

6 Q. And, lastly, the prosecutor asked you questions
7 about why you didn't go through with the robbery
8 at the money wiring place, Nicollet and Franklin,
9 you said because you were nervous and scared.
10 Nervous and scared because there were too many
11 people in there; correct?

12 A. No. Because I just don't go around robbing
13 places and that was the first time actually doing
14 something like that and I didn't want to go
15 through with it.

16 Q. But nonetheless you went in and did another
17 robbery just within less than an hour?

18 A. That's correct.

19 MR. GOETZ: No further questions.

20 THE COURT: Mr. Streitz.

21 MR. STREITZ: No further questions, Your
22 Honor.

23 THE COURT: Members of the jury, this is
24 a good time to take our lunch break. Please be
25 back in place by 1:30 today. Thank you.

1 (Recess for the noon hour.)

2 (Afternoon session:)

3 THE COURT: Mr. Streit.

4 MR. STREITZ: We call Lt. Bruce Folkens
5 to the stand.

6 BRUCE FOLKENS,
7 called as a witness on behalf of the State, having been
8 first duly sworn, was examined and testified as follows:

9 THE COURT: Have a seat. Before you
10 begin, give us your full name, spelling each of
11 your names.

12 THE WITNESS: My name is Lt. Bruce,
13 B-r-u-c-e, Karl, K-a-r-l, Folkens, F-o-l-k-e-n-s.

14 THE COURT: Mr. Streit.

15 MR. STREITZ: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MR. STREITZ:

18 Q. Good afternoon, sir.

19 A. Good afternoon, sir.

20 Q. And you are employed by who?

21 A. The Minneapolis Police Department.

22 Q. In what capacity?

23 A. I'm the lieutenant in charge of our gang
24 enforcement team.

25 Q. And back on January 6, 2010, did you have an

1 assignment?

2 A. At that time I was a sergeant assigned to the
3 homicide unit as a detective.

4 Q. Okay. Your involvement in this case had to do
5 with your assignment back then; is that right?

6 A. Yes, as a homicide investigator.

7 Q. Okay. How long have you been a police officer?

8 A. Twenty-three years now.

9 Q. And can you kind of take us through your various
10 assignments through the years.

11 A. When I came on the police department, as all our
12 police officers, I start out as uniform patrol
13 officer. I was a uniform patrol officer for
14 three years and then I took an assignment to the
15 narcotics unit where I did undercover narcotics
16 investigations for two years. Then I was
17 transferred to the Drug Enforcement
18 Administration task force, the DEA, to work
19 federal narcotics violations, I did that for a
20 year. I was then promoted in 1993 to sergeant.
21 When I was promoted to sergeant, I was
22 transferred to command our third precinct street
23 level narcotics group. I did that for five to
24 six years. I then transferred to our gang unit
25 as a sergeant supervisor for a year. Then I went

1 to homicide. I spent a little over 12 years in
2 homicide until I was promoted again to lieutenant
3 where I'm currently at now in charge of gang
4 enforcement team.

5 Q. I want to take you back to January 6, 2010.

6 A. Okay.

7 Q. Were you on duty?

8 A. Yes, sir.

9 Q. And what shift, if you will, were you working?

10 A. I was working what we call our car 710, which is
11 our on-duty homicide response car, and my
12 scheduled shift was 7 p.m. to 3 a.m.

13 Q. Do you have a partner that day?

14 A. Yes, sir I did.

15 Q. His or her name?

16 A. His name was Sgt. Chris Karakostas.

17 Q. Could you spell that for the court reporter?

18 A. K-a-r-a-k-o-s-t-a-s.

19 Q. Thanks.

20 A. Yes, sir.

21 Q. At approximately 7:50 p.m. that evening, did you
22 and your partner, Sgt. Karakostas, receive a call
23 requesting your presence somewhere?

24 A. I received a call from our dispatch supervisor
25 informing us of a robbery/shooting that had

1 occurred at 2431 East Franklin at the Seward
2 Market.

3 Q. Which is in Hennepin County?

4 A. Yes, in Hennepin County.

5 Q. Okay. And did you and your partner respond to
6 that call as soon as you got it?

7 A. Yep.

8 Q. How long did it take you to get there?

9 A. About 15 minutes.

10 Q. While you were going to the Seward Market, did
11 you receive any updated information at that time?

12 A. At that time, again, contacted by the dispatch
13 supervisor and she updated us to say that there
14 was three people at this location that were DOA,
15 or dead.

16 Q. Did you advise anybody else as to what you were
17 doing and where you were going?

18 A. Per the -- how the homicide unit works, we have
19 on-duty detectives and as the on-duty car you're
20 responsible to arrive timely response in initial
21 investigation to various crime scenes, most
22 importantly homicide scenes. We also have in
23 Minneapolis what's an on-call homicide team.
24 They're the team of detectives that will come in
25 and actually be assigned the case investigation

1 from beginning to end. So that way we get there
2 right away, help with the scene investigation and
3 get things going, they come in from home and then
4 begin their investigation and they're responsible
5 for the investigation. At this time it was Sgt.
6 Ann Kjos and Sgt. Luis Porras. So I called Sgt.
7 Kjos.

8 Q. And you advised them what?

9 A. That we were en route the Seward Market, gave
10 them the location, and it appeared from the
11 information that we received from dispatch that
12 it was going to be a triple homicide.

13 Q. And apologize if you said it, because I think you
14 did, how long did it take you to get there?

15 A. Fifteen minutes.

16 Q. When you got there, first of all, was it -- what
17 was the weather like that night when you got
18 there?

19 A. January 6th, cold. It was in single digits. I
20 believe seven degrees out. There was a real
21 light wind, less than probably one mile an hour.
22 It was a fairly clear night. It began to snow
23 lightly several hours later while we were at the
24 scene, but when we first got there it was not
25 snowing, it was just a clear, cold evening.

1 Q. Okay. When you arrived, what did you see?

2 A. When we first arrived the first thing you notice
3 is and what we look for is is the scene
4 adequately secured by the uniformed officers.
5 When we got there the streets were taped off, the
6 scene was taped off with the yellow crime scene
7 tape. The police do not enter crime scene tape.
8 The scene was taped off and we arrived at which
9 time we speak to the responding officers and the
10 supervisor -- uniform supervisors.

11 Q. Why do you speak to them?

12 A. To find out what they know and what they did on
13 their initial response to the call, so we kind of
14 get an idea before we enter the scene what to
15 expect when we get in.

16 Q. Okay. After -- do they call it briefing?

17 A. Yep.

18 Q. After you were briefed, what did you do?

19 A. At that point, Sgt. Karakostas and I entered the
20 scene to view the scene for ourselves and start
21 our initial investigation of that scene.

22 Q. And I take it that means you entered the
23 building?

24 A. Yes.

25 Q. Okay. And what did you note as you entered the

1 building?

2 A. Well, before you even enter the building there
3 was a Somalia male laying face down in the
4 doorway. The doorway -- the glass door of the
5 building was open, or the market was open and
6 there was a male laying face down, blood around
7 him. Just inside the doorway was a second male.
8 In fact, the one in the doorway, his head, or his
9 face was on that person's shoe inside the
10 doorway. Again, there was large pool of blood
11 inside. You could see a third victim that was
12 DOA inside the building. We further noted that
13 the building structure itself is a two-story
14 structure. The main floor, ground level floor is
15 the Seward Market, little corner grocery store
16 market type thing. The upstairs had a separate
17 entrance which was locked. We went up there
18 later on in the evening, it was like apartment
19 offices -- that was used for offices type thing,
20 and then there is a basement.

21 Q. Did you notice any security -- video security
22 system in the building?

23 A. There was a lot of cameras.

24 Q. Okay.

25 A. In the ceiling and stuff.

1 Q. Having noted that, what did you do?

2 A. First thing we do is try to find out where that
3 video is fed to, where the recording equipment
4 is.

5 Q. Did you do that?

6 A. Yes, we did.

7 Q. Where did you find it was fed to?

8 A. In the basement of the building.

9 Q. And were you able to get access to the building?

10 A. Yes, we were.

11 Q. Was it locked?

12 A. Yes.

13 Q. How did you get access?

14 A. The owner of Seward Market provided us with a
15 key.

16 Q. Okay. And I take it, did you go down to the
17 basement then?

18 A. Yep.

19 Q. Okay. And having noted that the equipment was
20 down there, what did you do?

21 A. Because there is so many different kinds of video
22 surveillance systems, we had our crime lab
23 personnel contact one of our forensic video
24 experts or technicians that are trained to
25 download that type of video and retrieve it, so

1 we called them in from home.

2 Q. Did one such person come in from your department
3 to do that?

4 A. Yes, Mr. Cliff Johnson.

5 Q. Okay. And what happened to the video recording
6 equipment at the store?

7 A. It was --

8 Q. Was it taken?

9 A. It was taken, yeah.

10 Q. Did you notice any items of potential evidentiary
11 value at the store as you looked around?

12 A. Yeah. There was discharge cartridge casings
13 inside the store that was recovered. There was a
14 lot of blood, of course, inside the store. The
15 other thing that was evidentiary that we found in
16 the store was the cash register drawer still had
17 money in it. Beneath the cash register on a
18 shelf below it was an open money bag, like a bank
19 bag that also had quite a bit of cash in it also.

20 Q. You mentioned a little while ago that you -- that
21 there was an adjoining part of this business?

22 A. The upstairs, yes.

23 Q. And did you go into that business?

24 A. Yes.

25 Q. Again, was that locked, and did you have to get a

1 key?

2 A. We got a key. There is an exterior door that
3 opens out onto Franklin that's separate from the
4 Seward Market itself that led to the stairway up
5 to the upper floor of the building.

6 Q. How did you gain access to that?

7 A. A key from the owner.

8 Q. Okay. And did you go up there to inspect?

9 A. Yep.

10 Q. Did you note anything of significance?

11 A. It was vacant. It looked like it was used for
12 office type space up there, desks and stuff like
13 that but nothing.

14 Q. Did you believe that that had been involved in
15 whatever had happened at the Seward Market?

16 A. Not at all. No, it wasn't.

17 Q. While you were there, what were other officers
18 doing that had been called to the scene?

19 A. The uniformed officers were busy canvassing the
20 neighborhood, knocking on doors to see if people
21 heard or saw anything. Some of the officers were
22 just providing perimeter security to the scene.
23 We also call in our crime lab personnel and have
24 the technicians there arrive to help document the
25 scene and collect evidence.

1 Q. At some point while you were there did either of
2 the on-call sergeants, who I believe you said
3 were Kjos and Porras, arrive?

4 A. Yes, they did.

5 Q. Did you brief them as to what you had seen and
6 learned?

7 A. Yes, of course.

8 Q. How long did you stay there that particular
9 evening, or maybe into the next morning?

10 A. Several hours. Like I said, it started snowing
11 about 2 o'clock in the morning and we were still
12 at the scene.

13 Q. Okay.

14 A. It takes a long time to methodically go through a
15 scene and document it.

16 Q. Your role was to do what again?

17 A. The initial scene investigation, to document the
18 crime scene and make sure that if there are any
19 witnesses that they're transported down to our
20 office to be interviewed by the on-call
21 detectives.

22 Q. Once you've done that, is the case somebody
23 else's in this case, Kjos and Porras?

24 A. Yep. It goes to the on-call detectives. They
25 keep the case and it's theirs to investigate

1 then.

2 Q. Do you sometimes, if you're involved in a
3 situation like this, help them out if need be?

4 A. Absolutely. We all try to help each other due to
5 the volumes of work that is involved in a
6 homicide case.

7 Q. Okay. You mentioned that the surveillance
8 equipment was taken?

9 A. Yep.

10 Q. Did you ever watch any of the surveillance video?

11 A. Yep, the next day.

12 Q. On January 8th, did Sgts. Porras and Kjos ask
13 your assistance in something?

14 A. Yep, they did.

15 Q. What did they ask you to do?

16 A. They asked if Sgt. Karakostas and I would help
17 them in drafting and executing a search warrant
18 at a suspect's address.

19 Q. And the name of the suspect?

20 A. Mahdi Hassan Ali.

21 Q. And the address of the residence to be searched?

22 A. Was 2515 South 9th Street, Apartment 1310.

23 Q. And where was that in relationship to the Seward
24 Market?

25 A. Basically across the street and maybe just a

1 little kitty-corner from the market.

2 Q. And did you, in fact, draft a search warrant and
3 request that judge authorize you to search that
4 apartment?

5 A. Yes, sir I did.

6 Q. And did a judge authorize you to do that?

7 A. Yep.

8 Q. And was that search warrant signed on January 8,
9 2010?

10 A. Yes, sir, it was.

11 Q. And was it executed the same day?

12 A. Yes, sir, it was.

13 Q. And about what time?

14 A. I believe we went -- executed the search warrant
15 at about 5:30 on the 8th.

16 Q. And who went with you when you executed the
17 search warrant?

18 A. Well, of course, Sgt. Karakostas, my partner, and
19 two members of our crime lab.

20 Q. And the reason for the crime lab people?

21 A. To help document the search warrant and to assist
22 in the collection of evidence.

23 Q. When you got to that address, what did you do?

24 A. We entered Apartment 1310 with a key that was
25 provided to us by building management and

1 maintenance type people.

2 Q. Had you confirmed who lived in that apartment?

3 A. Yes, I did.

4 Q. And who?

5 A. Mahdi Hassan Ali and his grandmother.

6 Q. And I kind of interrupted you. You got the key?

7 A. Yes, sir.

8 Q. And I take it you entered the apartment?

9 A. Yes, we did.

10 Q. Was anybody home?

11 A. No, it was empty.

12 Q. And can you kind of take us through how you
13 searched the place?

14 A. When we go into an apartment, or any type of
15 search warrant, what Sgt. Karakostas and I do as
16 a matter of just how we do things is each person
17 will take a room and you search a room, to be
18 systematic so you don't miss anything, you start
19 on one side and you work around the room as you
20 go, searching up and down and kind of following
21 either in a clockwise or counterclockwise so you
22 can methodically go through and search.

23 Q. What were you looking for?

24 A. Looking for a lot of stuff. Looking for clothing
25 that would match the clothing worn by the

1 suspects as we've seen on the videotape. We're
2 looking for, of course, handguns, ammunition,
3 documentation of who lives in the apartment and
4 cellular telephones is a thing we look for.

5 Q. And did you, in fact, take items from that
6 apartment?

7 A. Yes, we did.

8 Q. Where did you take items from?

9 A. Mostly from the bedroom area of the apartment.
10 It was a single, or a one-bedroom, so mostly from
11 the bedroom.

12 Q. Based on your assessment of what was in that
13 bedroom, did you come to a conclusion as to whose
14 bedroom it might be?

15 A. We found a lot of male clothing in the bedroom so
16 I'm assuming that it was Mahdi Hassan Ali's room.

17 Q. And the clothing that you took, can you describe
18 for us the process and how you take the clothing
19 and what you did with it and why?

20 A. Okay. When you find evidence such as clothing,
21 what we're interested in is any type of
22 evidence, of course, that's on the clothing,
23 trace evidence or blood evidence. So when you
24 find a piece of clothing, we get a brown paper
25 bag from -- a clean paper bag from our crime lab

1 personnel and you package individual items in a
2 bag. So if you find a pair of pants, you put
3 them in a bag. If you find a shirt, it goes in a
4 separate bag to try to preserve any evidence that
5 may be on that clothes.

6 Q. Why don't you put everything in one bag?

7 A. Because you don't want to comingle any evidence
8 on -- from one item to the other. We want to
9 keep everything as separate as we can.

10 Q. And once items are put in separate bags as you've
11 described for us, what is done?

12 A. Once they're taken then they're taken to our
13 property and evidence unit where they're sealed
14 and inventoried.

15 Q. In this case, what was your role in that process
16 in terms of locating, taking equipment and
17 bagging?

18 A. I assisted in locating evidence with Sgt.
19 Karakostas. If he found something that he felt
20 may have evidentiary value, he'd notify me. I
21 would go to where he was and recover that
22 evidence and bag it up.

23 Q. Were you wearing any gloves?

24 A. Yeah. Blue, I don't want to say plastic, but
25 rubber glove-type things.

1 Q. Everybody involved gloved?

2 A. Yes.

3 Q. And the reason for that?

4 A. So that we don't introduce any of our, basically,
5 our DNA into any evidence or fingerprints.

6 Q. And once you were done collecting evidence that
7 you thought might have possible evidentiary
8 value, again, what was done with those items?

9 A. I take it and property inventory it in our
10 property and evidence unit.

11 Q. Can you kind of describe for us the type of
12 things that you took from the apartment?

13 A. Took clothing items, we took some shirts, three
14 pairs of jeans, a blue piece of cloth. I took a
15 photo album with a bunch of photos in it. I took
16 a cellular phone. I believe I took a receipt
17 from a Domino's pizza delivery.

18 Q. Why did you take that?

19 A. Because it had the name of Hassan Ali.

20 Q. Okay. Shoes?

21 A. No.

22 Q. Any big grey, puffy parka?

23 A. No.

24 Q. Any guns?

25 A. No.

1 Q. The clothing that you took, was it all the same
2 size?

3 A. No.

4 Q. Was that of significance to you as an
5 investigator executing a search warrant?

6 A. Not at all.

7 Q. Why?

8 A. There is a couple of reasons. If you go to my
9 closet at home, I have different size clothing in
10 my closet, unfortunately my weight fluctuates a
11 little bit. The second reason is the way young
12 people dress today --

13 MR. GOETZ: Objection, foundation,
14 speculation.

15 THE COURT: Overruled.

16 THE WITNESS: The way -- a style of the
17 younger generation today is baggy clothes so
18 frequently you see young men wearing very baggy
19 pants, very baggy shirts synched up with belts
20 that are even too big so they have holes poked
21 in, so size of the clothing is not really that
22 important because people wear all sizes of
23 clothing.

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

1 THE COURT: You may.

2 BY MR. STREITZ:

3 Q. Lieutenant, I'm going to show you what's been
4 marked as Exhibit 111. Have you look at that
5 tell me if you recognize it.

6 A. That's a picture of the closet in the bedroom of
7 the apartment that we were doing the search
8 warrant at.

9 Q. Fair and accurate depiction of what that closet
10 looked like before items were taken?

11 A. Yes.

12 MR. STREITZ: State would offer Exhibit
13 111 into evidence.

14 MR. GOETZ: No objection.

15 THE COURT: 111 is received.

16 BY MR. STREITZ:

17 Q. Sir, I'm going to show you some items here,
18 probably easier if I show you back here. First
19 of all, I'm going to show you a bag that is
20 marked as Exhibit 109 and ask you if you
21 recognize that bag?

22 A. Yes.

23 Q. And what is that, sir?

24 A. This is a bag that is used by our property and
25 evidence unit to store the items that we

1 inventory.

2 Q. And how do you know what case this is associated
3 with?

4 A. It's got the Case No. 10-005090. It's got the
5 date that it was inventoried. It's marked as a
6 homicide, and I was there when they put it in
7 there.

8 Q. And do you have any markings on that item itself?

9 A. No, I don't.

10 Q. Okay. So this is inventoried in your property
11 room?

12 A. In our property and evidence unit.

13 Q. And you are present?

14 A. Yep.

15 Q. Showing you what's been marked as Exhibit 109B,
16 which is an item with a paper bag attached to it,
17 do you recognize that, sir?

18 A. Yeah. This is a pair of jeans that was recovered
19 from the search warrant at the apartment.

20 Q. And the bag that's attached to them, is that the
21 bag they were put it?

22 A. This is the bag they were put in at the scene and
23 the markings on the bag. Our property and
24 evidence clerks mark the bag while we're there.
25 They just keep everything in the same bag.

1 Q. Okay. So this item, these jeans, were in a
2 separate bag?

3 A. Yep, there were in a bag, yep.

4 Q. And, by the way, are these jeans in the same,
5 other than being in plastic now, are they in the
6 same condition as they were when you took them
7 from the defendant's home?

8 A. As far as like the cuffs, yeah, we don't add
9 cuffs, we just put them in a bag. So, yeah, it's
10 the same as I found them.

11 Q. Okay. Showing you what is marked as Exhibit
12 109A. Do you recognize that exhibit, sir?

13 A. Yeah. This is a pair of jeans with a belt
14 attached that I recovered from inside the search
15 warrant.

16 Q. At the defendant's home?

17 A. Yeah.

18 Q. Was that, again, put in a separate bag and
19 property inventoried at the police department?

20 A. Yeah. I put it in this bag, the markings were
21 put on by our property and evidence people, then
22 they take these bags and put it in a bigger bag
23 to combine the storage.

24 Q. Okay. And then is there documentation that is
25 associated with the items that you property

1 inventoried from a search warrant, and in this
2 case 109A and 109B?

3 A. Yeah. When the property clerk enters it into the
4 computer to inventory it, the computer prints out
5 an inventory sheet listing the items that I've
6 inventoried, and then when it prints out I sign
7 the bottom of the inventory sheet saying, yes,
8 this is what I did property inventory.

9 Q. And was that done in this case?

10 A. Yes, sir, it was.

11 Q. And, again, the item of jeans, are those in
12 substantially the same condition as they were
13 when you found them in the defendant's apartment,
14 except for being wrapped in plastic at this time?

15 A. Yep.

16 MR. STREITZ: Your Honor, the State
17 would offer Exhibits 109, 109a and 109b into
18 evidence at this time.

19 MR. GOETZ: No Objection.

20 THE COURT: 109 including subparts a and
21 b are received.

22 MR. STREITZ: Your Honor, may I publish
23 Exhibit 111, please?

24 THE COURT: You may.
25

1 BY MR. STREITZ:

2 Q. The monitor in front of you, Sergeant --
3 Lieutenant --

4 A. That's fine. Still getting used to it myself.

5 Q. And the jury is going to be able to view it over
6 your left shoulder. Do you have a laser pointer
7 in front of you there?

8 A. Okay.

9 Q. The item -- either -- any of the items that were
10 just introduced into evidence, that is 109 and
11 108, are those depicted in Exhibit 111?

12 A. Yeah. Here's a pair of the jeans, the ones with
13 the little cuff on them are right here
14 (pointing).

15 Q. Okay. 91. If you look over your left shoulder,
16 do you recognize what that is, Lieutenant?

17 A. That's an aerial view of the neighborhood of the
18 Seward Market and the highrise where 2515 South
19 9th Street.

20 Q. Can you laser with your laser, point to the
21 building that you executed the search warrant?

22 A. That's in this tall highrise building (pointing).

23 Q. In this exhibit in the lower left-hand corner?

24 A. Yes, sir.

25 Q. Lieutenant, in your, I believe it was 20 years?

1 A. A little over 23 years now.

2 Q. I take it you've executed more than one search
3 warrant?

4 A. Yes.

5 Q. Do you always find everything you're looking for
6 in a search warrant?

7 A. No, I wish we did.

8 Q. Okay.

9 MR. STREITZ: I have no further
10 questions, perhaps counsel does.

11 THE COURT: Mr. Goetz.

12 MR. GOETZ: I do.

13 **CROSS-EXAMINATION**

14 BY MR. GOETZ:

15 Q. Good afternoon, Lieutenant.

16 A. Afternoon, sir.

17 Q. When were you promoted?

18 A. Which time?

19 Q. Good question. To Lieutenant.

20 A. December of 2010.

21 Q. Congratulations.

22 A. Thank you, sir.

23 Q. I want to ask you first about the search of 2515
24 South 9th Street, Apartment 1310.

25 A. Yes, sir.

1 Q. Okay. That search was pursuant to a search
2 warrant; correct?

3 A. Yes, sir it was.

4 Q. In order to get a search warrant, you complete an
5 application for a search warrant; correct?

6 A. Yes, sir.

7 Q. And part of that application is an affidavit;
8 correct?

9 A. Yes.

10 Q. In which the person applying for the search
11 warrant, called the affiant, sets forth all those
12 facts that they believe provides probable cause
13 to believe that the things they want to look for
14 are going to be found in the place they're
15 searching, right?

16 A. Yep.

17 Q. In the case of the search warrant for 2515 South
18 9th Street, Apartment 1310, you were the affiant;
19 correct?

20 A. Yes, sir, I was.

21 Q. And you prepared the warrant outlining exactly
22 what you were looking for; correct?

23 A. Yes, sir.

24 Q. Top of the list is handguns, right?

25 A. Yes, sir.

1 Q. No handguns were found; correct?

2 A. No, sir, they weren't.

3 Q. But when you're executing a search warrant for
4 handguns, you're not -- you're looking for
5 anything that might be associated with handguns;
6 correct? For example, ammunition?

7 A. Yep.

8 Q. You look all through that apartment for any kind
9 of ammunition and you didn't find any; correct?

10 A. Correct, sir.

11 Q. In particular, nothing for a .40 caliber weapon;
12 correct?

13 A. Correct, sir.

14 Q. You looked for in this case a dark, hooded
15 jacket?

16 A. Yes, sir.

17 Q. You didn't find any; correct?

18 A. I found a couple of dark colored hooded
19 sweatshirts that could have been a jacket.

20 Q. Jumping to the end of the search warrant process,
21 you complete what's called an inventory?

22 A. Correct, sir.

23 Q. You list exactly what you found; correct?

24 A. Yes, sir.

25 Q. And you note dark hooded sweatshirt but you do

1 not note a dark hooded jacket; correct?

2 A. Correct, sir.

3 Q. Because you didn't find one, right? Dark hooded
4 jacket?

5 A. I didn't find a dark hooded jacket per se.

6 Q. You were looking for a blue cloth face covering;
7 correct?

8 A. Correct.

9 Q. And did you not find that; correct?

10 A. I found a blue cloth, I didn't know if it was a
11 face covering or not but I found a piece of blue
12 cloth.

13 Q. You know what a typical bandana would look like?

14 A. (No response.)

15 Q. You know what a bandana in terms of markings and
16 the design, roughly?

17 A. There is, yeah, I know bandanas, there's tons of
18 different designs that are put on them.

19 Q. Sure. But you didn't find anything that would be
20 in the nature of a light blue bandana?

21 A. I did not find a bandana, no.

22 Q. You were looking for a hat; correct?

23 A. No, sir.

24 Q. Were you generally looking for any clothing items
25 that may have biological samples, to include

1 blood on them?

2 A. Yes.

3 Q. And did anybody direct that you should look for,
4 consider looking for a red hat with strings?

5 A. I don't recall that, sir.

6 Q. You don't have any such item listed on your
7 inventory; is that correct?

8 A. No, sir, I don't.

9 Q. You also have a specific type of shoes that you
10 were looking for listed on your search warrant;
11 correct?

12 A. Yes.

13 Q. Can you tell the jury what color of shoes you
14 were looking for?

15 A. Brown, brown shoes.

16 Q. And brown shoes are not listed on your inventory
17 of things that you seized?

18 A. Correct, sir.

19 Q. And if you'd found brown shoes, obviously, you
20 would have seized them?

21 A. Yes, sir.

22 Q. Getting back to the search warrant application
23 process itself. The prosecutor asked you some
24 questions about it, taking it to a judge, and I
25 want to focus on the affidavit that you prepared

1 in this case.

2 A. Yes, sir.

3 Q. The affidavit that you prepared in this case
4 included information that you -- was from a
5 person by the name of Abdisan Ali -- Abdisalan
6 Ali?

7 A. Yes.

8 Q. And that information provided details of the
9 homicide; correct?

10 A. According to Sgts. Kjos and Porras, yes.

11 Q. And you had reviewed the surveillance videotape;
12 correct?

13 A. Yes, I watched it.

14 Q. And it was your understanding that that
15 information that Abdisalan Ali had provided, or
16 had given was consistent with the robbery as
17 shown in the murders as shown in that
18 surveillance videotape; correct?

19 A. According to Sgts. Kjos and Porras.

20 Q. And that's what you put in your affidavit?

21 A. Yes, sir.

22 Q. And stepping back just a second, the process of
23 preparing a search warrant affidavit in this
24 case, it was a group effort in the sense that you
25 got information from other officers and you

1 included it in your affidavit; correct?

2 A. Yes, sir.

3 Q. And that's not unusual at all?

4 A. No.

5 Q. You also received information specifically that
6 Mahdi Hassan Ali lived in that apartment at 1310
7 at 2515 South 9th Street; correct?

8 A. Yes, sir.

9 Q. And were you aware that that information came
10 from employees of that building?

11 A. Yes, sir. I spoke to an employee of the
12 building.

13 Q. Okay. You spoke to that person yourself?

14 A. Yes, sir.

15 Q. And so the information, I think, did you pass
16 that on then to Sgt. Kjos?

17 A. Sgt. Kjos also spoke to the employee, I believe,
18 and gave me the phone number to the employee and
19 I talked to them also.

20 Q. Was that a Ms. Kempedian, Kathy Kempedian (ph)?

21 A. I don't recall. I think I talked to a
22 maintenance man.

23 Q. Okay. Was the information in essence that a
24 16-year-old male by the name of Mahdi Ali lives
25 in the apartment with his 74 year-old

1 grandmother?

2 A. The ages I don't recall. I recall that they
3 identified that Mahdi Hassan Ali and his
4 grandmother lived in that apartment at 1310.

5 Q. Okay.

6 A. Yes.

7 Q. So some ages may have been given, you just don't
8 recall?

9 A. I don't recall if I was given ages at the time,
10 sir.

11 Q. But what I just read to you would not be
12 inconsistent with the information you remember
13 getting?

14 A. Like I say, I don't recall if it was -- they gave
15 me ages or not. I know that from the best of my
16 recollection that it was Mahdi Hassan Ali and his
17 grandmother lived inside that residence.

18 Q. Okay. Few final questions. You said a
19 particular bedroom, you assumed it was Mahdi
20 Hassan Ali's, but you don't actually know, of
21 course, who lived in that room?

22 A. No. I had never been there when the occupants
23 were there.

24 Q. Sure. And the apartment was in fact vacant when
25 you -- in the sense that nobody was home when you

1 did the search warrant?

2 A. Correct. No one was inside the apartment when we
3 went inside.

4 Q. Okay. And you don't know who may have been in or
5 out of that apartment before you got there on
6 January 8th of 2010?

7 A. No.

8 Q. And, finally, as of January 8th 2010, you
9 prepared the search warrant for Judge McShane to
10 sign, I think. Because by that time you -- your
11 team had focused on Mahdi Hassan Ali as a suspect
12 in this shooting; correct?

13 A. It wasn't my team, I was probably more of a team
14 member. So, yeah, I believe, Sgts. Kjos and
15 Porras were focusing on Mahdi Hassan Ali as a
16 possible suspect, yes.

17 Q. Okay. And by your team, I just meant
18 collectively, not that you were leading up. I
19 understand Kjos and Porras, it was their case?

20 A. Yeah.

21 Q. And that focusing was based on information
22 provided by Abdisalan Ali; correct?

23 A. I believe so, yes.

24 MR. GOETZ: Thank you. No further
25 questions.

1 THE COURT: Mr. Streit.

2 REDIRECT EXAMINATION

3 BY MR. STREITZ:

4 Q. Lieutenant, in your affidavit was the information
5 coming directly from Abdisalan Ali, or had
6 somebody else reported to the police that
7 Abdisalan Ali had said something?

8 A. It came through a reporting party.

9 Q. Okay. That claimed that Abdisalan had said
10 something?

11 A. Yes.

12 Q. Okay. And that information included that Mahdi
13 Ali was a suspect who shot the victims at the
14 market?

15 A. Yes, sir.

16 Q. When in a case like this you have initial
17 information that comes to the police about, let's
18 say like a homicide, do the police just stop with
19 that information, or does the investigation
20 continue?

21 A. Oh, the investigation continues and continues and
22 continues.

23 Q. And do you sometimes find that information that
24 you learn at the beginning of an investigation
25 turns out to be a little different as the

1 investigation concludes?

2 A. Yeah, that happens.

3 MR. STREITZ: Nothing further.

4 THE COURT: Mr. Goetz.

5 MR. GOETZ: Just a few follow-up.

6 **RE-CROSS-EXAMINATION**

7 BY MR. GOETZ:

8 Q. Do you have your affidavit in front of you?

9 A. I do, sir.

10 Q. Looking at the fifth paragraph, third sentence,
11 talking about the information supplied by a known
12 witness that was attributed to Abdisalan Ali. As
13 you wrote it up, the known witness went on to
14 state that Abdisalan Ahmed Ali had confessed to
15 him about his participation in the robbery of
16 2431 East Franklin on 1/6/2010 when the three
17 victims were shot and killed. Did I read that
18 correctly?

19 A. Yes, sir, you did.

20 Q. And then you go on to write that Abdisalan Ahmed
21 Ali also told the known witness that Mahdi Hassan
22 Ali was also involved in the robbery and
23 homicide. Right?

24 A. That partial sentence.

25 Q. I'm getting to the next.

1 A. Okay.

2 Q. And -- am I right so far?

3 A. Yes, up to that.

4 Q. And further that Mahdi Hassan Ali is the suspect
5 who shot the victims?

6 A. Yes.

7 Q. Now, these facts that were supplied in terms of
8 the details of the robbery, they were not facts
9 that were generally known to the public at that
10 time; is that right?

11 A. I don't believe so, no.

12 MR. GOETZ: No further questions.

13 THE COURT: Mr. Streit.

14 MR. STREITZ: Nothing further.

15 THE COURT: Thank you, Lieutenant. You
16 may step down.

17 (Witness steps down.)

18 MR. WEBER: Your Honor, State calls
19 James Schroering.

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

23 THE COURT: Before you begin, give us
24 your full name spelling each of your names.

25 THE WITNESS: Jimmy, J-i-m-m-y,

1 Schroering, S-c-h-r-o-e-r-i-n-g.

2 THE COURT: Mr. Weber.

3 **DIRECT EXAMINATION**

4 BY MR. WEBER:

5 Q. Mr. Schroering, for whom do you work?

6 A. I work for the Federal Bureau of Investigation.

7 Q. And how long have you worked there?

8 A. Since January of this year.

9 Q. And where are you currently based?

10 A. I'm based outside of Washington D.C. in Quantico,
11 Virginia.

12 Q. And what is your title with the FBI?

13 A. I'm currently a forensic video examiner trainee
14 working on becoming a certified forensic video
15 examiner for the FBI.

16 Q. Is that a sworn police officer position or
17 civilian position?

18 A. It's a civilian position.

19 Q. Prior to January of this year, where did you
20 work?

21 A. I worked for Target Corporation.

22 Q. And what did you do for Target Corporation?

23 A. I was a digital evidence customer.

24 Q. And how long did you do that?

25 A. I believe it was about 20 months for Target.

1 Q. Prior to Target?

2 A. I worked for the North Carolina State Bureau of
3 Investigation at the state crime laboratory.

4 Q. And what did you do for North Carolina?

5 A. I was a digital evidence analyst as well.

6 Q. Do you have any other, prior to that position,
7 did you have any other digital evidence
8 examination positions?

9 A. No. I had technology related positions but
10 nothing in the forensic field.

11 Q. And what were those?

12 A. I was a network administrator for an internet
13 service provider in North Carolina and I was a PC
14 technician for a short period of time.

15 Q. And what is the training that goes into being a
16 forensic video analyst?

17 A. For forensic video there are various classes
18 regarding vendor specific training of software
19 and hardware that we use as well as a lot of
20 on-the-job training with examiners who have been
21 doing this for a very long time. There's also
22 technical training with regards to general video
23 concepts and processes.

24 Q. And what about formalized university training?

25 A. At the time I started in this field, there was

1 very limited university training. My degree is
2 bachelor of science in computer networking from
3 Strayer University. There is now starting to be
4 more and more forensic training, especially in
5 the digital evidence field. But at the time I
6 was doing it, there was very limited training.

7 Q. And so, again, what's the training that you've
8 had in forensic video analysis?

9 A. I've had probably hundreds of hours of external
10 training from various vendors such as LEVA, which
11 is the Law Enforcement and Emergency Services
12 Video Association, training from companies such
13 as resolution video, all these trainings deal
14 with analog video like VHS tapes, as well as
15 digital video that you'd get on CD or DVD, and
16 then forensic processes that are applied to
17 those.

18 Q. Are there any degrees or certifications that one
19 can obtain to analyze video?

20 A. I'm a certified forensic video examiner from the
21 IAI, which is the International Association for
22 Identification. They've been offering
23 certification programs for years in fields such
24 as latent prints and blood stain, pattern
25 analysis, crime scene analysis, but they've

1 recently started a forensic video -- forensic
2 video examiner certification.

3 Q. And basically what do you have to do to be
4 certified in that?

5 A. They're certain requirements you have to meet in
6 terms of number of years you've been performing
7 the work, as well as the number of hours of
8 external training that you've received. But
9 there is also a written test, as well as a
10 practical examination that is going to start
11 being issued this year. I'm actually now
12 chairing that certification board as well.

13 Q. When did you receive your certification?

14 A. My certification, I was actually the first
15 certified forensic video examiner and it was in
16 May of this year.

17 Q. And in the future you'll be chairing the board
18 that will certify others?

19 A. I'm currently doing that, yes.

20 Q. Do you belong to any professional organizations
21 related to video analysis?

22 A. I chair the video subcommittee for the scientific
23 working group on imaging technology, which is
24 sponsored by the FBI. There are multiple
25 scientific working groups in the country for

1 different -- such as latent prints, tire tracks
2 or DNA, drug analysis. Imaging technology deals
3 primarily with photography, video analysis,
4 comparisons, things of that nature, anything
5 involving images. I'm also a ASCLD, which is the
6 American Society of Crime Laboratory Directors'
7 Laboratory Accreditation Board. That is the
8 organization that assesses crime laboratories
9 across the country. I'm an assessor for their
10 program, as well as I participate on their
11 proficiency review committee, which reviews
12 proficiency tests for examiners in digital
13 evidence all over the country.

14 Q. And that organization accredits different crime
15 labs, is that right?

16 A. That's correct.

17 Q. And have you given any trainings or lectures?

18 A. I've given some lectures over the years. One
19 regarding the video analysis certification
20 program from IAI. I've also given talks at the
21 Forensic 411 Conference, I guess you can call it
22 from the Innocence Inquiry Commission.

23 Q. That's also known as the Innocence Project?

24 A. Yes, I'm sorry.

25 Q. And that is the group of lawyers, that's a

1 continuing legal education seminar?

2 A. That's correct.

3 Q. When you worked for Target, why is it that Target
4 Corporation has a forensic video analyst?

5 A. Target actually has an accredited crime
6 laboratory much the same as a state crime
7 laboratory or federal crime laboratory. It was
8 originally started to solve some of Target's
9 business problems that revolve around organized
10 retail crime, so not someone walking in and
11 stealing a CD from a store, but groups of
12 individuals that go in and break into several
13 stores in an area, or groups that might do price
14 switching or tag switching, things like that. A
15 lot of times those items end up on eBay. So
16 there is a lot of digital evidence that revolves
17 around -- there's video evidence, there is
18 computer forensics. Target also found there's
19 latent prints that are available when someone
20 breaks into a store and they go through and touch
21 things. And maybe they wear a mask so video
22 doesn't really help them but latent prints might.
23 So they decided that they wanted to start doing
24 this work. And then they went and got accredited
25 to put more emphasis behind what they were doing

1 with the video and to show they're really doing a
2 good job, as good as any crime lab in the
3 country.

4 Q. And who did they get accredited by?

5 A. ASCLD lab.

6 Q. And what relationship does Target have with law
7 enforcement?

8 A. Once Target opened up its lab, they decided that
9 they have the equipment, they have the people,
10 they have the training, they have big habit of
11 giving back to the community through donations or
12 community service. This was another way to
13 extend that effort, and so they decided that they
14 would do pro bono work for law enforcement.
15 About 30 to 40 percent of the work that I did
16 when I was at Target was law enforcement cases on
17 violent felonies that were totally unrelated to
18 Target. We would work that evidence and give it
19 back to the law enforcement agency just as if
20 they submitted it to their own crime laboratory.

21 Q. What law enforcements agencies did you work with?

22 A. I worked for many agencies when I was at Target.
23 That I can recall, Minneapolis Police Department,
24 Hennepin County, FBI, DEA, Drug Enforcement
25 Agency, Federal Bureau of Investigation, state,

1 local, federal organizations all submitted cases
2 at one time. Sometimes it was because they
3 didn't have a local lab, and sometimes it was
4 because their local lab was too backed up and
5 this was an important case they wanted to have
6 examined faster.

7 Q. Was Target compensated for doing that work?

8 A. No.

9 Q. And you said that you're no longer with Target?

10 A. That's correct.

11 Q. And obviously you've been called to testify
12 today?

13 A. That's correct.

14 Q. Other than a plane ticket from Washington D.C.
15 and a rental car, are you being compensated for
16 your testimony today?

17 A. No, sir.

18 Q. If you can tell the jury what can a video analyst
19 do for law enforcements purposes?

20 A. Depending on the type of video and the request
21 there is multiple things that video analyst may
22 be able to help with. Sometimes it involves
23 enhancement, making images clearer so that
24 something can be identified in the video,
25 sometimes it involves comparison between what we

1 call question and known things. Question items
2 being the video, known things being recovered
3 from a crime scene or from a suspect's house. It
4 can also be things related to authenticity
5 whether what actually occurred in the video is
6 real or whether it was fabricated. It really
7 depends on the video and what options are
8 available.

9 Q. What -- what's the difference between you looking
10 at a video and anybody else looking at that
11 video?

12 A. When someone that isn't a trained video examiner
13 looks at a video, they're typically going to see
14 what they see on the video, and that's pretty
15 much it. When a video examiner looks at the
16 video they're looking not only for what appears
17 in the video, but what may have been at the
18 actual scene but isn't apparent in the video
19 because maybe the video needs to be enhanced, or
20 maybe the video quality isn't good enough to show
21 that feature. So let me give you an example, a
22 dent on a car. A car drives through a scene and
23 maybe the law enforcement suspect has a dent on
24 their car, but there is not a dent that's
25 apparent in that video. The question is, was it

1 possible that there is actually a dent on that
2 car that drove through there but the video
3 doesn't show because maybe it's too far away,
4 maybe the lighting is in the wrong location, is
5 that possible? And really it's up to the video
6 examiner to determine based on the quality of the
7 video, the type of recording, the compression,
8 all sorts of other factors that go into that, is
9 it possible that that actually was the case? Or
10 was there not a dent there? Can we say for sure
11 that there was not a dent there? So it's a
12 matter of interpreting the video and what is
13 contained within it.

14 Q. In your dent example, would the opposite be true,
15 for example, if video appeared to show a car with
16 a dent and the known car law enforcement didn't
17 have a dent?

18 A. Yes, it's entirely possible. That dent could be,
19 or the dent in the car that drives through the
20 scene could be a number of things. It could be
21 lighting again that because of the particular
22 angle that the lighting is shining on that car
23 could make it appear that there is a dent. It
24 could be what we call compression artifact, when
25 video is recorded in digital form, there are

1 sometimes effects that appear in that video that
2 can make things look like a dent, can make it
3 look like there is say a bloodstain on a piece --
4 a pair of pants, or a number of different things,
5 and it's up to us to determine what's really
6 there and what's not.

7 Q. Is it through your training and experience that
8 you're able to do that?

9 A. Yes, sir.

10 Q. Are there any developed standards for analyzing
11 video?

12 A. Each laboratory, in particular, accredited
13 laboratories, are going to have their own
14 standard operating procedures. That is just one
15 of the requirements of accreditation is that you
16 say what you do and you do what you say. So we
17 have procedures that we follow as we examine the
18 video. Some of those are pretty generic simply
19 because every video is a little bit different,
20 but they are going to say in these circumstances
21 this is what we're going to do. There is not a
22 national standard, if you will, but there are
23 best practices out there from organizations such
24 as best practices from LEVA, Law Enforcement
25 Emergency and Services Video Association, that

1 agencies can use to sculpt their own SOPs to
2 follow.

3 Q. What was that?

4 A. SOPs. Standard Operating Procedures.

5 Q. And did Target have standard operating
6 procedures?

7 A. We did.

8 Q. And did you follow the procedures?

9 A. I did.

10 Q. Just stepping back. How many, if you can even
11 tell us, types of difficult video are there out
12 there to analyze?

13 A. I don't know if I can tell you, there is a lot.
14 It's increasing. I think there is a study maybe
15 five or six years ago that said that in a major
16 metropolitan city someone is captured on video
17 eight times a day. I think that number is
18 entirely too low now. And it depends on the area
19 of the country, or the world. If you go over to
20 say the United Kingdom and they have a lot more
21 video over there, so you're going to see a lot
22 more different types of video. Traditionally
23 today we have two main types of video. We have
24 analog video and digital video. Analog is still
25 recorded to VHS tapes, and digital might be

1 recorded to a hard drive on a computer or any
2 other medium whether it's CD or something like
3 that.

4 Q. And typically do we refer to those systems as a
5 closed circuit television?

6 A. Closed circuit television which is CCTV.

7 Q. Is that what we're talking about when we're
8 talking about surveillance cameras?

9 A. Correct.

10 Q. The technology on surveillance cameras, does that
11 vary?

12 A. It does, there are many factors that go into
13 video that affect the quality, the camera is just
14 one of those. There is also the transmission
15 method so, for example, digital opens up a whole
16 lot more options as far as how you want to get
17 that video from the camera, before it was just a
18 cable. Now it can be wireless, it can be --
19 there are different types of wireless that you
20 can use. So there is lots of different options
21 that are going to affect that quality and
22 ultimately the recorder itself whether it's going
23 to analog tape or to a hard drive.

24 Q. Because there are so many different technologies,
25 can the same artifact, say a car, look different

1 on two different video systems?

2 A. When you say artifact, do you mean like an
3 object?

4 Q. An object, yeah.

5 A. Yes. An object could look different on two
6 different surveillance systems. It could look
7 different -- really is going to depend on the
8 recording system. And, again, that's something
9 that a video examiner is probably going to have
10 more experience than somebody that's looking at a
11 video for the first time or doesn't see a lot of
12 video.

13 Q. When you're comparing two different videos, what
14 can you tell and what can't you tell?

15 A. It's really up to the video itself and what's
16 shown. Typical example would be a car. If we
17 wanted to compare two cars in two different
18 videos and determine what the characteristics are
19 that may be in common between those videos or
20 that may be different, we have to have the same
21 point of view. So if we only have the back end
22 of the car on one video, and we have the front
23 end on the other, we're not going to be able to
24 say anything about that video most of the time.
25 But if we have the same view, then we have to

1 start examining what, based on the motion of the
2 video, based on the recording type, what
3 characteristics we notice in each video. Most of
4 the time that would be an example of what we call
5 question videos, we don't know where either of
6 those cars are, but we just want to know if
7 they're the same. Most of the time it's a
8 question in the known. First thing we're going
9 to do is look at the question, we're going to
10 find out all the things that we know about that
11 object. Does it have a dent? Is there a bumper
12 sticker on it? Is there four doors? Is it, you
13 know, a Ford logo on it? Any of those features.
14 Then once we identify all of those
15 characteristics, then and only then do we look at
16 the known and we say, okay, what of those
17 characteristics are present on this car that we
18 know is this car? And if we can find all those,
19 then those are what characteristics are in
20 common. If we can't find some of those, then we
21 have to determine whether those are explainable
22 differences. A bumper sticker can be removed, so
23 that might be an explainable difference.
24 However, a dent in a specific location, maybe not
25 so much, it might not be able to be repaired to

1 that extent, depends the video, depends on the
2 car, a lot of different factors.

3 Q. And basically what is the process you go through
4 when you compare videos?

5 A. We follow a methodology that is called ACE,
6 A-C-E, stands for analyze, compare and evaluate.
7 And that is the same methodology that a latent
8 print examiner is going to use. They compare two
9 latent prints to determine if those are the same
10 latent print. The analyze portion is where we do
11 describe what is finding all the characteristics
12 that we can about that first object. Once we
13 identify those two characteristics, then we're
14 going to look at the other objects in a
15 comparison phase. And then we're going to
16 evaluate those results and determine whether or
17 not those two objects are the same or whether
18 they have characteristics in common. I will say
19 that it's incredibly rare, given the current
20 state of video, that you can identify to the
21 inclusion of all other objects two things as
22 being the same, just because of the quality of
23 the video, we don't typically get that.

24 Q. Would that be the same with objects as it would
25 be with people?

1 A. Yes.

2 Q. Now, you recall when you were working for Target
3 in the early months of 2010, that you were asked
4 by Minneapolis Police detectives to assist on a
5 case involving a homicide at the Seward Market?

6 A. I was.

7 Q. And do you recall specifically what you were
8 asked to do?

9 A. I believe that there was two different requests.
10 Would you like me go over both of those or --

11 Q. I would. Are you refreshing your recollection by
12 referring to your report?

13 A. Yes, if I can do that.

14 THE COURT: You may.

15 THE WITNESS: There was two requests.
16 The first request was made on, I believe it was
17 made on February, or excuse me, February 5th of
18 2010, and that request was to examine what we
19 call DVR, digital video recorder. The second
20 request was made on February 8th of 2010, and
21 that was to perform a comparison, an enhancement
22 of video from three different locations that was
23 submitted on, I believe, CDs.

24 BY MR. WEBER:

25 Q. And in referring to the second request.

1 A. Yes, sir.

2 Q. You said it was submitted on CD. What was
3 submitted on CDs?

4 A. There was video from -- there was one video that
5 was submitted from an impound lot. There was
6 video submitted from SuperAmerica. And there was
7 video that was submitted from, I believe it was
8 another business, like a check cashing facility
9 of some sort. And then there was video from a
10 convenience store.

11 Q. When you refer to the convenience store, is that
12 the Seward Market?

13 A. Yes, sir.

14 Q. And those were all submitted on CD form you said?

15 A. I believe so, yes.

16 Q. Now, when you received those videos, what did you
17 do with them in order to conduct your analysis?

18 A. In this particular case, I performed enhancements
19 to the images that I extracted from those videos.
20 Sometimes in comparison it's necessary to do that
21 step first in order to identify all the
22 characteristics that might be present. So if the
23 video is too dark, we're going to want to lighten
24 that up so that we can see everything that is in
25 this video before we start making determinations

1 as to whether characteristics are present or not.

2 So that was what was done in this case first.

3 Q. Did you do that with all the videos?

4 A. Yes. I believe I extracted and enhanced images
5 from each of the four videos.

6 Q. You talk about extracting and enhancing images,
7 what does that mean?

8 A. All of these videos were submitted on CD so they
9 were already digital videos so they were easily
10 played back on a computer, there was no tape
11 involved or anything like that. So it was a
12 matter of performing either an export from the
13 particular player that gives us an image that
14 comes from that video or in some circumstances a
15 screen capture that will give us the image that
16 we're looking at on that screen. So we're going
17 to get an image that's exactly the same as what
18 was recorded on that video.

19 Q. When you do enhancements, do you in any way
20 change what's in the video?

21 A. No. It's akin to walking into a room with the
22 lights off and then turning on the lights. So
23 we're going to enhance it so you can see what's
24 going on, we're not going to fundamentally change
25 what was present in the video. So whatever

1 furniture is in the same location, just now you
2 can see it and you don't trip over it.

3 Q. Did you analyze screen captures or still images
4 or did you analyze the motion video or both?

5 A. The examination overall was performed on the
6 entire video. The screen captures and the images
7 were to illustrate some of the features and
8 characteristics that were present, but when you
9 do a comparison you're looking at both the video
10 as well as the images that you might extract.
11 And the reason for that is that if the
12 characteristic is common in a particular image,
13 you want to make sure that that characteristic
14 tracks throughout the video, so that it's not
15 just an artifact appeared in that one image, it's
16 something that moves with the individual as they
17 move. And if they move their arm, that mole or
18 freckle or whatever characteristic moves with
19 them.

20 Q. If that characteristic doesn't move with them,
21 what would you conclude from that?

22 A. I would more than likely conclude in that
23 circumstance that it was an artifact of the
24 video, which could be from lighting, compression,
25 sometimes you know, sometimes you don't, however

1 in either circumstance in that case it wouldn't
2 be a characteristic that I would view as being on
3 that person.

4 Q. To prepare for your testimony today, did you
5 provide my office with a number of screen
6 captures from the various different videos?

7 A. I did.

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

9 THE COURT: You may.

10 BY MR. WEBER:

11 Q. All right. And I'm showing you what I have
12 marked for identification as Exhibits 169, 170
13 and 171. Can you tell me what those images are,
14 if you recall?

15 A. They appear to be prints of images that I
16 extracted and enhanced from the SuperAmerica
17 video.

18 Q. Are these fair and accurate copies of the images
19 that you enhanced?

20 A. They appear to be.

21 MR. WEBER: I would offer 169, 170, 171
22 and 172.

23 MR. GOETZ: Without objection, Your
24 Honor.

25 THE COURT: 169 through 172 are

1 received.

2 BY MR. WEBER:

3 Q. Now I have a number more, Exhibit 173, 174, 175,
4 176, 177, 178, 179, 180, 181 has already been
5 received, 182, 183, 184, 185, 186, 187, 188, 189,
6 190, 191, 192, 193, 194, 195, 196, 197, 198, 199,
7 200, 201, 202, 203, and 204. If you would take a
8 second to go through those?

9 A. If I may have a moment.

10 Q. Yes.

11 A. (Witness complies.)

12 Q. Can you tell me what these exhibits depict?

13 A. They appear to be prints of the images I
14 extracted and enhanced from the impound lot.

15 Q. Are they fair and accurate prints of those images
16 you extracted?

17 A. They are, yes.

18 MR. WEBER: I offer 173 through 204 with
19 the exclusion of, I believe, 181 that has already
20 been admitted into evidence.

21 MR. GOETZ: May just take a quick look?

22 THE COURT: Yes.

23 MR. GOETZ: No objection.

24 THE COURT: Exhibits 173 through 204 are
25 received, including 181 which is already been

1 received.

2 BY MR. WEBER:

3 Q. I'll now show you Exhibits 205, 206, 207, 208,
4 209, 210, 211, 212, 213, 214, 215, 216, 217, 218,
5 219, 220, 221, 222, 223, 224, 225, 226, 227, 228,
6 229, 230, 231, 232. Take a minute to look
7 through those.

8 A. (Witness complies.)

9 Q. And can you tell us what these are?

10 A. They appear to be prints of the images that I
11 extracted and enhanced from the Seward Market.

12 Q. Do they fairly and accurately represent the
13 images that you extracted?

14 A. Yes, they do.

15 (Defense attorney looks through the
16 exhibits.)

17 MR. WEBER: I would offer 205 through
18 232.

19 MR. GOETZ: No objection.

20 THE COURT: Exhibits 205 through 232 are
21 received.

22 Can I see counsel at the bench.

23 (Discussion at the bench.)

24 BY MR. WEBER:

25 Q. I'm now showing you Exhibits 163, 164, 165, 166,

1 167 and 168. Can you tell me what those are,
2 after you've taken a minute to review them.

3 A. (Witness complies.) They appear to be the prints
4 from the images that I extracted and enhanced
5 from, it was a check cashing business.

6 Q. Are these fair and accurate depictions of those
7 extractions?

8 A. They appear to be, yes.

9 MR. WEBER: I offer 163 through 168.

10 (Defense attorney reviews exhibits.)

11 MR. GOETZ: No objection.

12 THE COURT: 163 through 168 are
13 received.

14 Members of the jury, at this time we'll
15 take our afternoon break, so please be in the
16 usual spot at 3:15.

17 (Recess.)

18 THE COURT: Mr. Weber.

19 MR. WEBER: Your Honor, may I have
20 permission to publish the exhibits?

21 THE COURT: You may.

22 BY MR. WEBER:

23 Q. Before I publish the exhibits, Mr. Schroering,
24 you and I during the break had a discussion about
25 the Seward Market images. Can you clarify for us

1 from what format you took those images?

2 A. Yes. The Seward Market video was digital, as I
3 stated previously, but I made a mistake in saying
4 that it was all submitted on CD. The Seward
5 Market video was actually submitted on hard
6 drive, it was digital files on a hard drive that
7 were too big to fit on a disk. So that was
8 submitted and then examined the same way as if it
9 had come on a CD, but it would have taken a whole
10 lot of CDs so.

11 Q. I'm now going to show you what has been admitted
12 as Exhibit 205. Can you tell us -- well, first
13 of all, in 205, you depicted the individual
14 subject that was the center of your analysis?

15 A. Yes. The subject holding the weapon was the
16 subject of the analysis and the comparison.

17 Q. And in relation to that, the individual holding
18 the weapon, what were you asked to do?

19 A. I was asked to perform a comparison between that
20 subject, which I believe I identified as QS1,
21 which QS stands for question subject, that
22 individual and the individuals that appeared and
23 the other individuals that I examined from the
24 other locations, such as SuperAmerica and the
25 impound lot and the check cashing facility.

1 Q. And so was this QS1 the individual with the gun,
2 is that the focus of your analysis then?

3 A. That's correct.

4 Q. And you -- while we're talking about individual
5 images now, your analysis focused on a number of
6 different images, is that fair?

7 A. That's correct. It focused on the images that I
8 extracted as well as the video that they came
9 from. However, it's important to understand and
10 remember that the video is really what I'm
11 looking at, the images are representations of
12 those maybe characteristics that I identify, and
13 I take out an image and extract it and enhance it
14 to show a particular feature. However, sometimes
15 that's not always possible. There are certain
16 things that occur with motion that aren't easily
17 shown in a still image. An example of that would
18 be if you're talking about a clerk that was
19 taking money, or suspected from taking money from
20 a drawer, a cashier, I can't extract an image of
21 that individual holding money because that
22 individual holds money all day. What I need is
23 video showing them taking money out of the drawer
24 and putting it in their pocket. So there is
25 certain things that happen or features that I

1 might reference in my report that I don't have an
2 actual image of because there is not really an
3 image that truly depicts what I'm talking about.

4 Q. One other thing before we talk about the image on
5 the screen. As part of the core presentation you
6 asked that we not display two images next to one
7 another. Why did you ask that?

8 A. When I perform a comparison, I prefer in
9 situations where I'm just highlighting
10 characteristics of this individual and
11 characteristics of this individual and things
12 that might be in common, I don't want to give the
13 presumption that I'm saying that they're the
14 same, and by putting them side by side and you
15 see it on TV all the time with matches on CSI and
16 things like that, it gives the presentation that
17 I'm saying the same, and in most circumstances
18 I'm not saying that they're the same. I'm not
19 saying that they're different either, but I don't
20 want to prejudice anyone by putting them side by
21 side unless I'm actually going to make that
22 statement. So in most circumstances I prefer to
23 highlight characteristics of each and say that
24 these things are common or not in common and
25 leave it up to the Court to decide what that

1 means.

2 Q. Now, referring specifically to Image 205, what
3 characteristics did you note in this image?

4 A. In this image for Question Subject 1, the main
5 focus obviously is the fact that the individual
6 is holding a weapon, or appears to be holding
7 some sort of weapon. There is obviously the big
8 coat, the jeans, and you start to see the shoes,
9 however, there are better images to follow of the
10 shoes. There is the other feature that is
11 apparent here is that the person is standing
12 fairly erect. It's hard to say that for sure
13 because the other leg is not visible. So one of
14 the functions that we can sometimes perform is a
15 height examination to determine how tall someone
16 is but that relies on knowing that they're
17 standing almost fully erect to be able to be sure
18 that you're getting the right height. So I was
19 not able to do that from this, but I can get a
20 general idea of the person's height from this
21 image.

22 Q. Are you able to make any statements about the
23 person's height in relation to the person's
24 height in the foreground with the weapon and the
25 person in the background that's just coming into

1 the store?

2 A. I was. In this particular image, we have this
3 individual coming into the store. They're
4 farther away from the camera, the camera is also
5 up high looking down. So with perspective, the
6 individuals that are closer, or objects that are
7 closer to the camera should seem bigger, taller,
8 larger than they actually are in comparison to
9 objects that are far away. So with this you have
10 the individual in the background coming in, you
11 can tell they're not standing fully erect either.
12 They're somewhat crouched, they're running in the
13 door. However, they appear almost approximately
14 the same height as the individual that is
15 standing at the counter, yet the individual that
16 is standing at the counter should appear, if
17 those two individuals, you can make the
18 assumption that these two individuals are the
19 same height in real life, this person should be
20 taller, simply because they're closer to the
21 camera and because the other individual is
22 undoubtedly crouching. That gives me a frame of
23 reference as to how tall these people are in
24 reference to each other but not necessarily how
25 tall they actually are in real life.

1 Q. Just so we're clear, which one is, would you say,
2 is taller?

3 A. I would say that the individual in the background
4 is taller.

5 Q. I'm going to show you Exhibit 207. Can you tell
6 us any characteristics that you found for
7 purposes in comparison in this?

8 A. I believe the main characteristic that I found in
9 this particular image were the tassels or cords
10 hanging off of the coat. That is a feature that
11 is sometimes hard to display, it's one of the
12 things I was talking about with video being
13 easier to show things and images from time to
14 time. There are better images of these, but you
15 can still see them here. If you were actually
16 watching the video, you would see the movement of
17 those and it would be a little bit easier to pick
18 out.

19 Q. And Exhibit 211?

20 A. This is actually a lot better image, you can see
21 the tassel right here, as well as over here.
22 Obviously, this is also an image that was
23 extracted and enhanced in order to show the
24 weapon. When I'm doing these analyses, sometimes
25 the focus of me exporting an image isn't

1 necessarily just for comparison. I want to give
2 this back to law enforcement or whoever the
3 request is in case they need to know something
4 about the weapon that was used or anything, even
5 if I'm not doing a comparison, I'm going to give
6 them anything that I might think they might find
7 useful.

8 Q. Exhibit 218?

9 A. This particular image has a lot of what we refer
10 to as motion blur down in this area. There might
11 also be a smudge on the camera where it's real
12 blurry down here. Some of that is from the
13 actual blur of the moment, but if you look at
14 other images from that particular camera, you can
15 see a little bit of a smudge, I believe. Here
16 you can see a little bit more of the jeans and
17 the shoes are almost completely obscure because
18 of the blur. Again, you can see a little bit of
19 the tassel here (pointing). Also the mask which
20 appears to be a bandana was falling down at that
21 point so the main focus of that image was really
22 that the mask was falling down.

23 Q. And 219?

24 A. 219 shows the shoes, shows the jeans as well but
25 they're lifting up and you can see what is likely

1 socks but it's hard to tell from that angle.

2 Really the focus of that image is the shoes.

3 Q. 222?

4 A. This particular image is depicting some of the
5 cuffing that appears on the jeans where the shoes
6 meet the jeans. There are, I believe, other
7 images that depict that a little bit better, but
8 I like to export more than one image showing the
9 same feature to document that that's not an
10 artifact or effect of lighting, things like that,
11 so this is kind of a supplementary image.

12 Q. And 223?

13 A. 223, again, has the tassels or cords hanging down
14 from the coat.

15 Q. Exhibit 224?

16 A. This is actually a lot better image that shows
17 the cuffing right around the shoes, it shows the
18 shoes as well. And, again, it shows another view
19 of the weapon.

20 Q. Just one question. There appears to be a dot on
21 the suspect's knee. What --

22 A. Right around this area (pointing).

23 Q. What is that?

24 A. It's hard to say at this point. Obviously, I
25 didn't mention it as a characteristic and that's

1 probably due to the fact that it did not track
2 through the video. As that person moves, I
3 didn't see that same characteristic that appeared
4 on other camera angles or as they moved so I
5 negated its value to the point where it wasn't
6 worth mentioning as a characteristic that was
7 apparent because I wasn't sure it was really
8 there.

9 Q. Is that the type of thing that could be the
10 artifact of the video camera itself or the
11 compression or something like that?

12 A. Right. It could be an artifact of the
13 compression of the video which is where they're
14 trying to store a lot of information in a very
15 small amount of space. And so the computer looks
16 at the video and says, well, all these things
17 look very similar, I can use the same values to
18 represent all of those. So they compress the
19 video down to save space, but sometimes those
20 algorithms get things wrong and it puts artifacts
21 in there. That could be an artifact from that.
22 It could also be from lighting in the room the
23 way it's shining on that particular area to make
24 it appear that way. Sometimes it's the
25 combination of lighting and compression.

1 Q. Exhibit 226. Explain why you took this picture.

2 A. This is leaving, I believe, the market. Again,
3 it shows the jeans, it shows the shoe. This is
4 actually based on the movement in the video, it
5 was the same video we were just looking at
6 leaving the market. However, you can see that
7 the color on the coat is completely different and
8 that's due to a number of things. But the main
9 reason why we see that is different fabrics and
10 different types of cameras and different types of
11 lighting react differently. So if you were to
12 put that same coat back under that same lighting
13 on that same camera, you should see the same
14 color affect here. But it was obviously some
15 sort of dark coat before. You put another dark
16 coat made out of a different material under there
17 and it might appear like this, or it might appear
18 just like it is. It has to do with the way the
19 fabric and light interacts with the camera.

20 Q. And Exhibit 229?

21 A. This, again, is showing the differences between
22 the lighting and the camera and the coat, but
23 it's also a little bit more of the face shot,
24 although it's still covered up by the mask.

25 Q. What about the hat?

- 1 A. Yeah. There is a -- the hood is on the coat
2 itself. This image was not one where obviously
3 you can make a facial identification or anything
4 like that, but it was a just good outside shot, I
5 like to take multiple from different camera
6 angles to show different features.
- 7 Q. I'm going to jump to exhibits from the impound
8 lot. Exhibit 181. What do you see in this
9 exhibit that's helpful?
- 10 A. This exhibit was actually helpful throughout the
11 entire case. It shows all three individuals
12 lined up at the counter standing more or less
13 erect, maybe a little bit of a crouch, but all
14 right lined up next to each other, which gives
15 you a reference for the heights between them. So
16 I can say fairly certainly that this individual
17 and this individual are approximately the same
18 height (pointing). I mean, I can't put a height
19 on it, but I can say that they're approximately
20 the same height. This person appears a little
21 bit taller (pointing), but this person is farther
22 away from the camera. So, again, we go back to
23 perspective and the fact that he's farther away
24 can make him appear slightly shorter than he
25 actually is. Whereas the individual in the

1 center is notably shorter than both of the other
2 individuals.

3 Q. And for clarification again, what were you asked
4 to do in relation to these three individuals
5 depicted in this picture as compared to the
6 individual with the weapon in the Seward Market
7 pictures?

8 A. The individuals from this video that were the
9 focus were the individual on the left and the
10 individual in the center. The individual on the
11 right was not the focus of any of the comparisons
12 that I performed on any of the videos even though
13 he appeared to appear in all four of the videos.

14 Q. And will you explain what we're seeing in Exhibit
15 190?

16 A. Exhibit 190 shows the cuffing on the jeans, as
17 well as the shoes that appeared to the
18 characteristics in common with Question Subject 1
19 from the Seward Market video or the individual
20 holding the weapon. Also, again, I take images
21 simply because they're good images, not
22 necessarily because of characteristics, and this
23 obviously has a fairly decent face shot of an
24 individual who is the subject of the case.

25 Q. And, again, the two individuals that are sort of

1 out in the lobby area, there is five individuals
2 in this picture for the record, and there is two
3 individuals that are away from the window. Are
4 those the two individuals that you were comparing
5 to the shooter in the Seward Market video?

6 A. The individuals that -- that I was comparing is
7 this individual and this individual (pointing).
8 These individuals were not the subject of any of
9 the investigation, didn't appear to be related in
10 any way, shape or form. This individual was the
11 subject (pointing) that I mentioned previously
12 that wasn't the focus of any of the comparisons
13 but was with these individuals.

14 Q. And 196?

15 A. Again, we have the cuffing on the jeans, the
16 shoes. In all these images I'm also looking at
17 general characteristics such as skin tone, such
18 as general build of the individuals. So any
19 images that show that, such as this image, can be
20 useful during the comparison process.

21 Q. Were there any similarities that you noted
22 between the individual that is in the foreground
23 of Exhibit 196 and the individual that's holding
24 the gun in the Seward Market video?

25 A. This individual appeared to have a similar build

1 overall, as well as similar skin tone. The
2 cuffing on the jeans that were worn all appeared
3 to be somewhat similar and they couldn't be
4 eliminated as being the same.

5 Q. Were there any unexplainable differences between
6 the individual in the foreground and the
7 individual in the Seward Market videos?

8 A. No, there does not appear to be.

9 Q. What conclusions, if any, can you reach as to the
10 individual in the foreground and the individual
11 with the weapon in the Seward Market videos?

12 A. This individual in the foreground could not be
13 eliminated as being the same as the individual
14 holding the weapon in the Seward Market.

15 Q. As to the tall individual who is in the middle in
16 this image, are there any similarities to him and
17 the person with the gun in the Seward Market
18 videos?

19 A. Other than general skin tone, there were no
20 significant characteristics that appeared to be
21 in common between those two individuals.

22 Q. Are you able to make any conclusions as to that
23 individual and the individual in the Seward
24 Market videos?

25 A. This individual, despite the fact that no

1 significant characteristics other than general
2 skin tone were noted as being in common, he also
3 could not be eliminated as being the same as the
4 individual with the weapon in the Seward Market.

5 Q. Now I'm going to jump to the images labeled
6 Dahabshiil. I'm going to show you Exhibit 167.
7 What do you see in 167?

8 A. 167 has, again, the tassels that appeared to be
9 similar to the ones in the Seward Market video,
10 the cuffing on the jeans and the shoes. This
11 particular image is not the best representation,
12 in my opinion, of the tassels that are hanging
13 from the coat. However, when you watch the video
14 in real time and you watch the movement, you can
15 see the movement in those tassels and it becomes
16 a little bit more apparent. Also when images are
17 projected on here, some of the detail is
18 projected is not as good as say a printed image
19 or on like a digital screen like what's up here.

20 Q. So, again, what similarities, if any, did you
21 note between this individual and the individual
22 holding the gun in the Seward Market videos?

23 A. Again, similar build, similar general skin tone,
24 the shoes, and the cuffing on the jeans. And in
25 addition, the tassels hanging from the coat.

1 Q. And did you note any unexplainable differences?

2 A. I did not.

3 Q. And what conclusions, if any, did you reach as to
4 those two individuals?

5 A. This individual could not be eliminated as being
6 the same as the individual holding the weapon in
7 the Seward Market.

8 Q. And just for clarification, we also admitted
9 Exhibits 169 through 172 which shows
10 SuperAmerica. And I'm displaying 169 now. That
11 individual was not the subject of any of your
12 comparisons; is that right?

13 A. That's correct.

14 Q. So why did you make these images?

15 A. It goes back to what I stated previously about
16 taking any images from these videos that may be
17 useful. Sometimes during the course of the
18 investigation you don't realize when something
19 might become useful, so any features that might
20 be useful or face shots that would help in
21 identification, I felt it best to go ahead and
22 export those regardless of whether or not they
23 were the subject of the investigation.

24 MR. WEBER: Thank you, Mr. Schroering, I
25 have no other questions at this time, perhaps

1 defense counsel does.

2 THE COURT: Mr. Goetz.

3 MR. GOETZ: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. GOETZ:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. I want to ask you some questions to start about
9 the Target Corporation.

10 A. Yes, sir.

11 Q. And Target Forensics. Now, the focus of Target
12 Forensics, as I understand it, is on corporate
13 matters such as personal injury at stores, theft
14 and fraud. Would you agree with that?

15 A. Yes, that's the focus of the examinations.

16 Q. And you said you spent about 40 percent of your
17 time on outside matters?

18 A. I don't have exact numbers but I felt like when I
19 was there I spent about 30 to 40 percent of my
20 time. It would vary from week to week, month to
21 month depending on what types of cases were
22 coming in at the time, the priority of those
23 cases. But typically it was up to half, but
24 probably closer to 30 or 40 percent.

25 Q. A statistic I found printed in Forbes -- you're

1 familiar with Forbes; correct?

2 A. Yes, sir.

3 Q. Talking about Target Forensics said about 70
4 percent of time on corporate matters with the
5 other 30 percent being pro bono work for law
6 enforcement, sound about right?

7 A. Uh -- .

8 Q. Subject to variation?

9 A. I believe so. Also, I think that there is a
10 great demand for the services that we offer and
11 at times we would -- our goal was 30 percent but
12 we would often exceed that goal because we would
13 have a case that would come in and we're not
14 going to turn away an agency that needed
15 assistance. So oftentimes we'd end up going over
16 that 30 percent. However, I don't think that
17 they like to advertise that they would be
18 spending 50 percent of their time on law
19 enforcement because we could barely handle the
20 work we were getting in at the time.

21 Q. Target forensics has a mission statement, does it
22 not?

23 A. Yes, sir.

24 Q. Part of that mission statement is, we support
25 Target's vested community vision by offering our

1 services to local, state and federal law
2 enforcement agencies free of charge?

3 A. That's correct.

4 Q. It's part of the mission of Target Forensics?

5 A. Yes.

6 Q. Target Forensics also has a quality statement of
7 the Target Forensic Services Laboratory. Are you
8 familiar with that; correct?

9 A. Yes, sir.

10 Q. And that provides that Target Forensic Services
11 Laboratory is committed to providing the highest
12 quality of service to all customers whether from
13 Target or from the local, state or federal law
14 enforcement community; is that right?

15 A. That sounds to be right, yes, sir.

16 Q. So in that sense, and as stated, Target Forensics
17 view local, state or federal law enforcement
18 community as part of their customer base, if you
19 will?

20 A. Yes, sir. I believe some of that actually comes
21 from the accreditation side of things where a --
22 because a laboratory, a forensic laboratory is a
23 laboratory some of the accreditation --

24 MR. GOETZ: I object at this point,
25 nonresponsive.

1 THE COURT: Overruled.

2 THE WITNESS: Some of the language in
3 the accreditation requirements for a laboratory
4 to be accredited is noted around the word
5 customers and things like that because that's
6 what a typical laboratory, say like an analysis
7 laboratory for DNA or drugs or something like
8 that, is going to use, they have customers. A
9 forensic laboratory has customers as well, it's
10 just a terminology difference.

11 BY MR. GOETZ:

12 Q. That's how Target Services -- Forensic Services
13 writes it up in your quality statement; correct?

14 A. I believe that's correct. I haven't been there
15 in eight months but.

16 Q. And that's services you provide to law
17 enforcement free of charge?

18 A. Correct.

19 Q. If someone who's accused of a crime in this
20 country, a violent crime, were to go to Target
21 Forensic Services and said, hey, I would like you
22 to do an analysis free of charge, they're not
23 part of your customer base, are they?

24 A. I do not believe so. Again, the laboratory
25 existed before I was there and it exists after I

1 left. To my knowledge, we did not do any defense
2 work while I was there.

3 Q. You never worked on one case for the defense
4 while you were there, did you?

5 A. I don't believe so, no.

6 Q. And Target Corporation, are you aware, has a
7 particular close relationship with the Hennepin
8 County Attorney's Office. Were you aware of
9 that?

10 A. I don't know what you mean by particularly close,
11 but I know we have done cases for them and worked
12 on cases for them in the past, yes.

13 Q. Were you aware that Target Corporation paid for a
14 lawyer and paralegal in the Hennepin County
15 Attorney's Office?

16 A. I was not aware of that.

17 Q. And you know Rick Lautenbach; correct?

18 A. That's correct.

19 Q. He's basically the head of Target Forensic
20 Services?

21 A. He's the laboratory director. There is actually
22 a manager that is over him that manages the lab
23 as well. For the majority of the time I was
24 there, he provided both of those functions. He
25 was the manager as well as the laboratory

1 director.

2 Q. And you know Mr. Lautenbach has openly advocated
3 for synergistic integrated relationship between
4 criminal justice agencies and private businesses?

5 A. If that is a quote from somewhere, I have not
6 read that before, but I wouldn't know for sure.

7 Q. Okay. Let's talk about the forensic -- the area
8 of forensic analysis that you provide, video
9 digital evidence?

10 A. Yes, sir.

11 Q. Now, you gave us a number of organizations. Are
12 you familiar with the National Research Counsel
13 of the National Academy of Science?

14 A. I am.

15 Q. Are you familiar with their 2009 report
16 Strengthening Forensic Science in the United
17 States, a Path Forward?

18 A. I am.

19 Q. And that is a report that was commissioned by
20 Congress in 2005, is it not?

21 A. Yes, sir. I believe that's correct.

22 Q. And it's true, is it not, that that is a report
23 that's put together by luminaries in the field of
24 forensic science across the country?

25 A. I believe the people that wrote that report were

1 both prosecutors, defense attorneys, forensic
2 examiners. There was a lot of different people
3 involved, yes.

4 Q. It's regarded as -- in the field of forensic as
5 an authoritative report, is it not?

6 A. I think depending on who you ask, people have
7 different views on it, and different parts of it
8 that have different views, but I believe that
9 parts of it could be, yes.

10 Q. In this report commissioned by Congress, the
11 committee talked about problems relating to the
12 interpretation of forensic evidence, did they
13 not?

14 A. I believe that's correct, yes.

15 Q. And they state, often in criminal prosecutions in
16 civil litigation, forensic evidence is offered to
17 support conclusions about individualization,
18 sometimes referred to as matching a specimen to a
19 particular individual or other source or about
20 classification of the source of the specimen into
21 one of several categories. With the exception of
22 nuclear DNA analysis, however, no forensic method
23 has been rigorously shown to have the capacity to
24 consistently and with a high degree of certainty
25 demonstrate a connection between evidence and a

1 specific individual or source. In terms of
2 scientific basis the analytically base
3 disciplines generally hold a notable edge over
4 disciplines based on expert interpretation.

5 Are you familiar with that part of the
6 report?

7 A. It sounds fairly familiar to something I read
8 previously. Without having that in front of me,
9 I can't say that's word for word from the report.

10 Q. I can quick show it to you.

11 A. That would be great.

12 Q. This is the 2009 report. Does it look to be
13 that?

14 A. Yes, it does.

15 Q. This section.

16 A. If I can have one moment.

17 Q. Sure.

18 A. (Witness reads over report) Yes, that's what it
19 says.

20 Q. I read that correctly?

21 A. I believe so, yes.

22 Q. And the report covered rather a wide area of
23 different forensic science disciplines; correct?

24 A. Yes, sir.

25 Q. But one of those was digital evidence; correct?

1 A. Yes.

2 Q. And that is what we're talking about here, are we
3 not?

4 A. Yes.

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

6 THE COURT: You may.

7 BY MR. GOETZ:

8 Q. And the report concludes that digital evidence
9 has undergone a rapid maturation process. This
10 discipline did not start in forensic
11 laboratories, instead computers taken as evidence
12 were studied by police officers and detectives
13 who had some interest or expertise in computers.
14 Over the past ten years this process has become
15 more routine and subject to the rigors and
16 expectations of other fields of forensic science.
17 Three holdover challenges remain. Number one,
18 that digital evidence community does not have an
19 agreed certification program or list of
20 qualifications for digital forensic examiners.
21 Number two is not pertinent. But, number three,
22 there is a wide variability in and uncertainty
23 about the education, experience and training
24 about those practicing this discipline.

25 Did I read that correctly?

1 A. Yes, sir.

2 Q. And at the time you conducted the examination in
3 this case, if I recall from your testimony, you
4 were not certified by any national accrediting
5 body; correct?

6 A. That's correct.

7 Q. You were one of the first certified and now
8 you're writing the standards and doing the
9 testing for other people being certified; is that
10 right?

11 A. There is another certification program that
12 existed prior to the International Association
13 for Identification Program. I was not certified
14 by them though, no.

15 Q. I want to talk now about your conclusions in this
16 case.

17 A. Yes, sir.

18 Q. QS1 and QS3, I want to just define those since
19 I'll be referring to subjects by those terms. If
20 I may, just so I'm correct, you have your report,
21 correct me if I'm wrong. QS1 is the individual
22 holding the gun in the Seward Market surveillance
23 videos; correct?

24 A. Yes, sir.

25 Q. And QS3 is the shorter of the three individuals

1 in the impound lot videos; is that right?

2 A. Yes. Based on the image where they were
3 standing, all three individuals are standing side
4 by side.

5 Q. Just so we have some reference?

6 A. Yes, sir.

7 Q. You talked about similar characteristics. And
8 number one was a similar build. And that's a
9 very generalized characteristic, is not?

10 A. It is.

11 Q. And you'd agree that the individual QS1 is
12 wearing a bulky jacket, whereas the individual
13 QS3 is not wearing that jacket?

14 A. That's correct.

15 Q. Skin tone, again that's a very generalized
16 characteristic; correct?

17 A. Yes, sir.

18 Q. When you're talking about generally the same type
19 of skin tone, do you have a, and I'm thinking
20 about looking at the people in this courtroom,
21 there is a whole rainbow, if you will. How do
22 you break it down, the rainbow of colors that
23 exist amongst people or skin tone?

24 A. Skin tone is a very, very difficult aspect to
25 compare to get down to specifics. And, in fact,

1 anything with color in general, whether it's
2 color of a vehicle or color of a skin tone is
3 going to be difficult because of all the factors
4 that I've listed about lighting and other factors
5 that can occur in video. It's very rare in an
6 examination that we are ever going to say that
7 something is, for example, a red car. Same goes
8 with skin tone. But we can still look at
9 generalities. If we had an African American
10 individual in one video and a Caucasian
11 individual in another video, that would obviously
12 be a difference. However, if you had two African
13 American individuals maybe with slightly
14 different skin tone, it can still be the same
15 general skin tone because you have differences in
16 the video. Not saying it is the same, but it
17 could be the same, yes.

18 Q. So when you're talking about same general skin
19 tone, what I'm hearing is that basically we're
20 talking about an African American person, a black
21 person?

22 A. In this particular video, yes, we are.

23 Q. But that's as precise as we can get with skin
24 tone?

25 A. In these particular videos, yes, it is.

1 Q. Shoes, you said that was another common
2 characteristic between QS1 and QS3?

3 A. Yes, sir.

4 Q. And based upon the testimony I just heard you
5 say, tell me if you disagree, but can you tell us
6 what color of shoes the individual is wearing in
7 QS1 or QS3?

8 A. Not down to a specific color, no.

9 Q. Can you tell us what brand of shoes?

10 A. No, sir.

11 Q. The individual QS1 as opposed to QS3, there are
12 some differences, no winter jackets on QS3;
13 correct?

14 A. That's correct, I believe.

15 Q. Whereas the individual QS3 is just wearing a grey
16 and black top?

17 A. That's also correct. However, those types of
18 differences are what we would call explainable
19 differences in the sense that their dynamic
20 clothing is very easy to change.

21 Q. Exactly. No bandana or gloves on the person QS3;
22 correct?

23 A. None were noted, correct.

24 Q. And as you said, people can change clothes, that
25 includes shoes, pants, hats; correct?

1 A. Yes, sir.

2 Q. And in the end as to QS1 and QS3, the best that
3 you can say is that, or in other words, the
4 strongest conclusion that you could offer is that
5 the question -- the question subjects cannot be
6 eliminated as being a match to one another;
7 correct?

8 A. Are you referring to Question Subject 3, or any
9 of the question subjects?

10 Q. Sorry. Let me ask the question again. The best
11 you can say as to QS1 and QS3, those two, is that
12 they cannot be eliminated as being a match to one
13 another?

14 A. That's correct, yes.

15 Q. And that should not be considered a no
16 conclusion; correct?

17 A. Correct.

18 Q. Nor should it be considered to be an
19 identification or individualization?

20 A. That's correct.

21 Q. And the same holds true between QS1 and QS4, that
22 is the --

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

25 THE COURT: You may.

1 BY MR. GOETZ:

2 Q. I have Exhibit 183.

3 A. Yes.

4 MR. GOETZ: And can everybody see that?

5 BY MR. GOETZ:

6 Q. Now, this is a little different arrangement of
7 the three individuals, but this would be QS3;
8 correct, on the far left?

9 A. Yes, sir.

10 Q. And QS4 is on the far right; is that right?

11 A. Yes, sir.

12 Q. Okay.

13 MR. WEBER: Counsel, what exhibit is
14 that?

15 MR. GOETZ: I'm sorry, 183.

16 BY MR. GOETZ:

17 Q. And as to QS4, QS1, again, the strongest
18 conclusion is that QS4 and QS1 cannot be
19 eliminated as being a match to one another?

20 A. That was ultimately the conclusion, however, if I
21 may read two sentences from my --

22 Q. I'm sure the prosecutors will give you a chance
23 to explain, okay.

24 A. Okay.

25 Q. And that conclusion should not be considered to

1 be no conclusion; correct?

2 A. That's correct.

3 Q. Nor should it be considered to be an
4 identification or individualization; correct?

5 A. That's also correct.

6 Q. And as to QS1 and QS5. Now, QS5 is the
7 individual that you talked about in the
8 Dahabshiil hallway surveillance stills, so
9 everybody knows what we're talking about?

10 A. That's correct.

11 Q. And as to that individual, as I wrote it down,
12 again, the points in common was a similar build,
13 general skin tone, cuffing on jeans, tassels and
14 shoes; correct?

15 A. That's correct.

16 Q. And, again, do you know what the color of his
17 shoes are in the Dahabshiil video?

18 A. No, sir.

19 Q. Can you get any more precise than the general
20 skin tone other than of an African American?

21 A. I cannot.

22 Q. And as to that individual, QS5 and QS1, again,
23 you cannot -- well, the strongest conclusion is
24 that that subject cannot be eliminated as being a
25 match to QS1?

1 A. That's correct.

2 Q. And that should not be considered to be no
3 conclusion nor should it be considered an
4 identification or individualization?

5 A. That's correct.

6 MR. GOETZ: No further questions.

7 THE COURT: Mr. Weber.

8 MR. WEBER: Briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MR. WEBER:

11 Q. Counsel has asked you about the shoe color and
12 you said that you can't give us statements as to
13 specific colors. Is that what the testimony was?

14 A. That's correct. We can talk about general tones,
15 but when we get down to specific colors there is
16 too much variations in those circumstances to
17 discuss that.

18 Q. Is it possible to have differentiations that you
19 can note in shoes or color?

20 A. Sure, it's possible if you had a white shoe and
21 say a black shoe. Those in most circumstances
22 are going to appear to be different in most
23 videos. However, as we witnessed in one of the
24 videos because of lighting and camera things and
25 camera optics and the fabrics and materials, a

1 black item might appear white, a white item might
2 appear black. There is so many variations with
3 that that it's a very difficult thing to nail
4 down.

5 Q. I'm going show you what's been received as
6 Exhibit 174 and publish it to the jury. Are you
7 able to make any statements as to the shoes on
8 these three individuals?

9 A. I would say based on the image itself, the
10 general tone of these shoes is much darker than
11 the tone of these shoes or these shoes. Also,
12 there, if I'm not mistaken, there was other
13 images from the video that maybe were not
14 exported that show different camera angles
15 outside, things like that where the lighting
16 conditions are going to be different. And given
17 the fact that I compared these shoes and said
18 they are the same general tone or they were
19 similar shoes, I didn't see any differences
20 outside to make me doubt the images that we're
21 seeing here.

22 Q. We're looking at a line of individuals and the
23 individual in the front is what we've been
24 referring to as QS3, and the individual in the
25 back is what we're referring to as QS5?

1 A. QS4, I believe.

2 Q. QS4, sorry.

3 A. Yes, you're correct.

4 Q. Okay. Now, if I bring you back to the video, or
5 Exhibit 206 in which we see the shoe of QS1 in
6 the bottom right-hand corner of the image.

7 A. Yes.

8 Q. Are you able to say whether that, the tone or the
9 color of the shoe is any more similar, or any
10 closer to QS3 versus QS4 in the image we just had
11 up?

12 A. It appears to be more similar, yes.

13 MR. WEBER: No further questions.

14 THE COURT: Mr. Goetz.

15 **RE-CROSS-EXAMINATION**

16 BY MR. GOETZ:

17 Q. More similar to the shoes worn by QS4 at the time
18 that image was taken; correct?

19 A. Yes, sir.

20 Q. Whether or not somebody changed the shoes later
21 on or gets another pair of shoes, you have no way
22 of knowing; is that correct?

23 A. That's correct.

24 MR. GOETZ: No further questions.

25 MR. WEBER: No further questions.

1 THE COURT: You may step down.

2 THE WITNESS: May I be released?

3 THE COURT: You are released.

4 (Witness leaves the stand.)

5 THE COURT: Members of the Jury, we've
6 gone a little bit faster than we've predicted, so
7 we're going to have an early release for you
8 today. We are going on that strange schedule
9 tomorrow due to my meeting schedule, I apologize
10 for that, but we will be starting our session
11 tomorrow at 8:30 in the morning and we will go
12 until noon, and then we will go from 1 to 2:30 at
13 which time we will recess for the weekend. So
14 we'll see you tomorrow. Please do everything you
15 can do to be here by 8:30, despite the roads
16 being in awful shape. Thank you.

17 (Court in recess until the following
18 day, September 16, 2011.)

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