

ORIGINAL

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

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

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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 21, 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: Good morning.

3 JURORS: Good morning.

4 THE COURT: Mr. Streit.

5 MR. STREITZ: The State would call Amber
6 Folsom to the stand.

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

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

12 THE WITNESS: Amber Folsom; A-m-b-e-r,
13 F-o-l-s-o-m.

14 THE COURT: Mr. Streit.

15 **DIRECT EXAMINATION**

16 BY MR. STREITZ:

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you tell the jury where you work?

20 A. Yes. I work for the State of Minnesota Forensic
21 Science Laboratory located at the Bureau of
22 Criminal Apprehension or the BCA.

23 Q. And what is the BCA?

24 A. The BCA is a facility that helps to assist law
25 enforcement agencies in the act of a crime to go

1 through items of evidence. We have many
2 different laboratory sections within the BCA.

3 Q. And your position there is?

4 A. I'm in the DNA section there.

5 Q. How long have you been with the bureau of --
6 Bureau of Criminal Apprehension?

7 A. A little over a year and a half.

8 Q. Is your particular position funded differently
9 than perhaps other individuals in the BCA?

10 A. I'm in the Minneapolis group. There is four of
11 us within our section that have a grant through
12 the Minneapolis Police Department that pays for
13 our employment.

14 Q. Do you answer to Minneapolis or do you answer to
15 your supervisor at the Bureau of Criminal
16 Apprehension?

17 A. My supervisors.

18 Q. At?

19 A. At the BCA.

20 Q. Okay. So your responsibilities at the BCA would
21 entail what?

22 A. I am currently assigned off in the area of
23 serology and DNA. Serology would be examining
24 items of evidence for the presence of a
25 biological fluid, such as blood, semen, saliva,

1 taking cuttings or swabbings from those areas and
2 then the DNA would be running a -- generating a
3 DNA profile from those biological fluids.

4 Q. Describe your educational background as it
5 pertains to your current assignment.

6 A. I received a bachelor's of science degree in cell
7 and molecular biology at Winona State University.

8 Q. And do you have any -- do you have any other
9 formal education as it relates to DNA or
10 serology?

11 A. While at the BCA we go through an extensive
12 training process that trains us in the area
13 serology and DNA.

14 Q. Okay. And do you have ongoing educational
15 training then in this area?

16 A. Yes.

17 Q. Okay. Do you belong to any professional
18 organizations relating to serology or DNA?

19 A. Yes, I do.

20 Q. And what are those?

21 A. I belong to MAFS, which is the Midwestern
22 Association of Forensic Scientists.

23 Q. When law enforcement agencies bring items of
24 potential evidentiary value to the Bureau of
25 Criminal Apprehension, what is the procedure that

1 the BCA has in place with respect to taking those
2 items into their custody?

3 A. So we have evidence intake personnel who will
4 take in the evidence from the law enforcement
5 agency or through certified mail. They assign a
6 unique case number and barcode label to all the
7 items of evidence in the case. They create a
8 case file. This maintains the chain of custody,
9 and the items that have been brought over, who
10 brought them over and when. And we also -- we
11 only allow evidence that is in a taped seal
12 condition so to insure the integrity of the item.

13 Q. And you mentioned chain of custody.

14 A. Uh-huh.

15 Q. Tell us what that is.

16 A. That is so each item of evidence has a barcode to
17 it and we're able to scan that so we can know
18 when anyone takes custody of these items, where
19 they are in the lab and who brought them there,
20 when, and what time.

21 Q. And do you have a file in this case with you
22 today?

23 A. Yes.

24 Q. Does that file indicate that on March 31, 2010
25 and on April 8, 2010 Sgt. Ann Kjos of the

1 Minneapolis Police Department brought you
2 numerous items of evidence for analysis?

3 A. Yes, it does.

4 Q. Do you recall, or do your records reflect the
5 condition of those various items of evidence as
6 they were received by the Bureau of Criminal
7 Apprehension?

8 A. They would have all been in a taped sealed
9 condition or we would not have accepted it.

10 Q. And why wouldn't the Bureau of Criminal
11 Apprehension accept items if they were not
12 properly sealed?

13 A. It's just our policy. It's to insure the
14 integrity of the item for contamination, anything
15 like that.

16 Q. For purposes of your testimony today, have you
17 seen a chart that was prepared regarding the
18 categories of evidence, if you will, that were
19 submitted to you by Sgt. Ann Kjos and would that
20 assist you in your testimony this morning?

21 A. Yes.

22 MR. STREITZ: Do you have any objection,
23 counsel?

24 MR. GOETZ: No.

25 MR. STREITZ: Your Honor, for the record

1 this would be Exhibit 103, which counsel has
2 indicated he has no objection to.

3 THE COURT: Okay. It will be received.

4 BY MR. STREITZ:

5 Q. You have a monitor there, but I'm going to direct
6 you to your over your left shoulder there. Can
7 you read that from there?

8 A. Yes.

9 Q. There is also a laser pointer in front of you, do
10 you see the little white --

11 A. Yep.

12 Q. And it's got a red laser there and I may ask you
13 questions and ask you to refer to Exhibit 103.
14 As indicated, you received then items of evidence
15 said to have come from the Seward Market?

16 A. Yes.

17 Q. And that included a swab from a wire rack?

18 A. Yes.

19 Q. And a metal bar said to have come from a door
20 there?

21 A. Yes.

22 Q. Also items of clothing said to have come from
23 Mahdi Ali's apartment?

24 A. Correct.

25 Q. Pursuant to a search warrant?

1 A. Yes.

2 Q. And clothes that were said to have been worn by
3 Mahdi Ali when he was arrested?

4 A. Yes.

5 Q. Also clothes said to have been worn by Ahmed Ali
6 when he was arrested?

7 A. Yes.

8 Q. And items from a Crown Victoria?

9 A. Yes.

10 Q. Which would include numerous swabs of possible
11 blood from the door handle inside and out front
12 and back?

13 A. Yes.

14 Q. And numerous swabs of possible blood from the car
15 seats, carpet, floor mat and shoes?

16 A. Yes.

17 Q. And known samples from five individuals; is that
18 correct?

19 A. Correct.

20 Q. Mahdi Ali, Ahmed Ali, Anwar Mohammed, Osman Elmi
21 and Mohamed Warfa?

22 A. Yes.

23 Q. Tell us what a known sample is.

24 A. A known sample is just a cheek swab of the
25 person, and that's used for later on in the DNA

1 process for us to compare it to.

2 Q. Okay. What was the request that Sgt. Kjos had of
3 you with respect to items of evidence that had
4 been taken at the Bureau of Criminal
5 Apprehension?

6 A. She had some items that she wanted that were more
7 top priority than others that she wanted us to
8 look at for the presence of blood on and also for
9 touch DNA, one being the wire rack, that was
10 wanting to be looked at for touch DNA. And also
11 the clothes that were from Mahdi Ali's apartment
12 were of top priority and also the fingernail
13 swabs from Mohamed Warfa.

14 Q. So did you take these various items that had been
15 submitted and look for blood on them?

16 A. Yes.

17 Q. Once you received these items, did you happen to
18 note any error in the identification of any of
19 the items how they were marked?

20 A. Yes.

21 Q. What?

22 A. If I could refer to my notes?

23 MR. STREITZ: May she do so, Your Honor?

24 THE COURT: She may.

25 THE WITNESS: Items 19, 20 and 21

1 were -- it was a known blood sample, and
2 fingernail clippings from Mohamed Abdi Warfa, but
3 evidence intake had written down the wrong name
4 as to who that belonged to. And I was able to,
5 based on the Minneapolis Property Inventory
6 sheet, and what was actually written on the
7 envelopes, I knew that it actually came from
8 Mohamed Abdi Warfa.

9 BY MR. STREITZ:

10 Q. And who had the intake person noted that those
11 were associated with?

12 A. I believe it said that it had been from Mahdi
13 Hassan Ali.

14 Q. But you noted that error and corrected it?

15 A. Yes.

16 Q. And were those samples your Item Nos. 19, 20 and
17 21, in fact, bore the name Mohamed Abdi Warfa?

18 A. Yes.

19 Q. So you began your, I take it, testing or analysis
20 or examination for potential blood on these
21 items?

22 A. Yes.

23 Q. How do you go about that?

24 A. I open up one item of evidence at a time. I'm
25 wearing protective equipment, such as glove a lab

1 coat, facemask. I'm bleaching down my area in
2 between each item of evidence. I open up one
3 item at a time and I just look with the naked
4 eye, if I see any sort of blood-like substance or
5 red discoloration, I'll test that area with a
6 chemical to see if it is, in fact, blood or not.

7 Q. Now, the chemical that you might use, does that
8 in any way inhibit or do anything to future DNA
9 testing that might be performed by either
10 yourself or another analyst?

11 A. No, it does not. And actually in this case with
12 respect to clothing we usually swab the
13 discolored area. We put it in sterile water and
14 swab that area and put our chemicals on that
15 swab, so we're not directly actually putting
16 chemicals on the sample, like on the pants.

17 Q. Is there a particular order in which you do the
18 examination or analysis for the presence of blood
19 with respect to items of evidence versus the
20 known samples that you received?

21 A. Yes. Generally, we always collect the known
22 samples last.

23 Q. Why is that?

24 A. Just to be confident that we aren't contaminating
25 the items of evidence or anything like that,

1 that's collected last.

2 Q. And as you're doing this, is your process
3 documented in your case file?

4 A. Yes.

5 Q. What would happen, for example, if you're
6 examining a particular item for blood and you are
7 interrupted during that examination and you have
8 to do something else?

9 A. I would probably put -- we put all of our items
10 of evidence on brown large construction-type
11 paper. I would probably put another piece of
12 paper over it, everyone within the lab knows not
13 to, they wouldn't, you know, touch your evidence
14 that's out on the lab bench.

15 Q. And then when you come back to that, do you
16 re-glove and that type of thing?

17 A. Yes.

18 Q. When you're given items of evidence, such as in
19 this case to examine, do you get -- do you talk
20 to the detectives that might be assigned to the
21 case? In this one, for example, Sgt. Kjos?

22 A. Yes. We don't always, but we do sometimes.

23 Q. And did you talk to her with respect to what
24 items maybe have a priority or what they were
25 looking for and that type of thing?

1 A. Yes.

2 Q. And why would you do that?

3 A. In a case where there are a large number of items
4 it will help us to sort of whittle it down a
5 little bit so we don't have to look at every item
6 of evidence because that can take a lot of time.

7 Q. Do you always analyze every signal item of
8 evidence that's submitted to you?

9 A. No.

10 Q. And, again, why might that be?

11 A. Just based on time and being able to get other
12 cases out. It's not very efficient to look at
13 everything.

14 Q. Is ultimately that a decision that the detective
15 makes with you?

16 A. It's up to us what we want to do. We talk to
17 them and get their input as to what they want to
18 do, but it's ultimately up to us what we're going
19 to do.

20 Q. And do you know a little bit about the facts of
21 the case then so that can help guide you in your
22 discussions, in this case, with Sgt. Kjos?

23 A. Yes.

24 Q. Okay. Knowing some of the facts of the case and
25 talking with the detective, can that bias you?

1 A. No, I don't think so. It's just a tool to help
2 us know what items of evidence we should test and
3 what we're looking for. It's just a way to help
4 us.

5 Q. In this particular case, did you do the
6 examination of these items and write a report as
7 to your findings?

8 A. Yes.

9 Q. And that was just with respect to whether you
10 found blood on certain items?

11 A. Yes. And the collection of some items that were
12 more for touch DNA.

13 Q. Okay. With respect to finding blood on any of
14 the items, did you?

15 A. Yes.

16 Q. And which items did you find blood on?

17 A. Blood was indicated on one area of Item 2A, which
18 were pants said to be from Mahdi Hassan Ali's
19 apartment.

20 Q. Is there a -- more of a description of what those
21 pants were?

22 A. Yes, I would have that in my notes. 2A were blue
23 jeans with a black belt and Playboy bunny buckle.

24 Q. And where was the blood test that you found on
25 those pair of jeans?

1 A. That was on the front inside pocket on the right
2 side.

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

5 THE COURT: You may.

6 BY MR. STREITZ:

7 Q. Prior to your testifying this morning, did you
8 examine what has been received into evidence as
9 Exhibit 109a?

10 A. Yes.

11 Q. Showing you Exhibit 109a, do you recognize these,
12 Ms. Folsom?

13 A. Yes.

14 Q. And what are they?

15 A. There are the blue jeans, Item 2A.

16 Q. The one with the Playboy buckle?

17 A. Yes.

18 Q. And how do you know that?

19 A. It has our case number and my initials and an
20 item number on it.

21 Q. So these are 2A?

22 A. Yes.

23 Q. And, again, where on 2A did you find blood?

24 A. It was on the inside right pocket.

25 Q. So the inside meaning if you put -- as you put

1 your hand in on that inside of the pocket?

2 A. Yes.

3 Q. Okay. Just the one area?

4 A. Yes.

5 Q. When you're looking for blood, do you use
6 anything other than the naked eye in looking for
7 it?

8 A. It depends on the color of the clothing. If it's
9 a black t-shirt or something and I feel like I
10 wouldn't be able to really see if there was blood
11 on there, I would do a general swabbing of
12 different sections of the shirt and then test
13 that and see if there was any blood in that area
14 that I swabbed.

15 Q. Let's go to the next item that you found blood
16 on.

17 A. Blood was indicated on three areas of Item 2B,
18 which were pants said to be from Mahdi Hassan
19 Ali's apartment.

20 MR. STREITZ: Okay. May I approach
21 again, Your Honor?

22 THE COURT: You may.

23 BY MR. STREITZ:

24 Q. Again, prior to testifying this morning, did you
25 have an opportunity to look at what's been

1 received into evidence as Exhibit 109b?

2 A. Yes.

3 Q. And do you recognize these?

4 A. Yes, I do.

5 Q. And what are those?

6 A. They are Item 2B.

7 Q. Again, said to have been?

8 A. From Mahdi Hassan Ali's apartment.

9 Q. Okay. You said there were three areas of blood
10 that you noted on these?

11 A. Yes.

12 Q. Where were those areas of blood?

13 A. One area on the front is right here, you can see
14 I cut that out (pointing).

15 Q. Here being the left lower inside leg?

16 A. Yes.

17 Q. And it's cut out?

18 MR. GOETZ: Your Honor, I'm sorry. May
19 I move because I can't --

20 THE COURT: Absolutely.

21 BY MR. STREITZ:

22 Q. The next area?

23 A. Was on the backside on the left pant leg.

24 Q. Okay.

25 A. Excuse me, the right pant leg.

1 Q. You didn't get them in this condition, that is,
2 in a plastic wrap?

3 A. No.

4 Q. All right.

5 A. Right here and then also on the cuff (pointing).

6 Q. You pointed to two areas on the lower right leg,
7 you said on the cuff?

8 A. Yes.

9 Q. And what did you designate that particular area
10 as?

11 A. That was 2B-2.

12 Q. Okay. And then you said another area on the
13 lower cuff, or lower leg, I'm sorry?

14 A. Right here is 2B-3.

15 Q. And that's just a little higher up from the cuff
16 but on the pant leg?

17 A. Yes.

18 Q. And that appears to be cut out?

19 A. Yes.

20 Q. That's 2B-3?

21 A. Yes.

22 Q. When you received these jeans that are received
23 into evidence as 109b, were they in this
24 condition, that is, they were cuffed?

25 A. Yes.

1 Q. Let's go to the next item of evidence that you
2 found blood on.

3 A. Blood test was indicated on the right and
4 left-hand fingernail clippings that were from
5 Mahdi Abdi Warfa.

6 Q. Is that the correct name that -- if you go to
7 your report number, Report No. 1, look at items
8 19 or Item 20, what was the name?

9 A. Item 20 was Mohamed Abdi Warfa.

10 Q. And, again, I'm sorry, on Items 20A through 20E?

11 A. Yes, those were the fingernail clippings.

12 Q. Which hand?

13 A. The right hand or 20A through 20E. The left hand
14 is 21A through 21E.

15 Q. And did you find -- so you found blood on both
16 the right and left hand fingernails?

17 A. Yes.

18 Q. All of the nails?

19 A. Yes.

20 Q. And what -- what did you do in terms of gathering
21 the blood from those fingernails?

22 A. I swabbed each fingernail. After I had already
23 taken a small swab and tested it and found that
24 blood was on it, I then swabbed the remainder of
25 the fingernails and collected those as swabbings

1 for testing.

2 Q. You mentioned -- was there blood on any of the
3 other items that you examined at that time?

4 A. No.

5 Q. You had mentioned earlier a wire rack, I believe?

6 A. Yes.

7 Q. I'm just bringing 103 up again for reference. So
8 the wire rack, what was done with respect to
9 that?

10 A. That had already been swabbed, I believe at the
11 scene, and just swabs were submitted of that
12 item.

13 Q. Okay. So you really didn't do anything more with
14 that?

15 A. I just collected it.

16 Q. Okay. And how about a metal bar that you
17 referred to, what was done with that?

18 A. That, I had swabbed the bar myself and collected
19 those swabs.

20 Q. Do you know if there was blood on the metal bar?

21 A. There was not.

22 Q. Do you know if there was blood on the wire rack
23 swabs?

24 A. I did not test for these, but when opening the
25 swabs there was no sort of red discoloration, so

1 I did not test for it, I just collected it.

2 Q. Okay. Tell us items that you tested then that
3 did not have blood on them.

4 A. Blood was not detected on Items 2C through 2J.

5 Q. And 2C through 2J was what?

6 A. It was more clothing from Mahdi Hassan Ali's
7 apartment, which included pants, a shirt, another
8 shirt, another shirt, another shirt, a
9 sweatshirt, another sweatshirt and a blue floral
10 cloth from the apartment.

11 Q. All said to have been taken during a search
12 warrant?

13 A. Yes. And blood was not detected on Item 3.

14 Q. Which was what?

15 A. A swab from the interior driver's door handle.

16 Q. Next item?

17 A. Blood was not detected on Item 4, which was a
18 swab from the exterior driver's door handle. And
19 blood was not detected on Item 7, which was a
20 swab from the interior front passenger door
21 handle. Was not taken on Item 8, which was a
22 swab from the exterior front passenger door
23 handle. Blood was not detected on Items 15
24 through 18, which were -- 15 is a plastic floor
25 mat from the front passenger floor. 16 is a

1 plastic floor mat from the front passenger seat.
2 17 is a plastic floor mat from rear passenger
3 floor. Item 18 is a plastic floor mat from
4 front passenger seat. And blood was not detected
5 on the left or the right shoe of Item 30, which
6 was a pair of shoes from a vehicle. Blood was
7 not detected on Items 38A through 31F, which was
8 the clothing that was worn by Mahdi Ali at the
9 time of his arrest. Blood was not detected on
10 the left shoe or the right shoe, which also were
11 the shoes he was wearing at the time.

12 Q. At that time, excuse me, that you generated --
13 you generated a report on your findings?

14 A. Yes.

15 Q. That's what you've been referring to?

16 A. Yes.

17 Q. And at that time had you examined other items of
18 evidence or had you not done that yet?

19 A. There were some items that I just did not examine
20 at that time.

21 Q. And did you subsequently examine those items to
22 determine if there was a presence of blood?

23 A. Yes.

24 Q. And what items were those and what were the
25 results?

1 A. That was Items 5, 6, and 9 through 14, blood was
2 not detected on any of those items. Item 5 was a
3 swab from exterior rear driver's side door
4 handle. Item 6 is a swab from interior rear
5 driver's side door handle. Item 9 was a swab
6 from exterior rear passenger door handle. Item
7 10 is a swabbing from interior rear passenger
8 door handle. Item 11 is a swab from interior
9 bottom door frame rear driver's side door. Item
10 12 is a swab from rear seat driver's side.
11 Number 13 is a swab from front seat -- front rear
12 seat driver's side. Number 14 is a swab from
13 carpet rear floor driver's side.

14 Q. And the results?

15 A. Blood was not detected on any of those items.

16 Q. Okay. There other items that were not examined?

17 A. Yes.

18 Q. And what were those?

19 A. Item 23, which were fingernail clippings from
20 Anwar Salah Mohammed's right hand. Item 24,
21 which were fingernail clippings from Anwar Salah
22 Mohammed's left hand. Item 26, which were
23 fingernail clippings from Osman Elmi's right
24 hand. Item 27 were fingernail clippings from
25 Osman Elmi's left hand. And also the screws that

1 were found on the metal bar. Oh, sorry, and Item
2 32, which was clothing said to be from Ahmed
3 Shire Abdi Ali.

4 Q. The item that you didn't test, was that a result
5 of discussions with Sgt. Kjos?

6 A. Yes.

7 Q. Do you recall that discussion as to why those
8 items weren't requested to be tested?

9 A. I don't really recall what her reasoning was for
10 not testing those items. She just told me that
11 those --

12 MR. GOETZ: Objection, hearsay, 602.

13 THE COURT: Overruled.

14 THE WITNESS: I was just told that those
15 were not of top priority, so I did not look at
16 them.

17 BY MR. STREITZ:

18 Q. And does that happen in cases where the detective
19 gives you that request or tells you that those
20 aren't a priority and don't test them?

21 A. Yes.

22 Q. Once you collected the samples of blood from the
23 items in which you did detect blood, what is done
24 with those particular samples?

25 A. So all the cuttings or swabbings that I

1 collected, they all go into a separate Manila
2 envelope and those are all labeled with the
3 barcode which has the case number and that
4 specific item number that that is. Those -- all
5 those Manila envelopes are then collected into a
6 larger Manila envelope which I tape seal and
7 that's known as our DNA case packet. I put that
8 into the freezer and it waits there until the DNA
9 scientist is ready to do their testing.

10 Q. Did you do the DNA testing on these items?

11 A. No, I did not.

12 Q. Is that a practice that the BCA uses that
13 sometimes one analyst will do the serology, the
14 blood detection on the items and yet another
15 analyst will do the actual DNA testing?

16 A. That's our policy and how we operate.

17 MR. STREITZ: I have no further
18 questions at this time.

19 THE COURT: Mr. Goetz.

20 MR. GOETZ: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. GOETZ:

23 Q. Good morning, Ms. Folsom.

24 A. Morning.

25 Q. I have a few questions for you on different

1 areas. First I want to ask you a few follow-up
2 questions about your training. You're a Winona
3 State graduate; is that right?

4 A. Yes.

5 Q. What year did you graduate?

6 A. The spring of '07.

7 Q. And your degree was in what?

8 A. Cell and molecular biology.

9 Q. And then after you graduated in '07, when did you
10 start for the BCA?

11 A. That was in January of 2010, I believe.

12 Q. Were you employed or working at all in the area
13 of biology or forensic science between the date
14 of your graduation from Winona State and when you
15 started working for the BCA in 2010?

16 A. I was working in a forensic toxicology lab,
17 Medtox Laboratories, dealing with screening of
18 urine and blood samples for drugs of abuse.

19 Q. That's a private company; correct?

20 A. Yes.

21 Q. That's sort of different work than you're doing
22 now for the BCA; correct?

23 A. Yes.

24 Q. Let's talk now about some of the process of the
25 work that you're doing for the BCA, and I want to

1 follow up on some of the questions the prosecutor
2 asked you. The list, I think it was Exhibit 103,
3 there were items that were marked as known
4 samples, and you talked about swabbings.

5 A. Yes.

6 Q. But fingernail clippings are also on the list of
7 known samples; is that right?

8 A. It is.

9 Q. Why are fingernail clippings on the list of known
10 samples?

11 A. Well, that is, a known sample would be something
12 that you know has come from that individual,
13 whether it be a cheek swab or a blood sample, a
14 fingernail clipping, we know that has come from
15 that individual.

16 Q. So you would expect an individual's -- well,
17 you'd expect the individual's DNA to be on the
18 sample that it came from?

19 A. With respect to the buccal swab or the
20 bloodstain, yes, not necessarily the fingernail
21 swabbings, there may not be not be any DNA there.

22 Q. Okay. Then why do you have them on your list of
23 known samples?

24 A. I did not create this list, it is on there just
25 because we know that it has come from that

1 individual.

2 Q. Okay. So at least the source of the item tested
3 is known?

4 A. Yes.

5 Q. You also talked with counsel about testing known
6 samples last. And as I kind of understood it and
7 was listening to that, and correct me if I'm
8 wrong, and do you do that to preserve, I guess,
9 the integrity of the evidence, keep the known
10 samples separate from the unknown samples?

11 A. Yes.

12 Q. Because you don't, as much as possible, want to
13 have contamination between known and unknown that
14 might skew the actual results; correct?

15 A. Correct.

16 Q. So the contact between known and unknown samples
17 is something you want to avoid; correct?

18 A. Correct.

19 Q. And that would be true not only at your stage of
20 the proceedings in serology but all the way
21 through the whole DNA testing process; correct?

22 A. Yes.

23 Q. You were also asked questions about the
24 biological fluids, different types of biological
25 fluids you test for. I just want to follow up on

1 that. Here we talked mostly, if not exclusively,
2 about testing for blood. Are there other tests
3 that you would run, I think I mentioned saliva,
4 semen. Do you run different tests when you're
5 looking for those biological samples?

6 A. Yes.

7 Q. Did you run any tests looking for any other
8 biological fluids other than blood in this case?

9 A. No, I did not.

10 Q. So whether or not there is any saliva or semen or
11 any other biological fluid on any of the
12 substances, or, rather, items that you tested,
13 you don't know one way or another based on your
14 tests?

15 A. Correct.

16 Q. Let's talk now about some of the specific testing
17 that you did in this case, all right?

18 A. Okay.

19 MR. GOETZ: And if I may have a moment,
20 Your Honor, we're going to switch technology
21 systems here.

22 THE COURT: Okay.

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

24 THE COURT: You may.

25

1 BY MR. GOETZ:

2 Q. Ms. Folsom, I'm showing you some documents, I
3 believe you're familiar with them. Exhibit 400,
4 what is that?

5 A. Those are called scheduled notes where we can
6 make a note on the case whether we talked to
7 investigator or anything to that effect.

8 Q. Do you recognize Exhibit 400 to be a true and
9 accurate copy of your notes?

10 A. Yes.

11 Q. And notes of other BCA employees pertinent to
12 this case; is that right?

13 A. Yes.

14 Q. Kept in the scope of your usual recordkeeping
15 procedures?

16 A. Correct.

17 Q. And Exhibits 401 and 402, I believe they're the
18 same documents, but I've broken them down into
19 separate exhibits. Let's talk about 401. Do you
20 recognize that?

21 A. Yes, I do.

22 Q. And what is Exhibit 401?

23 A. It's the analysis request form that the person
24 submitting the evidence fills out.

25 Q. And do you recognize that as being the analysis

1 request form that came from Minneapolis Police
2 Department in this case?

3 A. Yes.

4 Q. Page 1 of that form?

5 A. Yes.

6 Q. And page -- Exhibit 402 is Page 2 of that form;
7 is that right?

8 A. Correct.

9 Q. And, again, these records are kept in the usual
10 course of your business?

11 A. Yes.

12 MR. GOETZ: Offer Exhibits 400, 401 and
13 402, Your Honor.

14 THE COURT: Any objection?

15 MR. STREITZ: No objection.

16 THE COURT: 400, 401 and 402 are
17 received.

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

20 THE COURT: You may.

21 BY MR. GOETZ:

22 Q. Okay. Showing you Exhibit 401. You have it on
23 the monitor in front of you. And let's just work
24 through this. We have the case number in the
25 upper right-hand corner; is that right?

- 1 A. Correct.
- 2 Q. And the submitting agency is the Minneapolis
3 Police Department; correct?
- 4 A. Yes.
- 5 Q. And then we have their case number?
- 6 A. Yes.
- 7 Q. And then the name of the officer or detective who
8 did the request; correct?
- 9 A. Yes.
- 10 Q. And then what kind of analysis, do you see where
11 that is?
- 12 A. Yes.
- 13 Q. A specified biology and DNA; correct?
- 14 A. Yes.
- 15 Q. And then under, looks like drug cases, then we
16 have latent print and then DNA, those are sort of
17 subcategories or categories?
- 18 A. Yes.
- 19 Q. Under the latent print heading, there is a list,
20 clothing viewed for blood spatter analysis, blood
21 found; is that your writing?
- 22 A. No, it is not.
- 23 Q. There is something crossed out, do you recognize
24 what that is?
- 25 A. I can't quite read what it is that's crossed out,

1 but I see that.

2 Q. Okay. Then we have under DNA are known DNA
3 samples being submitted from all principles
4 question, and as I see it, neither yes or no is
5 indicated. Is that how you read that?

6 A. Yes.

7 Q. And this, just for background, this is the form
8 that comes in along with all the evidence when
9 the case is submitted to your office initially
10 for analysis; correct?

11 A. Correct.

12 Q. And then on Page 2 of the form, it lists the
13 people specifically as suspects -- as victims
14 first; correct?

15 A. Correct.

16 Q. Mr. Warfa and Mr. Mohammed and Mr. Elmi; correct?

17 A. Correct.

18 Q. With their dates of birth?

19 A. Yes.

20 Q. And then also suspects, and we have two names
21 there; correct?

22 A. Yes.

23 Q. Mahdi Hassan Ali and Ahmed Shire Abdi Ali;
24 correct?

25 A. Yes.

1 Q. And then you talked about the testing process
2 starting with serology and you talked about some
3 communications with the lead detective on the
4 case, Sgt. Kjos?

5 A. Correct.

6 Q. And I'm going to back to Exhibit 400. And this
7 has notes from you and also Erin Hoffman; is that
8 right?

9 A. Yes.

10 Q. And do you recognize Erin Hoffman to be another
11 employee of the BCA; correct?

12 A. Yes.

13 Q. She works in your same unit?

14 A. Yes.

15 Q. In the forensic science lab?

16 A. Yes.

17 Q. And the way these are entered, as I read them,
18 the person would indicate the date and time of
19 the note and then the analyst would indicate the
20 person making the note; is that right?

21 A. Correct.

22 Q. And below that is the substance of the note?

23 A. Yes.

24 Q. So apparently on or about April 2, 2010, Erin
25 Hoffman had communication with Sgt. Kjos in which

1 she indicated what priorities were; correct?

2 A. Yes.

3 Q. And then on April 26th, looking at the last
4 entry, April 26, 2010 at 17:32 hours, you had a
5 similar conversation with Sgt. Kjos; correct?

6 A. Yes.

7 Q. And then also looking at the middle entry, you
8 talked about a mixup with numberings, some items
9 were wrongly attributed to coming from one person
10 as opposed to another, and that was Items 19
11 through 21; is that right?

12 A. I believe that is correct.

13 Q. And the way it's written, those were initially
14 said to have come from Mahdi Hassan Ali, however,
15 it was determined those actually came from
16 Mohamed Abdi Warfa; is that right?

17 A. Correct.

18 Q. So then your forms were correct?

19 A. Yes.

20 Q. And then when you did the testing you talked
21 about an Item 30, a pair of shoes?

22 A. Correct.

23 Q. And as I read your report, you have a little more
24 information about those shoes, Item 30. Those
25 are said to have come from a suspect's vehicle,

1 and then it has the Minneapolis Police Department
2 case number; correct?

3 A. Their -- the PI is their property inventory
4 number, I don't believe that's their agency case
5 number.

6 Q. Good point. If it had case number, it had
7 CN-something, but this is PI-something so it's a
8 property inventory number?

9 A. Yes.

10 Q. Is it your understanding that those shoes were
11 said to come from Mahdi Hassan Ali?

12 A. Let me check my notes and see. I do not know.
13 All that what was listed was the suspect's
14 vehicle.

15 Q. Do you remember those shoes as actually being a
16 pair of tan boots?

17 A. Yes.

18 Q. And you tested those boots for the presence of
19 blood; correct?

20 A. Correct.

21 Q. On both right and left boot; correct?

22 A. Yes.

23 Q. And you, top, bottom, soles, everywhere;
24 correct?

25 A. Yes, I did general swabbings of the boot.

1 Q. And no blood was found on either boot; correct?

2 A. Correct.

3 Q. Exhibit, or rather Item 2A, which is what I'll
4 refer to now as the Paco jeans, the darker of the
5 two pair of jeans. Do you recall the blood that
6 you found on the inside right pocket, was that on
7 the front or the back of that pocket, do you
8 recall?

9 A. I do not recall. It was on -- do you mean of the
10 pants, the front pocket or the back pocket or
11 within the pocket?

12 Q. Within the pocket. You know, as I've got a
13 pocket in my pants, there's a part that's next to
14 your leg and a part that's next to the trousers,
15 do you remember which side the blood was on?

16 A. I do not.

17 Q. Now, when you test an item for blood, you're just
18 testing to, I guess, see if blood is there or
19 not; correct?

20 A. Correct.

21 Q. You're not able to tell from your tests the
22 source of that blood, who it came from; correct?

23 A. Correct.

24 Q. And you're also not able to determine how long
25 any particular blood may have been on an object;

1 correct?

2 A. Correct.

3 Q. Item 2B, you indicated blood was found 2B-1,
4 2B-2, 2B-3, and you showed us those areas.

5 Again, you didn't make any determination of whose
6 blood that was; correct?

7 A. Correct.

8 Q. And you have no determination or way to tell how
9 long that blood had been there; correct?

10 A. Correct.

11 Q. Can you tell us what you remember to be the
12 dimensions, specifically some of these blood
13 drops, and I'm looking at your notes, and I don't
14 believe, correct me if I'm wrong, I don't believe
15 there was testimony to how big these blood spots
16 were. Could you just read what your notes say
17 about the dimension of these blood spots?

18 A. For Item 2B?

19 Q. 2B-1 through 3, please.

20 A. Item 2B-1, the size of the stain was 3 by 2.5
21 centimeters. Item 2B-2 was .5 by .2 centimeters.
22 Item 2B-3 was 1.5 by .5 centimeters.

23 Q. Okay. So all fairly small?

24 A. They're fairly small.

25 Q. And, finally, Ms. Folsom, as we've covered, you

1 only examined for the presence or absence of
2 blood the items that were submitted to you for
3 analysis; correct?

4 A. Correct.

5 Q. And it was the Minneapolis Police Department that
6 made the determination of what they were going to
7 submit to you for testing?

8 A. Correct.

9 Q. And it was the Minneapolis Police Department that
10 put priority on certain items that they wanted
11 tested; correct?

12 A. Correct.

13 Q. And it's true, is it not, that ultimately the
14 only clothing that you examined was said to come
15 from Mahdi Ali, either from his apartment or from
16 his person at the time of his arrest?

17 A. Correct.

18 MR. GOETZ: No further questions.

19 THE COURT: Mr. Streitzi.

20 **REDIRECT EXAMINATION**

21 BY MR. STREITZ:

22 Q. With respect to Ahmed Ali's clothing, the reason
23 that wasn't tested?

24 A. From speaking with Ann Kjos, she said that did
25 not need to be examined.

1 Q. Did she indicate that he had pled guilty --

2 MR. GOETZ: Objection, leading, Your
3 Honor.

4 THE COURT: Sustained. Rephrase.

5 BY MR. STREITZ:

6 Q. Did she indicate why -- anything further as to
7 why she didn't want them tested?

8 A. She had indicated that he was cooperating and we
9 did not need to look at his clothing.

10 Q. Okay. You collected the blood samples. Who was
11 going to determine if -- do any further testing
12 on that?

13 A. Erin Hoffman.

14 Q. You were asked questions if testing was done for
15 DNA from other sources, such as saliva, that type
16 of thing. Again, was that decision made in
17 conjunction with the detectives assigned to the
18 case?

19 A. Yes.

20 Q. You were asked some questions about Item 30 said
21 to have been shoes which you said were tan boots
22 from a suspect car?

23 A. Yes.

24 Q. Do you have any idea who had worn those?

25 A. I do not know.

1 Q. Or whose they were?

2 A. I don't know.

3 MR. STREITZ: I have nothing further.

4 THE COURT: Mr. Goetz.

5 MR. GOETZ: No more questions, Your
6 Honor.

7 THE COURT: You may step down.

8 (Witness leaves the stand.)

9 THE COURT: Counsel, approach.

10 (Discussion at the bench.)

11 THE COURT: Members of the jury, we have
12 one more witness for the morning, so we're going
13 to take our break at this time a little early for
14 20 minutes. Please be back in the usual places
15 at 10:15.

16 (Recess.)

17 THE COURT: Mr. StreitZ.

18 MR. STREITZ: State would call Erin
19 Hoffman to the stand.

20 ERIN HOFFMAN,
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: My name is Erin Michelle

1 Hoffman; E-r-i-n, M-i-c-h-e-l-l-e, H-o-f-f-m-a-n.

2 THE COURT: Mr. Streitz.

3 MR. STREITZ: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MR. STREITZ:

6 Q. Good morning.

7 A. Good morning.

8 Q. What's your current occupation?

9 A. I'm employed by the Minnesota Bureau of Criminal
10 Apprehension, also known as the BCA, forensic
11 laboratory in the nuclear DNA section.

12 Q. We just heard from Amber Folsom, is she a
13 colleague of yours?

14 A. Yes.

15 Q. And does she also work in your section?

16 A. Yes, she does.

17 Q. Okay. How long have you worked at the Bureau of
18 Criminal Apprehension?

19 A. For three and a half years.

20 Q. And your specific responsibilities in your
21 current position are what?

22 A. I test evidence for the presence of bodily
23 fluids. I also perform nuclear and Y-STR DNA
24 typing. I write reports to my findings, and I
25 testify in court.

1 Q. Once you make findings and write a report, is
2 that report reviewed by anybody?

3 A. Yes.

4 Q. Can you tell us the review process?

5 A. The review process is that after I finish my
6 analysis and have written a report, I hand to
7 another scientist, such as Amber Folsom, to make
8 sure no errors were made, such as typos or that
9 the proper analysis methods were followed. And
10 then after she agrees, we hand it off to what is
11 called an administrative review where this person
12 again goes through and makes sure that everything
13 is in order and the case file is ready to be sent
14 out for the investigators.

15 Q. And we're going to be talking about this
16 particular case, but was that review process done
17 in this case?

18 A. Yes.

19 Q. Can you please describe for us your educational
20 background.

21 A. I have a bachelor's of arts degree from St. Olaf
22 College in Northfield, Minnesota where I majored
23 in biology and chemistry and minored in
24 biomolecular sciences. I am now currently
25 earning my master's degree from the University of

1 Nebraska Kearney, and that is in master in
2 biology.

3 Q. Did your formal education include the study of
4 DNA?

5 A. Yes.

6 Q. And I take it that your master's program covers
7 that too?

8 A. Yes, it does.

9 Q. Prior to working with the Bureau of Criminal
10 Apprehension, did you have any experience working
11 with the DNA?

12 A. Yes.

13 Q. What?

14 A. I worked in a research lab at the University of
15 Minnesota doing DNA work on slime mold for muscle
16 disease research studies.

17 Q. Do you belong to any professional societies or
18 organizations relating to DNA?

19 A. Yes.

20 Q. And what are those?

21 A. I belong to the Midwestern Association of
22 Forensic Scientists and I also belong to the
23 America Academy of Forensic Science.

24 Q. Have you testified on DNA analysis in courts in
25 Minnesota, including Hennepin County District

1 Court?

2 A. Yes.

3 Q. Your particular position at the BCA, is it funded
4 by the Minneapolis Police Department?

5 A. Yes.

6 Q. Do you answer to the Minneapolis Police
7 Department or do you answer to your supervisors
8 at the Bureau of Criminal Apprehension?

9 A. I am a state employee for the Minnesota Bureau of
10 Apprehension, so I do answer to my supervisor
11 there.

12 Q. What is DNA?

13 A. DNA, otherwise known deoxyribonucleic acid, is
14 the chemical inside of many cells within your
15 body that basically is the blueprint for who you
16 are.

17 Q. Where in the body is the DNA located?

18 A. It's within your cells, except for your red blood
19 cells.

20 Q. Does DNA vary from individual to individual?

21 A. Yes.

22 Q. Is it unique to each individual?

23 A. In the case of identical multiples, they may
24 have -- they do have the same DNA, however,
25 anybody else who's not an identical multiple is

1 not going to have the same DNA profile.

2 Q. An identical multiple, you mean like identical
3 twins or identical triplets, that type of thing?

4 A. Correct.

5 Q. Is it possible to distinguish between the DNA
6 from one person to another?

7 A. Yes.

8 Q. Is it possible to identify the DNA of a
9 particular person?

10 A. Yes.

11 Q. Is it possible to compare the DNA of a known
12 donor with the DNA found in an unknown sample of
13 blood, saliva, semen, so forth?

14 A. Yes.

15 Q. How long has DNA typing been used at the Bureau
16 of Criminal Apprehension, do you know?

17 A. It started in 1991.

18 Q. The methodology used to type DNA for one
19 individual -- from one individual to another
20 individual today, what type is that that you use?

21 A. Currently we use a method which is call PCR STRs,
22 and that is acronyms for polymerase chain
23 reaction and short tandem repeat.

24 Q. Is that a new type of DNA testing or has that
25 been around for awhile?

1 A. We have been using this type of DNA testing since
2 1999.

3 Q. As DNA typing methods change and so forth, does
4 the Bureau of Criminal Apprehension follow those
5 advances?

6 A. Yes.

7 Q. Is the, I'll call it the PCR STR, a form of DNA
8 typing that you do, is that used in fields other
9 than forensic criminal cases?

10 A. Yes.

11 Q. What are those fields?

12 A. I used PCR in my research at the U of M, so in
13 disease research. It's also used in cancer
14 researches and things like gene discovery. And
15 then DNA can also be used in studying plants or
16 animals also.

17 Q. Is it often -- is it sometimes used to identify
18 the remains of an individual?

19 A. Yes.

20 Q. As there's new advances in DNA typing methods,
21 does the Bureau of Criminal Apprehension provide
22 ongoing training for you and your colleagues?

23 A. Yes.

24 Q. So you can keep current?

25 A. Correct.

1 Q. Based on your training and experience, do you
2 have an opinion as to whether or not the types of
3 DNA testing you do at the BCA are generally
4 accepted in the scientific community?

5 A. Yes.

6 Q. And your opinion?

7 A. That they are accepted.

8 Q. Is the BCA an accredited laboratory?

9 A. Yes, it is.

10 Q. Who accredits them?

11 A. The ASCLD Lab or America Society of Crime
12 Laboratories Directors Lab Accreditation Board.

13 Q. You perform DNA testing at the BCA; correct?

14 A. Correct.

15 Q. Does the BCA employ anything such as proficiency
16 testing of its analysts at this time?

17 A. Yes.

18 Q. And why is that done?

19 A. It is done to insure that we are able to follow
20 our procedures. And we get samples where we
21 don't know what the results are going to be. We
22 get the result from it after doing the DNA
23 testing, submit back to the company that we got
24 it from and they tell us if we got the expected
25 result.

1 Q. We had testimony from your colleague, Ms. Folsom,
2 and she indicated that when a case is submitted
3 with potential items of evidentiary value for
4 blood DNA testing that a file is started on that
5 case at the BCA; is that your understanding?

6 A. Yes.

7 Q. Okay. In this particular case, did you examine
8 items that Ms. Folsom had -- back up. Did you
9 perform DNA testing in this case on samples that
10 Ms. Folsom had located from various items of
11 evidence submitted to the BCA from the
12 Minneapolis Police Department?

13 A. Yes.

14 Q. When you received those items of evidence, had
15 they been stored in a manner that was consistent
16 with the BCA policies and procedures?

17 A. Yes, they were.

18 Q. What was the first step that you took in the
19 process of analyzing those blood samples for DNA?

20 A. The first step that I performed was to extract
21 the DNA out of the cells within the sample.

22 Q. How does that get done?

23 A. That is done by, what we do is we set up a bunch
24 of tubes about this size, add chemicals to that
25 tube that will break open the cell, and then add

1 the samples, say a cutting from a pair of jeans
2 that was collected, a smaller cutting is taken
3 from that and placed in this tube and then
4 allowed to incubate in basically a heated water
5 bath until the cells have been broken open.

6 Q. And then what's done?

7 A. And then at that point we try to clean up the
8 liquid to only have all the cellular debris gone
9 and only have DNA remaining in the liquid.

10 Q. When you work on the samples, such in this case,
11 what -- what precautions do you use to avoid
12 contamination and mixing up samples with each
13 other?

14 A. Whenever I start a case, I always wipe down my
15 bench with bleach first. We wear gowns, masks
16 and gloves in order to avoid getting ourselves
17 within the sample. Every one of those tubes is
18 labeled with a unique individual item number
19 which is associated with the one that is
20 previously given during the serology
21 examinations. Then those samples are always kept
22 with that same name and kept in order, and only
23 one sample is opened at a time. And each tube is
24 moved from one rack to another when opening it so
25 that I'm not grabbing the wrong tube or putting

1 something into the wrong tube.

2 Q. When items of possible evidentiary value are
3 submitted to the BCA for DNA testing, are all
4 items always tested?

5 A. No.

6 Q. Why is that?

7 A. Because we have a large number of cases that come
8 in. Sometimes there are say samples collected
9 from the same area, there are four swabs from the
10 door, let's say, and they're all said to be
11 around the door handle. We're probably only
12 going to test one because we cannot test
13 everything, it's not cost-effective and it's not
14 time effective. It's a representative way of
15 sampling of samples.

16 Q. And do you talk to, say, such as in this case to
17 a detective who submits the items for analysis?

18 A. Some cases we do, some cases we don't.

19 Q. And the purpose of conferring with the detectives
20 assigned to the case would be what?

21 A. In order to gain some further insight on what
22 they feel is a priority, or if something is not
23 clear on what they want us to do with it, we can
24 call and ask so we know what we're actually
25 trying to do.

1 Q. As a general rule, does the person who, in your
2 Bureau of Criminal Apprehension, who looks at the
3 items first to determine if there is blood in
4 this case, is it typical that somebody else then,
5 such as yourself, would do the DNA analysis?

6 A. That is our general flow, yes.

7 Q. Be what items did you select for DNA testing in
8 this particular case?

9 A. I selected, there was fingernail swabbings
10 from -- can I refer to my notes, please?

11 MR. STREITZ: May she, Your Honor?

12 THE COURT: Yes.

13 THE WITNESS: There were fingernail from
14 swabbings from Mohamed Warfa. There is a swab
15 from a wire rack. There was swabbings collected
16 from a metal bar, and there were cuttings from
17 pants.

18 BY MR. STREITZ:

19 Q. And were you going to compare whatever DNA
20 profile you found in those items against
21 particular individuals?

22 A. Yes. There were also known DNA samples submitted
23 in this case that are used for comparisons to
24 question or evidentiary DNA profiles obtained.

25 Q. Do you employ any particular process or procedure

1 with respect to what items you do the analysis
2 for DNA on first, such as unknowns, knowns, that
3 type of thing?

4 A. We have to look at the profiles obtained from the
5 question or evidentiary samples to determine if
6 they're suitable for comparisons before looking
7 at the known samples profile to make any sort of
8 comparison.

9 Q. Do you take any precautions to make sure during
10 the course of this analysis that the question
11 items, samples aren't mixed with each other?

12 A. Yes. The question samples are started extracting
13 first. We start their extraction and then that's
14 actually done in a separate place in the lab
15 even, it's done at my lab bench most of the time.
16 Then the known samples are done on a robotic
17 system that does the extraction for us, so we
18 don't do it most of the time.

19 Q. And why are those done at separate places?

20 A. In order to ensure that we actually don't cross
21 contaminate between known samples and question
22 samples.

23 Q. Do you have to have a certain quantity or amount
24 of blood in order to do DNA testing?

25 A. We have to have a certain quantity of DNA to go

1 forward with DNA testing. We've shown that there
2 are -- there is just a low level where we
3 reliably weren't getting any results, so we were
4 able to say that we were able to stop on some
5 samples in that case if we have other samples in
6 the case that are going on to DNA testing.

7 Q. The samples that you analyzed in this case for
8 DNA, did you have appropriate amounts of DNA?

9 A. For all the samples except for one.

10 Q. We'll get to that. Prior to your testifying
11 today, did you review some items of evidence that
12 would assist you in your testimony today?

13 A. Yes.

14 MR. STREITZ: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. STREITZ:

18 Q. Showing you what I've marked as Exhibit 19, do
19 you recognize this?

20 A. Yes.

21 Q. And what is that?

22 A. This is a table prepared of just the profiles
23 obtained from five of the known DNA samples.

24 Q. And those knowns are who?

25 A. The knowns are from Mohamed Warfa, Ahmed Shire

1 Ali, Mahdi Ali, Anwar Mohammed and Osman Elmi.

2 Q. Did you recently receive a known DNA sample from
3 an Abdisalan Ali?

4 A. Yes.

5 Q. And is his known DNA on this chart?

6 A. No, it is not.

7 Q. But did you do a DNA analysis on that known
8 sample?

9 A. Yes.

10 Q. And did you subsequently compare that to the
11 other items of evidence in this case?

12 A. Yes, I did.

13 Q. Showing you what's been marked as Exhibit 152, do
14 you recognize this exhibit?

15 A. Yes, I do.

16 Q. And that is?

17 A. This is an exhibit of what has been marked as
18 item 2A, and it gives the DNA profile obtained
19 from the question stain, which was called item
20 2A-1, and then also the known profile of Mahdi
21 Ali.

22 Q. Okay. And the question sample that is your item
23 2A-1 was this sample that was collected by Ms.
24 Folsom?

25 A. Yes.

1 Q. Exhibit 120, do you recognize that?

2 A. Yes, I do.

3 Q. And that is?

4 A. This is an exhibit for Item 2B, and it is the DNA
5 profile obtained from the sample Item 2B-1 and
6 also the DNA profile obtained from Mahdi Ali.

7 Q. Exhibit 121, do you recognize that?

8 A. Yes.

9 Q. And that is?

10 A. This is the exhibit for Item 2B. It contains the
11 DNA profile from sample Item 2B-2, and also the
12 known DNA profile from Mohamed Warfa.

13 Q. And Exhibit 108, do you recognize that?

14 A. Yes.

15 Q. And that is?

16 A. This is the exhibit or the item called Item 2B
17 again, but it is the DNA profile from sample Item
18 2B-3 and it has the known DNA profile from
19 Mohamed Warfa.

20 MR. STREITZ: Your Honor, State would
21 offer into evidence Exhibits 119, 152, 120, 121
22 and 108.

23 THE COURT: Any objection?

24 MR. GOETZ: No objection, Your Honor.

25 THE COURT: Exhibit 108 and 119 through

1 121 and 152 are received.

2 MR. STREITZ: Thank you.

3 BY MR. STREITZ:

4 Q. I'd like to --

5 MR. STREITZ: May I publish these as I
6 go along, Your Honor?

7 THE COURT: You may.

8 BY MR. STREITZ:

9 Q. Exhibit 119. And there should be a pointer up
10 there. And if you press the red button.

11 A. Okay.

12 Q. Can you explain to the jury what this colored
13 chart represents?

14 A. This colored chart represents a known -- the
15 known DNA profiles from Mohamed Warfa, Ahmed
16 Shire Ali, Mahdi Ali, Anwar Mohammed and Osman
17 Elmi. There is two levels because there are 16
18 locations within the DNA that we look at and then
19 they didn't fit on one line so I separate them
20 into two rows, so if you keep the colors together
21 like the yellow and yellow on top go with the
22 same person.

23 Q. And you mentioned different locations are tested.
24 Different locations where?

25 A. Different locations on the chromosomes. These

1 are the STRs. So, for example, this D8 here is a
2 location on the DNA where an STR is.

3 Q. And is that the case throughout each of the
4 markings that you've got up there, the various --

5 A. There are 15 STR locations and then there is one
6 sex determining region right there, which gives
7 you information on if it's a male or a female.

8 Q. Okay. So that allows you to know what an
9 individual's DNA profile is?

10 A. Yes.

11 Q. Okay. And that is used then to compare two
12 results from question samples evidence?

13 A. Yes.

14 Q. Okay. We can go to Exhibit 152. Exhibit 152 as
15 you testified was item 2A-1 said to be some Paco
16 brand jeans from Mahdi Ali's apartment. Can you
17 tell us the results you have which you came to in
18 your DNA testing on that sample 2A-1?

19 A. The DNA profile obtained from the sample from the
20 pants, item 2A-1, matched the DNA profile
21 obtained from Mahdi Ali.

22 Q. Was that's what's called a single source of DNA?

23 A. Yes.

24 Q. What does a single source mean?

25 A. It means that all of the DNA types are

1 attributable to be from one person. If I can
2 explain an STR real quick. If you see that there
3 is one space here D 18 on the DNA that we look
4 at, there is an 11 and 16. There are two
5 different numbers because you get one copy from
6 your mom and one copy of DNA from your dad. And
7 at that location your DNA from your mom was, in
8 this case let's say, shorter than your dad and
9 therefore that's why there is an 11 and a 16
10 because the numbers correspond to the size of the
11 DNA at that location.

12 Q. So in this particular exhibit, you are comparing
13 what then?

14 A. I'm comparing the numbers obtained here.

15 Q. Here being the top row?

16 A. Yes. I look at the this right here is the DNA
17 profile on top, it's from item 2A-1, this is the
18 profile I obtained from that sample.

19 Q. And that is the evidence?

20 A. That is the evidence. You look at that sample
21 first, that profile, and then you go through the
22 known profiles you have to see if the numbers
23 match one another.

24 Q. And in this case, did the numbers match between
25 any of the known samples to the question sample

1 from 2A-1?

2 A. Yes.

3 Q. Who?

4 A. They match the known sample from Mahdi Ali.

5 Q. Did you compare the other known samples to 2A-1,
6 the question sample, to see if the other known
7 samples could be excluded?

8 A. Yes.

9 Q. And the results of that?

10 A. The known, the other known samples in this case
11 did not match.

12 Q. Did that include Abdisalan Ali's known sample?

13 A. Yes.

14 Q. When you determine a DNA profile, such as you did
15 in this case as being matching the defendants, do
16 you make a statistical statement about that DNA
17 profile?

18 A. We make a statistical statement about the
19 strength of the match.

20 Q. And in this case the strength of the match was
21 what?

22 A. It turned out to be once in the world's
23 population the -- let me refer to my notes so I
24 say it right.

25 Q. Sure.

1 A. So it means that the DNA profile obtained from
2 item 2A-1 would not be expected to occur more
3 than once among unrelated individuals in the
4 world's population.

5 Q. I want to move onto Exhibit 120. And at the top
6 it says Item 2B-1, again, said to be from a
7 different pair of jeans, Surplus brand jeans said
8 to come from Mahdi Ali's apartment. And what are
9 we seeing in this exhibit?

10 A. In this exhibit on the top line, again, you're
11 seeing the DNA profile obtained from the question
12 sample, in the case Item 2B-1, and then on the
13 second line you're seeing the known DNA profile
14 obtained from Mahdi Ali.

15 Q. Now, we've heard testimony from Ms. Folsom that
16 2B-1 is a sample she took from a front pocket
17 area of these jeans; are you familiar with that?

18 A. I would have to refer to be exact, but, yes.

19 Q. And the analysis that you -- the conclusions that
20 you reached in this analysis was?

21 A. In this case, the DNA profile obtained from Item
22 2B-1 was consistent with being a mixture of DNA
23 from four or more individuals.

24 Q. Now, when you say you get a mixture, what does
25 that mean?

1 A. That means that there are other types there that
2 can't be attributable to only coming from one
3 source.

4 Q. And when you have a mixture, is the mixture of
5 DNA all blood or could it be from other sources
6 of DNA in the human being body?

7 A. It could be from shed skin cells, it could be
8 from saliva, it could be from any type of cell
9 that has a DNA profile.

10 Q. Are you able to determine -- first of all, are
11 mixtures in clothing common or uncommon?

12 A. They are pretty common.

13 Q. Are you able to analyze a mixture and determine
14 if there is a predominant profile that could be
15 read?

16 A. Yes.

17 Q. Is that always the case?

18 A. No.

19 Q. In this particular exhibit, or sample, 2B-1, said
20 to have been from a pocket area of these jeans,
21 were you able to find a predominant profile?

22 A. I was able to distinguish a predominant profile.

23 Q. And that predominant profile?

24 A. The predominant profile obtain from Item 2B
25 matched the DNA profile obtained from Mahdi Ali.

1 Q. Did you compare the other knowns that you
2 received in this case to the DNA profile in 2B-1?

3 A. I compared them to the predominant profile from
4 2B-1.

5 Q. What were you able to say about the rest of the
6 DNA?

7 A. Because of the complexity of the mixture, I did
8 not make a statement regarding the other types
9 present in that DNA mixture.

10 Q. Did the DNA -- predominant DNA profile match any
11 of the other known samples?

12 A. No.

13 Q. Could you make a statistical statement with
14 respect to this particular predominant profile
15 you said was Mahdi Ali?

16 A. Yes.

17 Q. And that was?

18 A. That the predominant DNA profile obtained from
19 Item 2B-1 could not be expected to occur more
20 than once among unrelated individuals in the
21 world population.

22 Q. Could you make any statement regarding any minor
23 contributors to this DNA sample?

24 A. No, I could not.

25 Q. And because this is a mixture, can you take us

1 through this chart and show us where all those
2 figures in the top line are on this one?

3 A. Yes. In this one, you'll notice that there are
4 numbers with brackets around them. Those items
5 are the ones that what we've been referring to as
6 minor types. It means that in the mixture there
7 was a profile that was from someone or some body
8 fluid that was more an amount or higher quantity
9 in that sample that gave a profile that basically
10 stood out above the rest of the DNA types
11 present. But in order to show that we designate
12 the lower of the minor types by putting brackets
13 around them. In some locations you see that
14 there is no color or brackets. In those
15 locations, it wasn't clear which types were
16 standing out above others. So therefore, I did
17 not make a judgment on, at that location which
18 part of that profile was going to be predominant
19 or not.

20 Q. And how would we determine on this exhibit what
21 would be the predominant parts of the profile?

22 A. The predominant parts of this profile would be
23 the numbers here that are not in brackets but are
24 colored in this profile from Item 2B-1. So
25 this -- and you have to remember that you can

1 only, we're looking at 15 locations plus the sex
2 determining, so you would look at the numbers
3 below this box, and this number 11 and this
4 number 16 would be the predominant. When you
5 move to the next box, this number 28 and this
6 number 31.2 would be the predominant. If you
7 look down at TPOX, for example, you don't have
8 two different numbers not in brackets, you only
9 have one. And the reason why that happens is
10 because at that location mom and dad were the
11 same length.

12 Q. So on the top line, if a particular location in
13 the box, a particular location that you're
14 testing on a chromosome, right?

15 A. Right.

16 Q. Isn't in brackets and the lower line would
17 represent a known sample of the individual?

18 A. Yes.

19 Q. All right. A known DNA profile?

20 A. Right.

21 Q. So, for example, the first box here, you have on
22 the second line an 11?

23 A. Uh-huh.

24 Q. And a 16?

25 A. Yes.

1 Q. And on the line just above it, not in brackets is
2 an 11 and 16?

3 A. That is correct.

4 Q. So that would represent the predominant that
5 you're talking about for that location?

6 A. In that location the predominant matched the
7 known profile.

8 Q. In this case of Mahdi Hassan Ali?

9 A. Correct.

10 Q. You can go to 121. This is 2B-2, said to have
11 been a sample from Surplus jeans from Mahdi Ali's
12 apartment. And we've had testimony from Ms.
13 Folsom that this came from a cuffed area of the
14 jeans. What did your analysis show when you
15 tested this particular sample?

16 A. In this sample the DNA profile obtained from Item
17 2B-2 was consistent with being a mixture of DNA
18 from three or more individuals.

19 Q. Was there a predominant DNA profile on this
20 sample?

21 A. Yes.

22 Q. And who did the predominant DNA profile
23 correspond to?

24 A. It matched the DNA profile obtained from the
25 known sample of Mohamed Warfa.

1 Q. Each box represents a location where the DNA is
2 tested from; correct?

3 A. Yes.

4 Q. Take us through each of those boxes to tell us if
5 each of those locations, or boxes, there was a
6 corresponding profile between the sample 2B-2 and
7 the known of Mohamed Warfa?

8 A. I'm not quite sure what you mean.

9 Q. Let's start with the first box.

10 A. Okay.

11 Q. DAS 1179, the particular location you're testing
12 for; is that correct?

13 A. Correct.

14 Q. And what in the top line is not in brackets?

15 A. What is not in brackets is number 13 and number
16 15.

17 Q. And compared to Mr. Warfa you found --

18 A. The known profile matched at that location.

19 Q. That is that he had a 13 and a 15?

20 A. Yes.

21 Q. And the other items on the top line are in
22 brackets?

23 A. Correct.

24 Q. And that again represents a minor contributor?

25 A. Yes.

1 Q. And take us through each of the boxes in terms of
2 what the question sample was and what Mr. Warfa's
3 known was.

4 A. I'm going to abbreviate the name, we often call
5 them just by their first, D, and then the number
6 after that. So in D21, the profile from Item
7 2B-2 had a 30 and a 30. The profile from the
8 known sample of Mohamed Warfa had a 30 and a 30.
9 At D7, the profile from Item 2B-2 had a 10 and a
10 10. And the known profile from Mohamed Warfa had
11 a 10, 10.

12 Q. I'm going to interrupt you. I notice that on
13 D21, D7 and CSF there was no indication of a
14 minor contributor?

15 A. Correct.

16 Q. We can continue on to D3.

17 A. At D3 the profile from Item 2B-2 had a 15 and a
18 16, and the profile from Mohamed Warfa had a 15
19 and a 16.

20 Q. No minor contributors?

21 A. No minor contributor.

22 Q. At TH?

23 A. At TH01, there is a minor type of 6 and then a 7.
24 And of the known profile from Mohamed Warfa there
25 is a 7. At D13 --

1 Q. If I can just ask you, the fact that there is a 6
2 in brackets, does that mean that you have to say
3 that there is not a match?

4 A. No.

5 Q. What does that mean?

6 A. That means that there is a minor type present.

7 Q. D13?

8 A. At D13 there for the profile obtained from Item
9 2B-2 there is an 11 in brackets and a 12 and 13
10 not in brackets. From the known profile of
11 Mohamed Warfa, there is a 12 and a 13. In D16,
12 from the profile obtained from 2B-2 there is a 9,
13 a 13 in brackets and a 14. And then the known
14 profile from Mohamed Warfa there is a 9 and a 14.
15 In item -- I'm sorry. In D2, there is a 16 and a
16 19 for the profile obtained from 2B-2. And from
17 the known sample of Mohamed Warfa there is a 16
18 and a 19. In D19 for the profile obtained from
19 2B-2 there is a 13, a 13.2 in brackets, a 14, and
20 then from the known sample of Mohamed Warfa,
21 there is a 13 and a 14. At VWA, there is in the
22 profile obtained from 2B-2, there is a 15 and a
23 16 in brackets and a 17 in brackets. From the
24 known profile from Mohamed Warfa there is a 15.
25 In TPOX, there is from Item 2B-2 profiles there

1 is an 8, a 9 in brackets and an 11. And in the
2 known sample from Mohamed Warfa there is an 8 and
3 an 11. At D18, in the profile obtained from 2B-2
4 there is a 16 and a 22, not colored in.

5 Q. Why is that?

6 A. Because when DNA profiling was performed on the
7 known sample from Mohamed Warfa, the location at
8 D18 did not profile in the known. There is no
9 information on what the types are at that
10 location.

11 Q. What's the significance of that?

12 A. In a known sample, it isn't often but it's not
13 uncommon to have one location out of 16 not
14 amplify or not profile. This, in my opinion, is
15 not statistically significant when come to making
16 matches, considering back in 1999 we used a kit
17 that only looked at 13 loci and we've added more
18 to be more discriminatory that we currently use
19 now is 15 plus the sex determining region.

20 Q. Does the fact that you don't get a reading at
21 this particular location D18, affect your
22 conclusions or results in this particular sample?

23 A. The only thing it affects is that I'm not able to
24 use the numbers obtained from the question sample
25 2B-2 at that location, they're not included in

1 any statistical calculation.

2 Q. Is that an acceptable way to go about statistics
3 that's accepted in the general or scientific
4 community?

5 A. Yes.

6 Q. Is that consistent with the Bureau of Criminal
7 Apprehension protocol and procedures that you can
8 make a statistical statement when there is a loci
9 or location that didn't show a result?

10 A. Yes.

11 Q. Moving on to the next box.

12 A. The next box is the sex determining region,
13 amelogenin, it's shortened here, for Item 2B-2
14 the profile obtained has an X and a Y. And for
15 the known sample for Mohamed Warfa there is an X
16 and a Y, meaning this is a male profile.

17 The D5, the profile obtained from Item 2B-2,
18 there is an 8 and 11 and then a 12 in brackets.
19 The known sample from Mohamed Warfa there is an
20 8 and 11. For FGA, the profile obtained from
21 2B-2 there is a 23 and a 24. And then in the
22 known sample from Mohamed Warfa there is a 23 and
23 a 24.

24 Q. Did you arrive at a statistical statement
25 regarding the frequency in which you'd see this

1 DNA profile?

2 A. Yes. The predominant DNA profile obtained from
3 Item 2B-2 would not be expected to occur more
4 than once among unrelated individuals in the
5 world population.

6 Q. Did the predominant profile match any of the
7 other knowns that you received in this case?

8 A. No.

9 Q. Were you able to exclude any of the other known
10 DNA profiles from this particular sample?

11 A. Yes.

12 Q. Who?

13 A. Anwar -- excuse me. Anwar Mohammed, Osman Elmi,
14 Ahmed Shire Ali and Mahdi Ali and Abdisalan Ali
15 were excluded from the DNA mixture obtained from
16 Item 2B-2.

17 Q. Now, I'd like to go to Exhibit 108. And this is
18 said to be 2B-3, a sample from the same Surplus
19 brand jeans said to have come from Mahdi Ali's
20 apartment. We have had testimony from Ms. Folsom
21 that this sample was above the prior sample,
22 prior sample being from the cuff area of those
23 jeans and this being a little higher on the same
24 leg. What were the results of this particular
25 sample from those jeans?

1 A. The DNA profile obtained from Item 2B-3 matched
2 the DNA profile obtained from Mohamed Warfa.

3 Q. Was this a mixture?

4 A. No.

5 Q. So this was a single source sample?

6 A. Yes.

7 Q. Or single source profile?

8 A. Correct.

9 Q. Were -- did the DNA profile then match any of the
10 other profiles from the known samples you
11 received in this case?

12 A. No.

13 Q. Including Abdisalan?

14 A. Correct.

15 Q. And are you able to -- were you able to make a
16 statistical statement with respect to this
17 particular sample?

18 A. Yes.

19 Q. And that statement is?

20 A. The DNA profile obtained from item 2B-3 would not
21 be expected to occur more than once among
22 unrelated individuals in the world population.

23 Q. So the victim's DNA profile -- excuse me. Mr.
24 Warfa's DNA profile is on these jeans said to
25 have come from the defendant?

1 A. The DNA profile obtained from the sample of these
2 jeans matched the DNA profile obtained from the
3 known of Mohamed Warfa.

4 Q. Thank you. Now, I'd like to move along to
5 exhibit or samples 20A-1. Did you do DNA
6 profiling on that?

7 A. Yes.

8 Q. And those were said to have been fingernails --
9 samples from fingernails of Mr. Warfa?

10 A. That was one sample from a fingernail.

11 Q. 20A-1 is one sample?

12 A. Yes.

13 Q. And the DNA results on that particular sample?

14 A. The DNA profile obtained from item 20A-1 was
15 consistent with being a mixture of DNA from two
16 or more individuals.

17 Q. Did you have a predominant DNA profile?

18 A. Yes.

19 Q. And whose predominant DNA profile was it
20 consistent with?

21 A. The DNA profile, or the predominant profile
22 obtained from 2A-1 matched the DNA profile
23 obtained from Mohamed Warfa.

24 Q. Did it match any of the other known DNA profiles
25 that had been submitted?

1 A. Yes.

2 Q. Did that include Abdisalan Ali?

3 A. Yes.

4 Q. Were you able to give a -- were any of those
5 individuals excluded as being minor contributors
6 since this was a mixture sample?

7 A. All of them were excluded.

8 Q. As being a contributor to that mixture?

9 A. Yes.

10 Q. That would include Abdisalan?

11 A. Yes.

12 Q. And were you able to give a statistical
13 statement with respect to the predominant DNA
14 profile in this particular sample?

15 A. The predominant DNA profile obtained from 20A-1
16 would not be expected to occur more than once
17 among unrelated individuals in the world
18 population.

19 Q. Let's move to sample your items 20B-1 through
20 20E-1 and 21-A through 21E-1 said to have been
21 left and right-hand fingernail samples that Ms.
22 Folsom took of -- said to have come from Mr.
23 Warfa?

24 A. The male DNA --

25 Q. And the results?

- 1 A. The results were the male DNA profile obtained
2 from items 20B-1 through 20E-1 and 21A-1 through
3 21E-1 matched the DNA profile obtained from
4 Mohamed Warfa.
- 5 Q. Did it match any of the other known profiles,
6 including Abdisalan Ali?
- 7 A. No.
- 8 Q. Was there a sample within that that had minor DNA
9 type?
- 10 A. That was sample 20A-1. There were none within --
11 that was one of the fingernail samples taken from
12 Item 20A.
- 13 Q. And were you able to give a statistical
14 statement with respect to your findings on 20B-1
15 through 20E-1 and 21A-1 through 21E-1?
- 16 A. The male DNA profile obtained from 20B-1 through
17 20E-1 and 21A-1 through 21E-1 would not be
18 expected to occur more than once among unrelated
19 individuals within the world population.
- 20 Q. What about Item 21C-1?
- 21 A. Yes, you are correct. There was a minor DNA type
22 obtained in 21C-1.
- 23 Q. And were you able to give us any statement with
24 respect to the source of that?
- 25 A. No.

1 Q. And why is that?

2 A. Because there was insignificant genetic
3 information from one DNA type obtained.

4 Q. Did you do a DNA analysis on 33A-1 said to have
5 been a bar, a metal bar taken from the Seward
6 Market?

7 A. Yes.

8 Q. And your results?

9 A. The DNA profile obtained from which we call Item
10 33A-1, a sample from that metal bar was
11 consistent with being a mixture of DNA from three
12 or more individuals.

13 Q. Were you able to find a predominant DNA profile
14 on that bar?

15 A. Yes.

16 Q. And the results?

17 A. The predominant male profile from 33A-1 matched
18 the DNA profile obtained from Mohamed Warfa.

19 Q. Did it match the DNA profiles of the other known
20 samples you received, including Abdisalan Ali?

21 A. No.

22 Q. Were you able to determine if any of the other
23 known samples could have been the minor
24 contributors to that mixture?

25 A. Yes.

1 Q. And the result?

2 A. Anwar Mohammed, Osman Elmi, Ahmed Shire Ali,
3 Mahdi Ali and Abdisalan Ali were excluded from
4 being contributors to the minor DNA types
5 obtained from Item 33A-1.

6 Q. So their DNA wasn't in that mixture?

7 A. Correct.

8 Q. And were you able to arrive at a statistical
9 statement regarding the predominant profile in
10 this particular sample?

11 A. The probability of selecting an unrelated
12 individual at random in the general population
13 that would have a DNA profile that matched the
14 predominant profile obtained from Item 33A-1
15 would be 1 in 2.765 billion.

16 Q. With respect to item one, said to have been a
17 swabbing from a wire rack from the Seward Market,
18 did you perform DNA profiling on that sample?

19 A. I initiated DNA profiling on that sample.

20 Q. And what happened?

21 A. There was insufficient quantities of DNA to
22 continue on with DNA profiling from Item 1.

23 MR. STREITZ: May I have a minute?

24 THE COURT: You may.

25 MR. STREITZ: I have no further

1 questions at this time.

2 THE COURT: Counsel approach.

3 (Discussion at the bench.)

4 THE COURT: Mr. Goetz.

5 MR. GOETZ: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. GOETZ:

8 Q. Good morning, Ms. Hoffman.

9 A. Good morning.

10 Q. What year did you graduate from St. Olaf?

11 A. In 2006.

12 Q. And you've been with the BCA for three and a half
13 years?

14 A. Yes.

15 Q. And all of that in the nuclear DNA section?

16 A. Yes.

17 Q. You were asked some questions by counsel about
18 you working for the State, being funded by the
19 City, I just want to ask a follow-up question.
20 So when you get your paychecks, are those from
21 the City or the State?

22 A. They're from the state.

23 Q. Okay. Let's talk about some DNA testing
24 procedure questions, or issues in general, okay?
25 And you talked with counsel about it being

1 important to keep separate known from unknown
2 samples; is that right?

3 A. Yes.

4 Q. And, in fact, if I heard you correctly, one of
5 the best ways to ensure there are no cross
6 contamination between known and unknown samples
7 is to keep them separate; is that correct?

8 A. Yes.

9 Q. And is that what you tried to do?

10 A. That is what I did for almost all of the knowns.

11 Q. Okay. But I guess the question is, generally is
12 that what -- is that the best practice for you as
13 a forensic scientist?

14 A. Yes.

15 Q. Let's talk about DNA a little more in general.
16 And I have, I'm just going to put up a graph.
17 Just for illustrative purposes, you can see it
18 behind you or on your screen. DNA can come from
19 many sources; correct?

20 A. Yes.

21 Q. And would you agree that this graphic is -- or
22 was, accurate -- well --

23 MR. GOETZ: If I may just have an a
24 moment please, Your Honor?

25 (Pause in proceedings.)

1 MR. GOETZ: Well, I apologize.

2 THE COURT: There you go.

3 MR. GOETZ: My faith in Apple products
4 is restored.

5 BY MR. GOETZ:

6 Q. So sources of biological evidence, blood, semen,
7 saliva, urine, hair, teeth, bone, tissue. You
8 can get DNA samples or evidence from any of those
9 sources; correct?

10 A. Yes.

11 Q. And when you perform DNA analysis, you perform
12 the analysis for the presence or absence of DNA
13 and the typing, but you don't test to determine
14 the source of that DNA; correct?

15 A. In reference to the source of body fluid?

16 Q. Correct.

17 A. Yes.

18 Q. So when you've told us that you found DNA
19 profiles, and we'll talk about it in more detail
20 in a minute, but generally whether or not a given
21 profile is from blood, or semen or saliva, urine,
22 hair, any possible biological sources, you're not
23 able to tell us one way or the other; correct?

24 A. Correct. The only one we can come close with
25 being certain on is semen because we separate out

1 sperm cells from any other cells present in the
2 sample. But there was no semen in this case, so.

3 Q. Okay. So, for example, specifically between
4 blood and saliva, we can't say one way or another
5 the source in this case?

6 A. Correct.

7 Q. And some sources of DNA evidence you might be
8 able to see, for example, blood stains; correct?

9 A. Yes.

10 Q. But some sources of DNA evidence you might not be
11 able to see, assuming they've dried, such as
12 saliva, urine, even sweat perhaps; correct?

13 A. We can still -- if you look at some stains under
14 ultraviolet light, you can see fluorescent stains
15 which can be saliva, but you can't specifically
16 say, that's a saliva stain or a soda stain
17 basically.

18 Q. Okay. Now, in this case, narrowing it a little
19 bit, you told us about some mixtures of DNA
20 profile, and I want to talk to you a bit about
21 that. When you say, for example, that there -- a
22 particular DNA analysis showed you that there
23 were DNA profiles that could have come from three
24 or more persons, that "or more" figure is
25 somewhat of an unknown; correct?

1 A. Yes.

2 Q. Because if you take at a given loci, the
3 particular numbers, just using that sort of lay
4 phrase, and you add up the mathematical
5 combinations, just picking random numbers, say
6 there is an 11, 12, 13 on a given loci, you could
7 have a contributor who is 11, 11 having both the
8 same from each parent; correct?

9 A. Correct.

10 Q. So you can have an 11, 11, a 12, 12, a 13, 13, a
11 person with either of those profiles at that loci
12 would be a possible contributor; correct?

13 A. Correct.

14 Q. As would an 11, 12 or a 12, 13 or an 11, 13?

15 A. Correct.

16 Q. So at that loci there might be six possible
17 contributors; correct?

18 A. Correct.

19 Q. And so looking specifically at -- well, strike
20 that. We'll get back to that. Let's talk a bit
21 about the testing process. You told us about the
22 extraction of DNA from samples. And then at some
23 point once you've extracted the samples, you then
24 conduct a further analysis to determine the
25 profiles that might be found within a DNA sample.

1 Do you understand the question?

2 A. It didn't sound like a question.

3 Q. Okay. So let me rephrase. I'll ask it this way.
4 After you extract the DNA from a given sample
5 that comes in, what do you do next to conduct
6 your DNA analysis?

7 A. The next step in DNA profiling, after we have DNA
8 out of the cells, is to determine how much DNA is
9 present. After I determine how much DNA is
10 present, you amplify a certain amount of DNA, and
11 by amplify, you make copies of the DNA at those
12 locations that are developed in the DNA profile.
13 The 15 STR locations and the sex determining
14 region. That is the PCR step or the polymerase
15 chain reaction step. Then they're put onto an
16 instrument, the sample is put onto an instrument
17 that converts the DNA copies now into a data
18 printout, which then gives the numbers of what
19 the DNA profile is.

20 Q. And when you're working on a particular case,
21 just to get into the mechanics of it, you put
22 samples on a tray that then is put into a machine
23 for further analysis?

24 A. We -- the tray you're talking about, at which
25 step?

1 Q. Well, let me do it this way.

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

3 THE COURT: You may.

4 BY MR. GOETZ:

5 Q. I'm showing you Exhibit 403. Do you recognize
6 that?

7 A. Yes.

8 Q. And please tell us what this is.

9 A. This is the full allele table, or as you were
10 seeing displayed with the items, the profiles
11 with their numbers of all the samples I did in my
12 first round of testing in this case.

13 Q. And you recognize this to be a true and accurate
14 copy of that document?

15 A. Yes.

16 Q. Kept in the usual course of your work at the BCA?

17 A. Yes.

18 MR. GOETZ: Offer 403, Your Honor.

19 THE COURT: Any objection?

20 MR. STREITZ: No.

21 THE COURT: 403 is received.

22 BY MR. GOETZ:

23 Q. Okay. And --

24 MR. GOETZ: May I publish 403, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. GOETZ:

3 Q. Okay. Now, this is quite small and it's
4 difficult to read, particularly on that blowup,
5 but, if you could tell the jury generally what
6 we're looking at here?

7 A. Well, first, in regards to what I just saw as
8 Exhibit 403, this is only a partial
9 representation of what 403 is. It is missing
10 some of the locations on the right side or to my
11 left side, your right side, of the screen. So
12 this is what an allele looks like, or what the DNA
13 profile printouts are as a whole for all the
14 samples that I tested at that point in time in
15 this case. It's a way of looking at the data in
16 a clear way that you can easily go down each
17 location of DNA and make comparisons.

18 Q. Okay. I apologize for the misconnection. So,
19 where we had Exhibits 152, 120, 121, those
20 comparison of specific items with specific
21 profiles, this would be sort of a chart of --
22 combined chart of a number of those things; would
23 that be fair to say?

24 A. Yes, this would be my complete summary at that
25 point.

1 Q. And reading from left to right, say, for example,
2 if we pick the fourth item down from the top, do
3 you see that, maybe it's easier just to look at
4 on screen. What does that show us?

5 A. Are you referring to Item 4 or QS10-04811-20B-1?

6 Q. Yes. And that starts that the questioning. What
7 that number you've just read, what does that
8 signify?

9 A. That signifies the unique item number given for
10 that sample. The "Q" in front means that it is a
11 question sample. The S10-04811 is the case
12 number. The 20B-1 is the item number. And then
13 the 23-584 -- I'm sorry, I skipped some
14 2010-05-10 underscore 23-58-48 underscore G05 dot
15 FSA is the time and date stamp for when that
16 sample was ran on the instrument. And the dot
17 FSA is the file extension because this is a data
18 file that we get from the computer.

19 Q. Okay. And the 235845, what does that tell us
20 again?

21 A. That corresponds to the time.

22 Q. Okay. Military time; correct?

23 A. Correct.

24 Q. And would it be fair to say that all samples that
25 would have the same date and time were on the

1 same tray for testing?

2 A. So the way that this instrument works when he's
3 referring to a, there is -- these samples are in
4 a rectangular plate about this size (indicating)
5 that has individual little wells, or little cups
6 that each sample is put into. So there are
7 enough little wells in the plate for each
8 individual sample to go into. That then gets
9 tested individually.

10 Q. And for illustrative purposes, is that a
11 representative picture of what you just talked
12 about?

13 A. In essence, yes, but this is not the instrument
14 that was used in this analysis.

15 Q. Just for illustrative purposes, gives us an
16 example, I use the word trays, looks like?

17 A. No, this is different. The new instrument that
18 we use has a plate instead of what -- I'll use
19 the pointer -- what is shown here is a tray with
20 -- these are individual tubes. The new
21 instrument that was used in this case has a tray
22 that does not have individual tubes and instead
23 of one, this is called a capillary, it's what the
24 sample is taken up into and analyzed throughout
25 the machine. This instead of one, in our new

1 instrument there are four, which explains why
2 different samples can have the exact same
3 timestamp because instead of with this older
4 instrument we could only analyze one sample at a
5 time with our new instruments we now can do four
6 at a time. So instead of one going in each one
7 after another we have four go in, all four get
8 analyzed separately at the -- but at the same
9 time, the computer reads them separately. And
10 then it goes into the next four after washing off
11 the capillary and to ensure we have no cross
12 contamination between samples.

13 Q. So just so I understand the equipment that you
14 were using in this case. If we go back to
15 Exhibit 403, the item we were just talking about
16 QS1004811-20B1, and that description right-hand
17 fingernail swab MAW, that would be Mr. Warfa. We
18 have a time 23:58:45, date, I guess May 10, 2010.
19 And then if we look down there is QS1004811-2B-2,
20 again, the date May 10, 2010, the time 23:58:45,
21 BLS from pants. Were those on the same plate?

22 A. All of the samples on this table except for the
23 known samples, so samples from this point right
24 here, this last white line that says reagent
25 blank, not this one, this one here, the first

1 one, anything above that was on the same plate.
2 So this sample, Item 2B-2 with the same date as
3 these ones up here, was on the same plate. The
4 key thing to notice is the next set of numbers
5 which corresponds to the location, or what well
6 in that plate this sample was taken from. This
7 sample was taken from E0 -- was inside well at
8 location E05. This was F05, G05, H05. So there
9 are four. It would be e-f-g-h, goes into those
10 all at once. It goes a-b-c-d first, and then
11 cleans itself off, goes into the next set of
12 four. And there is only -- in these plates, it
13 goes, if you look at a plate, it goes 8 wells
14 down and 12 rows across.

15 Q. So adjacent wells on the same plate. In summary,
16 a sample that came from the right-hand fingernail
17 swab of Mohamed Warfa with the bloodstain from a
18 pair of pants, Item 2B-2?

19 A. Yes, they were adjacent to one another on the
20 plate.

21 Q. Now, 2B-2 as we've talked about, that ultimately
22 determined was the profile in that particular
23 sample, was that known DNA profiles from three or
24 more individuals; correct?

25 A. Correct.

1 Q. And as we've talked about, you cannot say whether
2 it's four, five, six, you don't know how many
3 people could have been possible contributors to
4 that sample; correct?

5 A. Correct.

6 Q. And also as to the DNA profiles that you found,
7 even the predominant DNA profile, you do not know
8 the source of the cells of that profile, whether
9 blood, saliva, et cetera; correct?

10 A. Correct.

11 Q. And looking at or talking about Item 2B-1, I
12 believe that was Exhibit 120. And your testimony
13 is that the predominant DNA profile was from
14 Mahdi Ali. Does that sound accurate?

15 A. That is correct.

16 Q. And that was a mixture of DNA from four or more
17 persons; correct?

18 A. Yes.

19 Q. And, again, we don't know the source of the DNA
20 in terms of what biological fluid or the
21 biological source; correct?

22 A. Correct.

23 Q. And we don't know who the other possible
24 contributors are for 2B-1, the minor
25 contributors?

1 A. Correct.

2 Q. I want to get back to exhibit or Item 2B-2, one
3 of the bloodstains on the Surplus jeans pants.

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

5 THE COURT: You may.

6 BY MR. GOETZ:

7 Q. I'm showing you what's been marked for
8 identification as Exhibit 404, do you recognize
9 that?

10 A. Yes, I do.

11 Q. And what is that, please?

12 A. This exhibit is a quality control check that we
13 have at work in order to determine if anybody
14 involved in the case or who had access to the
15 evidence in this case would have been -- a reason
16 why there could have been a mixture obtained from
17 a DNA profile.

18 Q. And this is the name, I guess, state match detail
19 report?

20 A. That is just what this printout is referred to
21 as.

22 Q. Right. And this is specifically to item, I'll
23 shorthand it, but 2B-2?

24 A. Correct.

25 Q. And this is a true and accurate copy of that

1 document?

2 A. Yes.

3 Q. Kept in the usual course of your business at the
4 lab?

5 A. Yes.

6 MR. GOETZ: Offer 404, Your Honor.

7 THE COURT: Any objection?

8 MR. STREITZ: No objection.

9 THE COURT: 404 is received.

10 MR. GOETZ: Permission to publish, Your
11 Honor?

12 THE COURT: You may.

13 BY MR. GOETZ:

14 Q. Again, this is a little hard to read, but you can
15 explain to us, you don't need to go into detail,
16 but what is this document reporting to us?

17 A. This document is showing that there was in
18 fact -- when we do a QC search of a mixture, we
19 look at it against anybody that's ever worked at
20 the BCA or who currently does work at the BCA.
21 Like I said, in order to ensure that somebody
22 that had handled the evidence or had access to
23 the evidence possibly could have been the reason
24 why there could have been a mixture. Mainly,
25 it's to see if the people doing the analysis are

1 part of that mixture because we want to rule
2 ourselves out as a possible source. So what we
3 do, we can't just compare it to only the people
4 that we think had access, so we compare it to all
5 of the known profiles that we have for current
6 and past employees. And what this is that there
7 was an employee who was not in the chain at the
8 BCA and/or in the biology section at the BCA, the
9 nuclear DNA section, that could not be excluded
10 from this mixture.

11 Q. So to be specific as to what Ms. Folsom gave you
12 taken from that pair of Surplus jeans down by the
13 cuff area, that Item 2B-2, an employee of the
14 BCA, who as far as you know had no contact with
15 this piece of evidence, could be a possible minor
16 contributor to that DNA mixture?

17 A. Yes. His types could not be excluded.

18 Q. And there is a note written in the bottom
19 right-hand corner of that document Exhibit 404,
20 can you please, first of all, is that your
21 writing?

22 A. Yes.

23 Q. What does that say exactly, please?

24 A. It says, employee not in chain or bio section.

25 Q. And then you have some items, and just continue

1 on.

2 A. Excuse me. The numbers, which is hard to read is
3 S10-04811. The scribble underneath is actually
4 my initials, and then it says 50 RFU underneath
5 that.

6 Q. I want to talk about a few other final things.
7 The fact that an item was negative for somebody's
8 DNA, let me use the specific example, 33A-1, the
9 metal bar from the door at the scene. You're not
10 telling us that a given individual did not have
11 contact with that door, just that their DNA was
12 not left on that door; is that right?

13 A. Correct.

14 Q. So, the fact that you did not find Ahmed Shire
15 Ali's DNA profile on any of the substances tested
16 or items tested from the Seward Market, you're
17 not telling us that doesn't mean he was not there
18 at the Seward Market; correct?

19 A. Correct.

20 Q. Same thing with Abdisalan Ali, just that you
21 didn't find his DNA; correct?

22 A. Correct.

23 Q. Now, lastly, I want to talk to you about how DNA
24 can get on any given item that you test. You're
25 familiar with the process known as transference;

1 correct?

2 A. Yes.

3 Q. Transference is how a bodily fluid might get
4 deposited onto a surface testing; correct?

5 A. Yes.

6 Q. If I cut my hand and I dropped a piece of blood
7 on this device, that would be transference;
8 right?

9 A. Correct.

10 Q. DNA can also go through what's called secondary
11 transfer; correct?

12 A. Yes.

13 Q. So say I was in the habit of sucking on my pen
14 here, okay. And then you asked to borrow my pen.
15 If you took my pen, put it in your hand and then
16 gave it back to me and picked up that white cup
17 in front of you there, my DNA could be on that
18 white cup; correct?

19 A. It is possible.

20 Q. Even though I had no contact with that cup
21 whatsoever?

22 A. That is possible.

23 Q. And, Ms. Hoffman, when you're telling us that in
24 regards to items, say, well, any of the items in
25 which you found a predominant or sole DNA

1 profile, all you're able to tell us is that that
2 individual's DNA profile was on that item tested;
3 correct?

4 A. I'm able to say that the profile that was
5 obtained from that item matched a known obtained
6 from somebody else.

7 Q. Thank you for the clarification. But you're not
8 able to tell us how that particular profile came
9 to be deposited on the item tested; correct?

10 A. That is correct.

11 Q. And you're not able to tell us how long it had
12 been there; correct?

13 A. Correct.

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

16 THE COURT: Mr. Streitz.

17 MR. STREITZ: I have some.

18 **REDIRECT EXAMINATION**

19 BY MR. STREITZ:

20 Q. You were asked some questions, Ms. Hoffman, about
21 mixtures and they could have come from three or
22 more individuals, but you're still, the science
23 of DNA today is that you're still able to find
24 and isolate a predominant DNA profile?

25 A. Yes, in some samples you are able to do that.

1 Q. Such as you did in this case?

2 A. Yes.

3 Q. And then, again, to make a statistical statement
4 about the likelihood of finding that did DNA
5 profile against the world, so to speak?

6 A. Yes. I'm able to make a statistical statement.

7 Q. As to the likelihood of that DNA profile showing
8 up in more than one individual?

9 A. Yes.

10 Q. Counsel showed you the chart, the overall summary
11 chart, I believe it's Exhibit 403, that big
12 colored chart that I believed you said showed us
13 all the samples, when they were run, that type of
14 thing?

15 A. All the samples for my first DNA submitted
16 report. It's not everything that I tested but
17 it's to that point that number of samples.

18 Q. The instrument that you use, you talk about the
19 samples being put on plates; is that correct?

20 A. Yes.

21 Q. How do we know that those samples run in this
22 case weren't contaminated?

23 A. We know that they weren't contaminated because I
24 have confidence that I didn't make any sort of
25 contamination error because of my methods and my

1 very pretty much anal retentive way of how I do
2 my DNA testing is one thing at a time, check the
3 labels, check where it's going, move onto the
4 next one. It's my confidence level that makes me
5 know there wasn't any contamination.

6 Q. With respect to the instrument that the samples
7 go on a plate, is any check done of that to
8 determine if there is any contamination when
9 you're doing the analysis?

10 A. When we first received our instrument, we did a
11 check or a validation study to determine if we
12 would see any sort of carryover, we call it, from
13 one injection to the next. So from putting that
14 capillary in one tube and going through the
15 washing steps and then putting it into the next
16 one. What we did is we put in the first four
17 wells a sample that we knew had DNA in it, we
18 knew what that DNA profile was. And then in the
19 next injection that goes forward have gone into
20 the next set of the wells, there was nothing, no
21 DNA in the samples, there was liquid, but there
22 was no DNA. So if there were carryover we would
23 have actually seen the profile or parts of the
24 profile from the sample that we knew had DNA in
25 them into the ones we knew didn't have DNA in

1 them. We did not detect any sort of carryover
2 and we studied the instruments.

3 Q. And is that instrument checked periodically to
4 make sure there is no carryover?

5 A. One way during a run that you can even check that
6 there is no carryover is that we have things
7 called reagent blanks. These are samples that
8 are carried out through the entire testing
9 process with all the chemicals used in order to
10 make sure that you don't get any DNA from any
11 process. So if there was carryover from an
12 injection into the next injection that had the
13 reagent blank that should be blank, has no DNA in
14 it. If that does get DNA in it, you work
15 backwards to figure out when that DNA could have
16 gotten in there. So that is a form of a check
17 while doing the case.

18 Q. And in this case, the results of that --

19 A. The reagent blanks had no contaminating DNA in
20 them.

21 Q. When you put the samples, the evidentiary samples
22 on a plate, does that, do you also put on that
23 same plate the known samples?

24 A. No.

25 Q. Why?

1 A. Because we try to keep these samples separate at
2 all times.

3 Q. In this case, do you have confidence that the
4 samples, for example, 2B-2 counsel is referring
5 to, the mixture, that that was not a contaminated
6 sample from other items of evidence?

7 A. Yes. I'm confident that there was no
8 contamination.

9 Q. Counsel showed you Exhibit 401, the quality
10 control check form that had to do with 2B-2, the
11 sample?

12 A. Okay. Was it 401 or 404?

13 Q. I thought 404. Did I just say 401?

14 A. Yes.

15 Q. 404. And it showed that an employee could not be
16 excluded from that mixture; is that correct?

17 A. Yes.

18 Q. Having seen the results of that, did you do
19 something to determine whether or not an employee
20 had any connection or access to this case?

21 A. Yes.

22 Q. What?

23 A. On that sheet there is an employee number listed,
24 we don't list the name on there because it can be
25 brought into court and your DNA profile is

1 private information so we only give out the name.
2 But at work we have a list of whose name
3 corresponds to what number. And on that list it
4 also lists what section they are in and they are
5 current or past employee. And this person
6 happened to not be -- not only not be in the
7 section, they weren't in the DNA group, nor in
8 the lab group, they were actually an investigator
9 that doesn't have access to the lab on their own,
10 they would have to be escorted in, wouldn't have
11 access to the evidence and works on a different
12 floor.

13 Q. So that's an investigator with the BCA?

14 A. Yes.

15 Q. And to your knowledge was any BCA investigator
16 involved in this case?

17 A. Not to my knowledge.

18 MR. STREITZ: If I may have a second?

19 THE COURT: You may.

20 MR. STREITZ: I have no further
21 questions.

22 THE COURT: Mr. Goetz.

23 MR. GOETZ: No follow-up, Your Honor.

24 THE COURT: All right, sir. You may
25 step down.

1 (Witness leaves the stand.)

2 MR. STREITZ: Your Honor, the State
3 rests.

4 THE COURT: Members of the jury, we will
5 recess at this time for lunch. I have a few
6 legal issues to deal with the lawyers before our
7 break, but you can break now until 1:30. Thank
8 you.

9 (Jurors leave the courtroom.)

10 THE COURT: State having rested. Mr.
11 Goetz.

12 MR. GOETZ: Motion for judgment of
13 acquittal, Your Honor.

14 THE COURT? Motion for judgment of
15 acquittal is denied. Looking at the evidence in
16 the light most favorable to the State, I do find
17 there is sufficient evidence for the jury on all
18 six counts.

19 Will the defense be ready to proceed at
20 1:30?

21 MR. GOETZ: We expect to be ready to
22 proceed.

23 THE COURT: Mr. Ali, I'm going to
24 address you directly. The attorneys and I may
25 discuss jury instructions now and perhaps later

1 in the day and you have a right to be there but
2 generally this is something that we're going
3 through in chambers, editing documents. Are you
4 willing to waive, in other words give up your
5 right to be present, and let your lawyer be
6 present on your behalf?

7 MR. GOETZ: May I have a moment, Your
8 Honor, also confirm a Fifth Amendment issue?

9 THE COURT: Sure.

10 MR. GOETZ: Your Honor, do you want to
11 hear from Mr. Ali on that issue or --

12 THE COURT: You can inquire.

13 **EXAMINATION**

14 BY MR. GOETZ:

15 Q. Mr. Ali, first as to the Court's question about
16 whether or not you want to be present when we
17 talk about jury instructions, do you want to be
18 present, or do you agree to give up that right to
19 be present for that?

20 A. I agree to waive it.

21 THE COURT: Okay.

22 MR. GOETZ: And Fifth Amendment, Your
23 Honor.

24 THE COURT: You can do it now if you
25 want or you can wait until after lunch or even at

1 the end of your case, if you prefer.

2 MR. GOETZ: We can do it now.

3 THE COURT: Mr. Ali, I'm going to have
4 you give answers that are loud enough for the
5 court reporter to hear in response to these
6 questions.

7 Mr. Goetz.

8 BY MR. GOETZ:

9 Q. Mr. Ali, you and I have been working together on
10 this case for about 18 months or so; correct?

11 A. Correct.

12 Q. And during that year and a half we've talked many
13 times about possible trial strategies and how we
14 would approach the trial; correct?

15 A. Correct.

16 Q. And you know and we've talked about many times
17 that you have an absolute right to testify in
18 this case if you want to?

19 A. Correct.

20 Q. And we've also talked about that nobody can make
21 you testify if you don't want to; is that right?

22 A. Yes, sir.

23 Q. And so I'll just now ask you, knowing that you do
24 have the right to testify or not to testify, what
25 is your decision about whether you're going to

1 testify in this case?

2 A. I waive my right to testify.

3 THE COURT: Mr. Ali, I will address you
4 directly then so it is clear, you do not wish to
5 testify; is that correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I want to make sure you
8 understand that the decision not to testify on
9 your own defense is your decision alone. Mr.
10 Goetz is a very skilled lawyer and he can give
11 you good advise, but in the last analysis, you
12 can disregard his advice and take the stand. I
13 don't want to know what his advice was one way or
14 the other, you just need to know that you make
15 the final decision, not your lawyer. A lot of
16 the decisions in the case he does make but this
17 is one you have to make on your own and you can
18 disregard your lawyer's advice. Is this your
19 decision?

20 THE DEFENDANT: I understand both sides
21 and it is my decision.

22 THE COURT: All right. In addition to
23 that, I also have to address you directly. There
24 is a jury instruction that may be given because
25 you have not testified, and it reads as follows,

1 I'd like you to listen and you can talk to Mr.
2 Goetz about it we'll get your decision after
3 lunch, but I want you to be aware that since you
4 are not testifying, you have the right to have
5 the following read to the jury once the case is
6 being submitted to them after the closing
7 argument, and that is as follows: The State must
8 convince you by evidence beyond a reasonable
9 doubt that the defendant is guilty of the crime
10 charged. The defendant has no obligation to
11 prove innocence. The defendant has the right not
12 to testify. This right is guaranteed by the
13 federal and state constitutions. You should not
14 draw any inference from the fact that the
15 defendant has not testified in this case.

16 That's the instruction that can be
17 given. It's your choice. Again, this is one of
18 those that has to be your choice after you
19 consult with your attorney. And I'm going to
20 give you over the lunch hour to talk to Mr. Goetz
21 and not ask you for a decision yet. But be aware
22 the decision whether or not to read that
23 instruction to the jury is yours. So after lunch
24 we'll probably talk about this, but I'll give you
25 time to talk to Mr. Goetz on whether or not that

1 should be given. There are competing reasons why
2 it should be given and why they should not. So
3 that's what you need to talk to Mr. Goetz about.

4 Any questions at this point?

5 THE DEFENDANT: No, Your Honor. Thank
6 you.

7 THE COURT: We are in recess until 1:30.
8 We'll save the instructions because I have a
9 meeting at noon. We'll reconvene at 1:30.

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

2 THE COURT: Record should reflect we are
3 outside the hearing of the jury for two issues.
4 The first is whether or not the Court should read
5 Jig 3.17 on the defendant's right not to testify.

6 MR. GOETZ: We do not request that, Your
7 Honor.

8 THE COURT: All right. Mr. Ali, I'll
9 remind you again that is your personal decision
10 and you can disregard Mr. Goetz's advice or
11 accept his advice. Is that correct, you don't
12 want it read?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: So we will not read 3.17.

15 THE DEFENDANT: Correct.

16 THE COURT: That will be taken out of
17 the final instructions, the remainder we'll talk
18 about after the defense rests. But for now, I
19 want to talk about the issue of sequestration of
20 the jury. We've had some chambers discussions
21 about it, but I think we should make a record on
22 what the requests are.

23 For the State?

24 MR. STREITZ: Your Honor, the State
25 would request that they be sequestered.

1 MR. GOETZ: The defense does not request
2 sequestration.

3 THE COURT: Okay. Would you object to
4 sequestration?

5 MR. GOETZ: We would object to
6 sequestration.

7 THE COURT: All right. Based on the
8 reality we have in this case, that being that we
9 will be closing on Thursday, that would only give
10 the jury a day and a half perhaps to deliberate
11 before the weekend. The Government Center no
12 longer has HVA systems turned on after 5 o'clock
13 in the evening, nor on the weekend, so we would
14 have no facilities for the jury to deliberate on
15 Saturday or Sunday or after 5 p.m. on weekdays.
16 And given the large amount of exhibits in this
17 case, I think it would be a burden on the jury to
18 sequester them with very little return. So far
19 we've asked the jury if they've been exposed to
20 any media inadvertently or any Facebook and they
21 have responded that they have not. I'll admonish
22 them again, obviously, that they to keep their
23 own counsel, and I will do that every time they
24 are released for the day. So I'm not ordering
25 sequestration of the jury. They will be able to

1 deliberate a normal day of 8:30 to 4:30 and be
2 released to their homes each night with a warning
3 not to discuss with anyone.

4 MR. STREITZ: Your Honor, what would
5 happen on the weekend?

6 THE COURT: They'll be in recess until
7 Monday. All right.

8 Anything further before I bring the jury
9 out?

10 MR. STREITZ: No, Your Honor.

11 (Jurors enter the courtroom.)

12 THE COURT: Mr. Goetz, you may proceed.

13 MR. GOETZ: Defense would call Amir
14 Farah.

15 THE COURT: Mr. Farah, come in front of
16 the bench.

17 AMIR FARAH,
18 called as a witness on behalf of the Defense, having
19 been first duly sworn, was examined and testified as
20 follows:

21 THE COURT: Have a seat right there.
22 Before you begin, give us your full name,
23 spelling each of your names.

24 THE WITNESS: Amir Addulqadir Farah;
25 A-m-i-r, A-d-d-u-l-q-a-d-i-r, F-a-r-a-h.

1 THE COURT: Mr. Farah, you're speaking
2 nice and loudly, I appreciate that. So if you
3 can keep that up. Also, make sure to answer yes
4 or no, opposed to head nods or mummering because
5 we can't take that down. Thank you.

6 THE DEFENDANT: I understand.

7 THE COURT: Mr. Goetz.

8 **DIRECT EXAMINATION**

9 BY MR. GOETZ:

10 Q. Good afternoon, Mr. Farah.

11 A. (No response.)

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. How old are you sir?

15 A. Twenty-one right now.

16 Q. And do you know the gentleman seated to my left?

17 A. Yes, I do.

18 Q. And what is his name as you know it?

19 A. Mahdi.

20 Q. Mahdi Ali?

21 A. Yeah, Mahdi Ali.

22 Q. And how long have you known Mahdi Ali?

23 A. I would say for about three, four or five years.

24 Q. Have you ever owned a 1996 Crown Victoria?

25 A. Yes, sir.

1 Q. What color was that?

2 A. Reddish maroon.

3 Q. Did you own that car on or about January 6th of
4 2010?

5 A. No, sir.

6 Q. Did you have custody or access to that car at
7 that time?

8 A. Yes, sir.

9 Q. Now, you know that we're here looking at events
10 involving a shooting at the Seward Market. You
11 know that that's generally what this case is
12 about, right?

13 A. Yes.

14 Q. And I assume you heard generally about the Seward
15 Market shootings; correct?

16 A. Yes, on the news.

17 Q. Right. On the day of the Seward Market
18 shootings, which I'll represent was January 6th
19 of 2010, did you ever loan or let Mahdi Ali use
20 that red Crown Victoria?

21 A. Yes, I did.

22 Q. And when did he first use it that day?

23 A. That day?

24 Q. Yes, that day.

25 A. He actually had it the night before and he picked

1 me up early that morning.

2 Q. Okay. And then did you ever see Mahdi Ali and
3 your red Crown Victoria later in the day on that
4 same day?

5 A. You mean in the evening?

6 Q. In the evening.

7 A. Yes, I did.

8 Q. And did he again pick you up in the evening?

9 A. Yes, he did.

10 Q. And where did he pick you up from?

11 A. The Riverside Hospital.

12 Q. Okay. Do you know what time it was that he
13 picked you up approximately?

14 A. It was awhile ago, but I would say around
15 sometime close to 8 or 7:50.

16 Q. Okay.

17 A. Yeah.

18 Q. And when he picked you up -- now, you had let him
19 use the car for the day, maybe the previous day;
20 is that right?

21 A. Yes.

22 Q. When he picked you up, where did you go?

23 A. I went to the Wells Fargo to get some money out
24 and then we went to Brooklyn Park, we actually
25 picked up another individual and then went to

1 Brooklyn Park.

2 Q. Okay. And the other individual that you picked
3 up, who was that?

4 A. A friend of ours.

5 Q. Do you remember his name first name?

6 A. Ahmed.

7 Q. Ahmed?

8 A. Yeah.

9 Q. Not Ahmed Shire Ali, you didn't pick him up?

10 A. Huh-uh.

11 THE COURT: That's a no?

12 THE WITNESS: I'm sorry, no.

13 BY MR. GOETZ:

14 Q. There is a court reporter to your right who's
15 taking everything, but there is no button for
16 huh-uh or uh-huh, you have to give verbal
17 responses, okay?

18 A. Okay.

19 Q. You picked up Ahmed, who was driving at this
20 point?

21 A. Mahdi was.

22 Q. After you picked up Ahmed, where did you go?

23 A. To Brooklyn Park or Brooklyn Center.

24 Q. And where did you go -- why did you go to
25 Brooklyn Center?

- 1 A. The other buddy wanted to grab some marijuana.
- 2 Q. And did you do that?
- 3 A. Yes, we did.
- 4 Q. Did you stop at any convenience store or gas
5 station while you were in Brooklyn Center, do you
6 remember?
- 7 A. The SA.
- 8 Q. And did you make a purchase there?
- 9 A. Yeah.
- 10 Q. And then what did you do after you were in
11 Brooklyn Center?
- 12 A. We just kicked it, the other individual, he went
13 about his business and then we just came back.
- 14 Q. When you came back, came back to the city, to
15 Minneapolis?
- 16 A. Yeah, to Minneapolis.
- 17 Q. And what happened with Mahdi and the car then
18 when you came back to Minneapolis?
- 19 A. Oh, I dropped him off.
- 20 Q. And where did you drop him off, do you remember?
- 21 A. At a building, Seward Towers, I think, yeah.
- 22 Q. Okay. Did you know that to be the place where he
23 was living at the time?
- 24 A. Yeah.
- 25 Q. So, how long total were you with Mahdi Ali from

1 the time he picked you up to the time he dropped
2 you off?

3 A. At the most an hour and a half.

4 Q. During that period of time, how was Mahdi Ali
5 acting or behaving in general?

6 A. As normal. It was nothing funny.

7 Q. During that period of time when you were with
8 him, did you ever know him to, or have a sense
9 that he was throwing any large item away,
10 clothing, anything like that?

11 A. Not at all.

12 Q. Do you see whether or not he had a gun?

13 A. He did not have a gun.

14 Q. Did you ever know him to throw away a gun or get
15 rid of anything?

16 A. No. He did not throw away anything while I was
17 with him.

18 Q. And you're here today because you've been
19 subpoenaed to court to testify; is that right?

20 A. Yes, that's correct.

21 MR. GOETZ: Thank you, sir, I have no
22 further questions.

23 THE COURT: Mr. Weber.

24 MR. WEBER: Thank you, Your Honor.

25

CROSS-EXAMINATION

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BY MR. WEBER:

Q. Mr. Farah, Mahdi Ali asked you to borrow your car because his window didn't work; is that correct?

A. And he would put some gas in my car.

Q. He would put some gas in your car for you and he said, I need to use your car, my window doesn't work, does that sound right?

A. I don't know.

Q. Do you remember giving a statement to police, Sgts. Kjos and Porras?

A. That was the day before though.

Q. And you told them that "his car window don't work, you know what I mean? He a cool cat so I did him a favor." Does that sound right?

A. Yes, sir.

Q. Now, on January 6th, Mahdi Ali took you to work; is that right?

A. I don't know what the exact date was, but if it was that day, yeah, because it was a long time ago.

Q. The day you lent him your red Crown Victoria?

A. Yeah.

Q. And he had it overnight, right?

A. Yep.

1 Q. And then he picked you up and took you to work
2 and dropped you off, right?

3 A. Exactly.

4 Q. And you started work that day around 3 o'clock,
5 roughly, does that sound about right?

6 A. No, at 4 o'clock, sir.

7 Q. Do you remember telling the police that you
8 started work, that he dropped you off around
9 2:50, 2:55, 3:15, something like that?

10 A. Yes, sir.

11 Q. So that is the time he dropped you off at the
12 Fairview Hospital?

13 A. Correct.

14 Q. Fairview Riverside?

15 A. Correct.

16 Q. And after that, you didn't see him, right?

17 A. To later on that evening.

18 Q. And you got off work that evening, maybe an hour
19 before he picked you up, does that sound about
20 right?

21 A. Huh-uh.

22 THE COURT: It's a no?

23 THE WITNESS: That's a no, sir. I'm
24 sorry.

25

1 BY MR. WEBER:

2 Q. After getting off work, you went and used the
3 computers; is that right?

4 A. Yes.

5 Q. And then he picked you up?

6 A. Yes, sir.

7 Q. And then you drove out to Brooklyn Center?

8 A. No. We picked up the other homeboy and then --

9 Q. You then went out to Brooklyn Center?

10 A. Yeah.

11 Q. I'm going show you a couple of exhibits. Look at
12 the little monitor there, I'm going to put the
13 exhibit up on the screen. I'm going to show you
14 what's been introduced and accepted into evidence
15 as Exhibit 149. Is this a picture of you leaving
16 the Fairview Hospital?

17 A. Sir, I can't tell.

18 Q. Does that look like a coat you had at one time?

19 A. It might have been.

20 Q. I'm going to show you, one moment here, I'm going
21 to show you Exhibit 272. Does that look like you
22 going into the library?

23 A. Yes, sir.

24 Q. And then that -- there is a timestamp on that as
25 7:41 p.m., does that look right?

1 A. Yes, sir.

2 Q. Would you say you were at Brooklyn Center maybe
3 about twenty after nine, something like that that
4 night?

5 A. I really don't remember, sir. It's a long time
6 ago.

7 Q. Let me show you Exhibit 289. Does that look like
8 you?

9 A. It might be, I really can't tell.

10 Q. Does that look like the car?

11 A. Yeah, it does.

12 Q. And at the time you said to counsel that you
13 didn't own the car, did you mean that the car
14 wasn't in your name?

15 A. Yes, sir.

16 Q. But you considered it to be your car?

17 A. Exactly.

18 Q. Did you go to St. Paul at all?

19 A. St. Paul?

20 Q. St. Paul.

21 A. No, sir. You mean St. Paul?

22 Q. That night --

23 A. Yeah.

24 Q. -- when you went to Brooklyn Center --

25 A. Yeah.

- 1 Q. Did you go to the City of St. Paul?
- 2 A. No, sir.
- 3 Q. And when you dropped Mahdi Ali off, you noticed a
4 lot of police cars around, didn't you?
- 5 A. When I dropped him off?
- 6 Q. Yes.
- 7 A. No, sir.
- 8 Q. You didn't notice any police cars?
- 9 A. No.
- 10 Q. And that was around, what time did you tell us?
- 11 A. What are you talking about?
- 12 Q. What time did you drop him off at home, around 11
13 o'clock?
- 14 A. No, before that.
- 15 Q. Do you remember telling police officers the time
16 kind of flew by that night?
- 17 A. It was awhile ago, I might have.
- 18 Q. You had a chance to review your statement today,
19 didn't you, before you got up on the stand? Did
20 you read the statement that you gave to police
21 officers Kjos and Porras today?
- 22 A. No, sir.
- 23 Q. You didn't read it?
- 24 A. No, sir.
- 25 Q. Do you recall that Officer Kjos asked you, do you

1 know what time you dropped Mahdi off at?

2 MR. GOETZ: What page, Counsel?

3 MR. WEBER: Page 8.

4 BY MR. WEBER:

5 Q. And you said, "Uhm, after we smoked, you know
6 what I mean, time flies."

7 A. I probably said that.

8 Q. Do you think that's accurate? After you smoked,
9 time flies?

10 A. Yeah.

11 Q. So you're not really sure what time you might
12 have dropped him off, is that fair?

13 A. I don't know. It's been almost two years, sir.

14 Q. Sure.

15 MR. WEBER: May I have a moment, Your
16 Honor?

17 (State's counsel confer.)

18 MR. WEBER: No further questions.

19 THE COURT: Mr. Goetz.

20 MR. GOETZ: No further questions.

21 THE COURT: Okay, sir. You may step
22 down.

23 (Witness leaves the stand.)

24 MR. GOETZ: Defense would call James
25 Bratt.

1 JAMES BRATT,
2 called as a witness on behalf of the Defense, having
3 been first duly sworn, was examined and testified as
4 follows:

5 THE COURT: Have a seat in the witness
6 chair.

7 Before you begin, if you can give us
8 your full name, spelling each of your names.

9 THE WITNESS: Okay. James Gerald Bratt;
10 J-a-m-e-s, G-e-r-a-l-d, B-r-a-t-t.

11 THE COURT: Mr. Bratt, keep your voice
12 up and answer yes or no as opposed to head nods
13 and murmuring, that would be appreciated.

14 Mr. Goetz.

15 **DIRECT EXAMINATION**

16 BY MR. GOETZ:

17 Q. Good afternoon, sir.

18 A. Hi.

19 Q. We met just briefly a few moments ago, Mr. Bratt,
20 again, I'm Fredrick Goetz, I represent Mahdi Ali.
21 And we've talked previously, you know you're here
22 to answer some questions about events that
23 happened on the night of what's called the Seward
24 Market shootings?

25 A. Yes.

1 Q. First of all, let's get a little background. How
2 old are you, sir?

3 A. Forty-two.

4 Q. And what do you do for a living?

5 A. I'm a cabinet maker.

6 Q. Who do you work for?

7 A. Steven Cabinets.

8 Q. And you're here today testifying pursuant to
9 subpoena; is that right?

10 A. Yes.

11 Q. And what is your address right now?

12 A. 2015 25th Avenue South, Minneapolis 55406.

13 Q. And where is that in relation to the Seward
14 Market and Halal Meats?

15 A. Across the street and approximately one lot away.

16 Q. Okay. I'm showing you what's been received in
17 evidence as Exhibit 405. And do you see a white
18 pointer on your desk there?

19 A. Like this remote?

20 Q. Yeah. If it has a red button on it, it has a
21 laser pointer and use that to point to the jury
22 where you live.

23 A. Right about there (pointing).

24 Q. And where is the Seward Market in relation to
25 your house?

1 A. Right there (pointing).

2 Q. Okay. Were you home on January 6th of 2010
3 between the hours of 7:30 and 8 o'clock p.m.?

4 A. Yes.

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

6 THE COURT: You may.

7 BY MR. GOETZ:

8 Q. I'm showing you what's been marked for
9 identification as Exhibit 406. Do you recognize
10 this?

11 A. Yes, that's my street.

12 Q. That's a photograph of your street; is that
13 right?

14 A. Yes.

15 Q. Fair and accurate depiction of how it generally
16 appears?

17 A. Yep.

18 Q. Exhibit 407, do you recognize that?

19 A. Yep, that's my house.

20 Q. Photograph of your house?

21 A. Yes.

22 Q. And is that a fair and accurate depiction of how
23 that generally appears?

24 A. Yes.

25 Q. And 408, do you recognize that?

1 A. Yes, that's my house.

2 Q. Again, a fair and accurate depiction of how that
3 generally appears?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 Q. Sorry, there's no -- have to use verbal
8 responses.

9 MR. GOETZ: I offer 406 to 408.

10 MR. WEBER: No objection.

11 THE COURT: 406 to 408 are received.

12 MR. GOETZ: Permission to publish, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. GOETZ:

16 Q. So looking at Exhibit 406. Can you tell us what
17 we're looking at here?

18 A. That's the Seward Market.

19 Q. So if somebody is standing -- is that 25th Avenue
20 that we see?

21 A. It's taken standing in the middle of 25th Avenue.

22 Q. Looking to which direction?

23 A. Looking north.

24 Q. Okay. And can you use the laser pointer and just
25 point out where the Seward Market is?

1 A. That's the main entrance right there (pointing).

2 Q. And can we see your house on this photograph?

3 A. No. You're standing in front of it.

4 Q. Where would your house be?

5 A. Off to the right.

6 Q. Okay. Exhibit 407. Can we see your house in
7 this photograph?

8 A. Yeah, that's my house there (pointing).

9 Q. And the building to the left of your house as
10 we're looking at the photograph, what is that?

11 A. That's Bethany Lutheran Church.

12 Q. And, for our record, everybody can see it, but
13 there is an alley between the two structures; is
14 that right?

15 A. Yes.

16 Q. And that alley runs east/west; is that right?

17 A. Correct.

18 Q. And if you keep going on the alley you get to
19 26th Avenue; is that right?

20 A. As this photograph is looking, yeah.

21 Q. Okay. And then 408, generally what do we see in
22 that photograph?

23 A. My house and the house next door.

24 Q. Okay. Can we see a little bit of the church,
25 too?

1 A. Yeah, right there.

2 Q. Okay. And from your familiarity with the church,
3 what are we looking at, that little portion of
4 the church?

5 A. It's a side entrance and a handicap ramp.

6 Q. Okay. So at some point on January 6th of 2010
7 between 7:30 and 8 p.m., roughly, did you see
8 anything unusual outside your windows?

9 A. Well, I saw a person standing on the -- at the
10 top of that ramp.

11 Q. Could you just point out to the jury where you
12 saw that person standing?

13 A. He was standing right about there (pointing).

14 Q. And that's Exhibit 407 --

15 A. Yes.

16 Q. -- just for our record?

17 A. Yes.

18 Q. And when you said right about there, that's that
19 side entrance you talked before on Exhibit 408?

20 A. Correct.

21 Q. Where were you when you made that observation?

22 A. I was in my kitchen.

23 Q. And where would your kitchen be?

24 A. Nearly directly across from that.

25 Q. Could you just sort of point out roughly where on

1 your house that would be?

2 A. Right down that side of the house (pointing).

3 Q. So using your pointer, your vantage point would
4 have been approximately what?

5 A. Nearly straight across (pointing).

6 Q. Can you describe the person that you saw standing
7 by the side entrance to the church?

8 A. I don't remember that much about him, but he was
9 dark-skinned, young, thin.

10 Q. Anything more about what he was wearing?

11 A. Not really. I didn't pay that much attention to
12 him.

13 Q. Do you have a sense of how long that that person
14 was standing there?

15 A. Not very long.

16 Q. Could you put that into terms of seconds or
17 minutes?

18 A. Five minutes at the most.

19 Q. Okay. And what were you doing at the time?

20 A. Well, I was doing dishes around, I noticed him
21 outside the window and I was curious as to what
22 he was doing and dismissed it as him just going
23 to a function at the church.

24 Q. Okay. You're doing dishes at your sink?

25 A. Yes.

1 Q. And where is your sink in relation to the kitchen
2 window?

3 A. Directly in front of the kitchen window.

4 Q. So as you're standing at your sink, is the window
5 behind it?

6 A. Yes.

7 Q. And at some point that person leaves; is that
8 right?

9 A. I looked up and he was no longer there. I didn't
10 see him leave.

11 Q. Okay. At any time after that, did you have any
12 sense that there were police in the area of your
13 house?

14 A. Well, maybe about ten minutes later I saw the
15 lights and went out to see what was going on.

16 Q. And did you see a lot of police cars by the
17 Seward Market?

18 A. Yes.

19 MR. GOETZ: Okay. That's all the
20 questions I have. Thank you.

21 THE COURT: Mr. Weber.

22 **CROSS-EXAMINATION**

23 BY MR. WEBER:

24 Q. Did you see this individual arrive at the church?

25 A. No.

1 Q. You just looked out the window and saw somebody
2 standing there?

3 A. He was there, yes.

4 Q. And doing anything significant it sounds like?

5 A. Correct.

6 Q. And you looked down and looked up and he was
7 gone?

8 A. More time transpired than that, but, essentially,
9 I was doing other things and he was there maximum
10 of five minutes.

11 Q. And you remembered roughly the time he was there
12 by the time that the -- you saw police lights, is
13 that what you testified?

14 A. I associated with it because it about ten minutes
15 after I saw him I saw the police lights and
16 wondered if it was related.

17 Q. Police came and knocked on your door and asked if
18 you saw anything?

19 A. Right.

20 Q. And you told them just what you testified to,
21 right?

22 A. Yes.

23 Q. And they asked if you could identify anybody?

24 A. Correct.

25 Q. And you said what?

1 A. No. I didn't look at him closely enough to tell.

2 MR. WEBER: Thanks. No further
3 questions.

4 THE COURT: Mr. Goetz.

5 MR. GOETZ: I have no more questions.

6 THE COURT: Mr. Bratt, you may step
7 down.

8 (Witness leaves the stand.)

9 MR. GOETZ: Defense would call Abshir
10 Asse, Your Honor.

11 THE COURT: Mr. Asee, if you could step
12 up.

13 ABSHIR ASSE,

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

17 THE COURT: Have a seat. Before you
18 begin give us your full name, spelling each of
19 your names.

20 THE WITNESS: Abshir Asse; A-b-s-h-i-r,
21 last name, A-s-s-e.

22 THE COURT: Pull up towards that
23 microphone and keep your voice up and answer
24 verbally yes or no instead of mummering or head
25 nods because we need to take everything down.

1 Okay.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Goetz.

4 MR. GOETZ: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. GOETZ:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. How old are you?

10 A. Twenty.

11 Q. And just generally, what city do you live in?

12 A. Minneapolis.

13 Q. Okay. Do you know Mahdi Ali?

14 A. Sort of, not really.

15 Q. Not very well?

16 A. Not very well, no.

17 Q. Do you know Ahmed Shire Ali?

18 A. Just went to school with him, that's all.

19 Q. Okay. If you can please make sure to keep your
20 voice up because for those of us in the back of
21 the courtroom.

22 A. I just went school with him, that's it.

23 Q. And there is that microphone if you just want to
24 pull it close to you.

25 A. Just hold it?

1 Q. That's okay just --

2 THE COURT: Counsel approach.

3 (Discussion at the bench.)

4 MR. GOETZ: Might I have a moment then,
5 Your Honor?

6 MR. GOETZ:

7 BY MR. GOETZ:

8 Q. Sorry, Mr. Asse, for the interruption. I was
9 asking you about Ahmed Shire Ali. You said you
10 knew him from school; is that right?

11 A. Yes.

12 Q. What school was that?

13 A. Volunteers of America High School.

14 Q. And that's in Minneapolis?

15 A. Yes.

16 Q. Is that also known as the VOA?

17 A. Yes.

18 Q. When did you go to the VOA school?

19 A. I went in 2010, early 2010.

20 Q. Okay. Do you also know a person by the name of
21 Abdisalan Ali?

22 A. Yes. He was there too at the school.

23 Q. Do you know whether or not Abdisalan Ali and
24 Ahmed Shire Ali are related in any way?

25 A. I was told they were cousins by him.

1 Q. Now, you know you're here to testify -- well,
2 this case is about the shootings at the Seward
3 Market?

4 A. Yes.

5 Q. You're aware generally of that incident?

6 A. Yes.

7 Q. At any time after the incident occurred, did you
8 speak with Abdisalan Ali about events that
9 happened at the Seward Market?

10 A. The next day, yes.

11 Q. Where did you talk with him about those
12 happenings?

13 A. At the school in the bathroom.

14 Q. How did the subject come up?

15 A. Just told me that he wanted to get something off
16 his chest and needed to speak to me because
17 something was bothering him and just talked in
18 the most private place possible in the school,
19 and that was the bathroom at the time.

20 Q. And what did Abdisalan tell you that he wanted to
21 get off his chest?

22 A. It was about what happened the previous day at
23 the Seward Market. He told me that he was there
24 and he witnessed what happened. That's what he
25 was trying to get off his chest to me.

1 Q. Did he tell you who he was there with?

2 A. He told me he was with his cousin Ahmed Shire and
3 Mahdi.

4 Q. Did he tell you how many people went into the
5 Seward Market?

6 A. I don't really remember, but he told me he was in
7 there.

8 Q. He told you he was one of the people in the
9 Seward Market?

10 A. Yeah.

11 Q. What did he tell you happened at the Seward
12 Market?

13 A. He told me that they went in the store, and I'm
14 not exactly sure what he said. He said someone
15 put -- he said he didn't, but someone put a gun
16 to one of the people's heads and said, give me
17 the money. And then the -- that person said, I
18 know who you are. I know your mom. I'm going
19 tell your mom right now. And he shot him. And
20 someone was holding Abdisalan in like a bear hug
21 while that was going on and was not letting go of
22 him so that person shot the guy in the back. And
23 then they saw someone at the door either trying
24 to get in or out, I'm not sure, and they shot
25 that person. And he told me he had to walk over

1 the person to get out of the store. Abdisalan
2 told me he had to do that.

3 Q. And this was all things that Abdisalan told you
4 he saw himself, he witnessed firsthand?

5 A. Yes.

6 Q. Did he also -- do you remember him telling you
7 that -- well, do you remember him telling you
8 whether or not his cousin Ahmed was inside the
9 store?

10 A. He didn't tell me if he was in the store. He
11 just told me that he was involved somehow, that
12 he was there with them. He didn't tell me if he
13 was in the store though. I don't remember him
14 saying that to me. It was a long time ago.

15 Q. Okay. Did he tell you whether or not he was
16 concerned or afraid for his cousin Ahmed?

17 A. Yeah, he did say that.

18 Q. And did Abdisalan tell you anything about what he
19 wanted to do to Mahdi Ali?

20 A. Yes. He said he wanted to kill him to protect
21 himself and his cousin Ahmed.

22 Q. And did Abdisalan say anything to you about
23 whether or not you should talk with Ahmed Shire
24 about what happened at that market?

25 A. He told me not to approach him at all.

1 Q. And did you talk with anyone else other than
2 Abdisalan Ali about what happened at the Seward
3 Market?

4 A. No.

5 Q. And later at some point in time, perhaps the
6 following day, did you talk to police officers?

7 A. It was either, I think it was two or three days
8 afterwards.

9 Q. And did you essentially tell the officers the
10 same thing that you told us here today?

11 A. Yes.

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

14 THE COURT: Mr. Weber.

15 **CROSS-EXAMINATION**

16 BY MR. WEBER:

17 Q. When you went in and talked to the police
18 officers, you told them who Abdi told you pulled
19 the trigger, didn't you?

20 A. Uh, it was a long time.

21 Q. You told them Mahdi Ali was the gunman, right?

22 A. I -- probably.

23 Q. Probably, or you told them?

24 A. That's what -- it was a long time ago. It was
25 last year, 2010 at the beginning of the year. I

1 don't remember exactly what I said to them.

2 Q. Do you remember giving a statement to the police?

3 A. Yes, I do. I'm not exactly sure I remember
4 word-for-word what I said to them.

5 Q. Would it help you remember if I showed you a copy
6 of my statement?

7 A. Probably would.

8 MR. WEBER: May I approach?

9 MR. GOETZ: Can I have a page number,
10 Counsel?

11 MR. WEBER: May I have one moment?

12 THE COURT: You may.

13 BY MR. WEBER:

14 Q. Just ask you to read the paragraph after Sgt.
15 Porras asked you, what did he tell you?

16 A. Okay.

17 Q. Just read it to yourself and I'll ask you some
18 questions about this.

19 MR. GOETZ: Page number?

20 MR. WEBER: Page 8.

21 THE WITNESS: Okay.

22 BY MR. WEBER:

23 Q. Now do you remember?

24 A. Yeah.

25 Q. And you remember you told him that it was a

1 Mahdi, right?

2 A. Yes.

3 Q. You told him that he put a gun to one of the
4 elder's head and said, give me the money, and he
5 said, I know who you are. Is that what you told
6 the police?

7 MR. GOETZ: Object to the form of the
8 question, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MR. WEBER:

12 Q. And you told police that Abdi told you that, I
13 know your mom, Mahdi. I know you. I know your
14 name and everything?

15 A. Yes.

16 Q. And I'm going to tell your mom right now?

17 A. Yes.

18 Q. And that Mahdi turned around, put the gun off
19 safety and shot him?

20 A. Yes.

21 Q. Now, Abdi also told you something about being put
22 in a bear hug?

23 A. Yes. By one of the people in there.

24 Q. And while he was in a bear hug, Mahdi shot that
25 person in the back; is that what you told him?

1 A. Yes, that's what he told me.

2 Q. Now, specifically, he told you that there were
3 two people in the store, Abdi and Mahdi?

4 A. He told me there was two people in the store,
5 yep.

6 Q. And they asked you about what Ahmed might have
7 been doing and you gave them some guesses; is
8 that, right?

9 A. I'm sorry?

10 Q. When they asked you what Ahmed was doing, you
11 didn't know what Ahmed might have been doing?

12 A. He didn't tell me exactly what he was doing.

13 Q. So you offered the police officers a guess as to
14 what he might have been doing?

15 A. No. I don't remember. I just told them that
16 Abdi told me that he was involved, but he didn't
17 tell me exactly how he was involved.

18 Q. Okay. Might you have told them that you just
19 concluded for yourself that he was --

20 MR. GOETZ: Objection, 602, Your Honor.

21 THE COURT: Overruled.

22 BY MR. WEBER:

23 Q. You said something to the effect of, I just
24 concluded for myself that he was driving them?

25 A. Yeah.

1 Q. Do you remember saying something like that?

2 A. I don't remember, but probably something like
3 that.

4 MR. WEBER: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. WEBER:

7 Q. Remember saying that?

8 A. Yeah.

9 Q. And what it says is, there was a third person, he
10 didn't tell me exactly who drove away, I didn't
11 want to ask him questions to look suspicious, but
12 I'm thinking it was his cousin?

13 A. Thinking, yeah.

14 Q. You're just making a guess, right?

15 A. Because he told me there was three people. I put
16 two and two together. If there was a third
17 person who was not in the store, what else could
18 he be doing?

19 MR. WEBER: Thank you. May I approach?

20 THE COURT: You may.

21 BY MR. WEBER:

22 Q. I'll show you another question that was asked
23 earlier in the interview.

24 A. Yep.

25 Q. And if I may read it to you. It reads, he said

1 there was two in the store, but I don't know
2 right?

3 A. Yeah.

4 Q. And he didn't tell me about the third guy, right?

5 A. Uh-huh.

6 Q. Is that yes?

7 A. Yes.

8 Q. He said, I don't know, I concluded to myself he
9 was probably driving away for them?

10 A. Yes.

11 Q. Do you remember speaking with officers again on
12 January 11th, a couple of days after you talked
13 to them the first time?

14 A. Yeah, yes.

15 Q. Do you recall that?

16 A. Yes.

17 Q. And do you recall telling them in reference to
18 Abdi that he just told you about himself and
19 Mahdi?

20 A. I don't understand.

21 MR. WEBER: May I approach?

22 THE COURT: You may.

23 BY MR. WEBER:

24 Q. Does that refresh your recollection?

25 A. I remember the first -- I remember the first time

1 talking to investigators better than I do the
2 second time.

3 Q. Do you remember telling them that he just told me
4 how the thing went down in the store. He didn't
5 tell me anything about a third person, though.
6 He just told me about himself and Mahdi. Do you
7 remember telling them not?

8 A. I honestly don't. Again, there is a lot of
9 inaudibles on this paper that they didn't hear it
10 clearly, so they might have got some things wrong
11 on there. I read the statement earlier.

12 Q. You read this earlier?

13 A. Yeah.

14 Q. Do you remember saying that Abdi told you he was
15 standing in the store with his hands in his
16 pockets?

17 A. Yes.

18 Q. Do you remember telling the officer that Abdi
19 told you he pushed the doors with his elbows
20 while his hands were in the pocket?

21 A. In his jacket pocket, yes.

22 Q. And that he said -- Abdi said they went to
23 McDonalds afterwards?

24 A. Yeah, that's what he told me.

25 MR. WEBER: I have no further questions.

1 THE COURT: Mr. Goetz.

2 MR. GOETZ: Just a few follow-up.

3 **REDIRECT EXAMINATION**

4 BY MR. GOETZ:

5 Q. I think it's clear, but just to be clear,
6 everything in terms of the details of what
7 happened that day came from Abdisalan Ali;
8 correct?

9 A. Yes.

10 Q. And Abdisalan Ali, in essence, was saying that,
11 well, Mahdi Ali was the person who did everything
12 bad when the robbery went bad?

13 A. Yes.

14 Q. He was the one who shot the people, he was the
15 one who had the gun?

16 A. Yes.

17 Q. And he just said, I was there, I had my hands in
18 my pocket, right?

19 A. Yes.

20 Q. Did Abdisalan Ali also talk to you, and did you
21 tell the police about him trying to frame
22 somebody for this crime?

23 A. What I remember is him trying to get him and his
24 cousin out of that situation. I might have said
25 that, I don't remember if I did. But I do

1 remember him saying just trying to get himself
2 and his cousin out of that situation.

3 Q. By framing somebody else?

4 A. I don't remember -- I don't remember. I might
5 have said that.

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

7 THE COURT: You may.

8 BY MR. GOETZ:

9 Q. Would it refresh your recollection to take
10 another look at your statement to see what you
11 said on Page 3?

12 A. Yes.

13 Q. Just read that to yourself.

14 A. Okay. Yeah, I didn't understand what you meant
15 when you were over there.

16 Q. Sure. And I guess generally do you remember
17 telling the police something about Abdisalan Ali
18 and Ahmed Ali trying to frame someone else for
19 this crime to get the cousins out of it?

20 A. Yes.

21 MR. GOETZ: No further questions.

22 THE COURT: Mr. Weber.

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RECROSS-EXAMINATION

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BY MR. WEBER:

Q. Now, do you recall the officers asking you, that guy that you're talking about to, what's his name. Was that the question you just read?

A. Yeah.

Q. And the answer was, Abdisalan, right?

A. Yes.

Q. The buddy I was telling you about that they're trying to frame, he went online and reported it?

A. Yes.

Q. He told them he reported Abdisalan and his address; correct?

A. Yes.

Q. Who were you talking about?

A. My friend, Mohamed Farah.

Q. Mohamed Farah went online and reported it?

A. Yes.

Q. And you had told him what happened, right?

A. Yes.

MR. WEBER: Nothing further.

THE COURT: Mr. Goetz.

MR. GOETZ: No more questions.

THE COURT: Okay. You may step down.

(Witness leaves the stand.)

1 THE COURT: Mr. Goetz.

2 MR. GOETZ: Defense rests, Your Honor.

3 THE COURT: Mr. Streit, Mr. Weber.

4 MR. STREITZ: State rests, Your Honor.

5 THE COURT: Members of the jury, the
6 evidence is concluded in this case and so the
7 next step is for final arguments and
8 deliberations. We will have final arguments
9 tomorrow. I have a few legal issues and
10 instruction to discuss with the attorneys, so for
11 you the day is over. We expect to conclude this
12 case by around lunchtime tomorrow and give it to
13 you for deliberations at that time. So for now,
14 please be in our usual places at 9 o'clock
15 tomorrow morning.

16 (Jurors leave the courtroom.)

17 THE COURT: All right. Be seated.
18 Counsel meet me in chambers to discuss jury
19 instructions.

20 But I just want to be clear for closings
21 tomorrow, given the limited space, and so
22 everyone is aware that essentially you're going
23 to have a ticket to get in. We are providing
24 numbers for people because we will not allow
25 people if they attended tomorrow to leave during

1 any closing argument. In other words, you must
2 remain throughout the argument. You cannot leave
3 in the middle of an attorney's argument, it's too
4 disruptive.

5 Accordingly, if you leave during an
6 argument for some reason, you may not return. To
7 get into the courtroom tomorrow you must have an
8 original of a letter with a number on it and we
9 are giving out number 1 through 34 to begin,
10 which is all the seats we have. One through 6
11 will be provided to media representatives. The
12 next four will be given to the defense counsel to
13 distribute to defendant's family. The next 12
14 will be given to the State to distribute to the
15 three families of the victims. Beyond that, it's
16 first come, first served for a ticket. Line up
17 by the window, there will be a marker. If you do
18 not have one of those slips of paper, you will
19 not be allowed to enter.

20 Counsel we'll see you in chambers.

21 (Hearing adjourned until the following
22 day, September 22, 2011.)
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