

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

ORIGINAL

THIRD JUDICIAL DISTRICT

3 -----
4 State of Minnesota)

5 Plaintiff,)

6 v.)

7 Mahdi Hassan Ali)

8 Defendant.)

JURY TRIAL

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

App. Court No. A12-0173

Volume XIII of XIV

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10 The above-entitled matter came duly on for trial
11 before the Honorable Peter A. Cahill, one of the judges
12 of the above-named court, on September 22, 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: All right. Record should
3 reflect we are outside the hearing of the jury,
4 and to make a record on several things. First
5 being the requested instructions. It is State's
6 proposal that the language, quote, or another
7 person aided and abetted by the defendant, end
8 quote, be inserted into various parts of the
9 elements of the six counts, and the defense
10 objected to that, and I have granted the the
11 State's request and put that language into the
12 various elements.

13 Defense requested in jig 4.01 liability
14 for crimes of another that instead of "the
15 defendant" it be changed to "a defendant" which I
16 granted that request except that there are
17 certain instances where I've changed "the" to
18 "that" because it would have been awkward
19 otherwise in grammatical construction.

20 On the Court's own motion I struck the
21 first sentence of the last paragraph of 4.01,
22 which reads as follows: The defendant is guilty
23 of a crime, however, only if the other person
24 commits a crime. The Court's opinion when the
25 person on trial is the principal, that is both

1 confusing, misleading and a misstatement of law.
2 Defense requested lesser included offenses be
3 submitted to the jury, that being murder in the
4 second-degree intent to kill as lesser included
5 to Counts 1, 2 and 3. State objected, Court is
6 granting the defense motion. Murder in the
7 second-degree intentional killing will be
8 submitted as lessers to Counts 1, 2 and 3.

9 Defense moved the Court to instruct the
10 jury on lesser included murder in the second
11 degree unintentional killing in the course of a
12 felony, aggravated robbery or attempted
13 aggravated robbery for Counts 4, 5 and 6. State
14 objected, provided the Court with case law, Court
15 is granting that motion. The jury will be
16 instructed on murder in the second-degree. I
17 would note several of the cases provided by the
18 State are distinguishable, specifically State
19 versus Dimmick, D-i-m-m-i-c-k, 586 N.W. 2d 127.
20 That case involved 35 stab wounds to the victim.

21 State versus Prtine, P-r-t-i-n-e, 784
22 N.W. 2d 303, the victim in that case suffered 63
23 stab wounds, and the other cases provided by the
24 State predated the Dahlin case. Dahlin being
25 State versus Dahlin, D-a-h-l-i-n, 695 N.W.2d 588,

1 Minnesota Supreme Court 2005. I would note the
2 language in State versus Hannon, which is 703
3 N.W.2d 498, which the Court reiterates the Dahlin
4 standard in deciding to give lesser included
5 offenses there must be a rational basis to acquit
6 of the greater and convict of the lesser. But in
7 making that decision the Court is not to weigh
8 credibility or come to its own decision of one
9 charge -- one conviction or another, rather must
10 view the evidence in the light most favorable to
11 the party moving for the lesser included
12 instruction. Accordingly, I have to view the
13 evidence in the light most favorable to the
14 defense. And I would note the following language
15 out of Hannon as, appears to be Page 512. Quote,
16 accordingly, there may be cases in which the
17 evidence that a defendant intentionally killed
18 his victim by assault is very strong. But
19 contrary evidence indicate the killing was the
20 unintentional result of an assault. Such cases
21 mandate the lesser included offense instruction.

22 Also at 513 of the same case, Court says
23 as follows: Quote, we have stated that a
24 warranted lesser included offense instruction
25 cannot be denied on the grounds that it is

1 inconsistent with the defendant's theory of the
2 case, end quote.

3 While the defense in this case has been
4 misidentification, that does not prohibit the
5 Court from giving the lesser included instruction
6 as warranted by law. And as far as the evidence
7 that could be used, the wounds in this case, some
8 are clearly fatal wounds but there are a variety
9 of wounds that are appear almost random. And the
10 fact that this entire killing of three people
11 occurred in a minute, the jury could infer a lack
12 of intent to kill. Court is not making any
13 evaluation of the evidence as how strong the
14 evidence of intent to kill is, simply that I'm
15 following the case law that that should be
16 submitted.

17 Anything further regarding instructions
18 from the State?

19 MR. STREITZ: No, Your Honor.

20 THE COURT: Mr. Goetz.

21 MR. GOETZ: No, Your Honor.

22 THE COURT: All right. Both sides ready
23 for closings?

24 MR. STREITZ: Yes, Your Honor.

25 MR. GOETZ: Yes, Your Honor.

1 THE COURT: We'll have a short moment
2 while we seat the remaining people who are
3 available. It is now 9:10, the courtroom is full
4 and I would advise all spectators and I would ask
5 Mr. Elmi to interpret. The closing arguments for
6 both sides are about to begin. If you wish to
7 listen to the closing arguments, you may do so.

8 Let's seat the remaining people so they
9 can hear this.

10 (Remaining people seated in gallery.)

11 THE COURT: The courtroom is now full.
12 You are welcome to stay for the closing argument
13 of the attorneys. However, there will be no
14 entry or exit while an attorney is arguing, to do
15 would disrupt the proceedings. The door will
16 remain unlocked, but if you leave during an
17 attorney's argument, you will not be allowed to
18 enter the courtroom for the remainder of the
19 trial and you'll be ordered to leave the 7th
20 floor for the remainder of the trial. There will
21 be a 20-minute break after the first argument,
22 you may leave during that time and you will be
23 able to return to the seat you are occupying for
24 the next argument. If you are not here when the
25 clerk seats you for the next session, you will

1 changed. They were changed because the defendant
2 and his accomplice were carrying out a mission to
3 rob the people in the Seward Market, a mission
4 that resulted in three people murdered and other
5 people's lives changed forever.

6 Anwar Mohammed. He seemed so happy when
7 he walked into the market. Smile on his face.
8 Why not? He had just been married. He was
9 waiting for his wife to come home, but that day
10 never happened.

11 Osman Elmi. He worked at the market.
12 He had recently had, just prior to the events
13 that happened in the market, had been on the
14 phone and he was talking about marriage plans
15 that he had. The marriage never happened.

16 Mohamed Warfa, a relative and a friend
17 of Mr. Elmi's was visiting, which he often did.
18 He was married and is a father of four. His
19 family is fatherless.

20 What happened in the market that evening
21 didn't take all that long, but what happened in
22 that market was premeditated and it was
23 intentional. When the defendant, his role as the
24 gunman, introduced a gun into that market, aimed
25 it, pulled the trigger numerous times at short

1 range and shot those victims multiple times in
2 vital areas of the body leaving them dead, while
3 his accomplice kept the people in the back of the
4 store at bay.

5 7:40 p.m., January 6, 2010. Mohamed
6 Warfa killed just outside the market. Lying next
7 to him Anwar Mohammed, dead. Anwar Mohammed
8 lying dead nearby him and Osman Elmi a little
9 further in the store shot and killed by the
10 defendant in cold blood.

11 As I told you, the State has proven
12 these are premeditated murders and they were
13 intentional.

14 (Video playing.)

15 Chilling scenes that you have watched in
16 this courtroom.

17 You learned that the co-defendant, Ahmed
18 Ali and Mahdi Ali, not related but codefendants
19 were together the hours before the murders.
20 Together in places that proved important in the
21 investigation because it led the investigators to
22 surveillance video that proved crucial in this
23 case.

24 You learned that Abdisalan Ali, a cousin
25 of Ahmed Ali were at school. When school got out

1 that Wednesday at about 2:12 in the afternoon
2 they were picked up by the defendant in a
3 Crown -- a red Crown Victoria. They were picked
4 up at the VOA school. They went to a store
5 briefly to get cigarettes or something. The
6 defendant brought them back to school where they
7 waited while the defendant went and picked up the
8 owner of the car and took him to work at Fairview
9 Hospital.

10 They went to a Coat Factory, an outlet
11 store, and the importance of that, of course, is
12 because as Ahmed Ali told you, he got busted
13 trying to steal a coat, but his cousin Abdisalan
14 didn't. He was successful in stealing a Sean
15 John coat that didn't have a hood, it had a fur
16 collar. Abdisalan's coat then was available to
17 the defendant, which the defendant would later
18 wear, and you will see in the the surveillance
19 videos of other places.

20 The three then went together to the
21 impound lot because the defendant wanted to get
22 his car out of impound. He had an arrangement
23 where the co-defendant was going to help him get
24 it out supposedly so that the co-defendant, Ahmed
25 Ali, could use the car.

1 The three of them arrived at about 4:30
2 in the afternoon, walked in together and
3 attempted to get the car out. But they didn't
4 have enough money, and it's that lack of money
5 that would prove to be the motive for the crimes
6 that would occur shortly thereafter.

7 After unsuccessfully getting that car
8 out of the impound lot the three drove to a
9 SuperAmerica store on Lyndale. There the
10 co-defendant, Ahmed Ali, got out of the car, went
11 in, paid for some gas, as the red Crown Victoria
12 sat by the pumps.

13 The three then went to the area of
14 Franklin and Nicollet where Ahmed Ali, the
15 co-defendant, and Mahdi Ali got out of the car
16 leaving Abdisalan in the car. The two
17 codefendants then went into the Dahabshiil money
18 transfer. The plan, they were going to rob that
19 place. They were going to get some money, get
20 that car out. But for some reason, whether they
21 had cold feet or there were too many people
22 there, they got nervous, they didn't carry that
23 robbery out. They returned to the car.

24 But the two co-defendants walked into
25 that building and were caught on surveillance

1 cameras. After they left that Dahabshil money
2 transfer business, the two co-defendants drove
3 Abdisalan home and dropped him off somewhere
4 between 6:30 and 7. All three of them agreed to
5 that, that that's what happened. He was dropped
6 off at his house at 2912 Clinton Avenue South.

7 Shortly thereafter, the defendant and
8 the co-defendant agreed on a plan, a mission to
9 go rob the Seward Market. And they drove and
10 parked the car on 25th Avenue towards the south
11 end of the block that the Seward Market was on.
12 The car was a red Crown Victoria. The car had
13 something unique in terms of its lights in the
14 back of the car. The left rear backup light
15 worked, but the right side backup light did not,
16 which was noted by the police. And when they
17 tested the car in the forensic garage, they also
18 noted that the backup light on the left rear
19 light system worked, but it didn't work on the
20 right side.

21 After the murders, Ahmed Ali was dropped
22 off by the defendant at approximately 8, a little
23 after, at his house at 3811 Minnehaha. The
24 defendant then went to Fairview Hospital where
25 his friend, the owner of the car, Amir Farah, was

1 waiting for him, he had gotten off work, waited
2 in the computer room at Fairview until his
3 friend, the defendant, would pick him up in the
4 Crown Victoria, and you have surveillance video
5 showing that he was in the lobby waiting for him
6 at 8:41. The defendant and Amir Farah picked up
7 another friend of theirs and went to the
8 SuperAmerica store in Brooklyn Center where one
9 of them scored some marijuana and they smoked for
10 awhile, but not the defendant, and eventually the
11 defendant was taken back to his house sometime
12 shortly after 11 o'clock, his house being a short
13 distance, almost kitty-corner from the Seward
14 Market where he had been hours earlier.

15 The police that night were called to the
16 Seward Market because of two individuals who
17 called 911, having witnessed in part some of the
18 tragedy that had just happened.

19 (Audio played.)

20 MR. STREITZ: Another person's life
21 changed forever.

22 (Audio played.)

23 MR. STREITZ: Peter Fleck. His life
24 changed forever. The police responded to that
25 call, Officer Brugger and his partner were the

1 first ones to arrive, and what they arrived to
2 were two dead bodies, Mr. Warfa's in the doorway,
3 Anwar Mohammed in front of the counter. By this
4 time, minutes after the shootings, blood had
5 pooled. Further into the store they noticed that
6 Osman Elmi was also laying dead with his phone
7 inches from his hand. They went back towards the
8 coolers because they heard people, and back in
9 the coolers they found Youb Ala and they found
10 Jamiila Ahmed, the two people that the
11 co-defendant has been keeping at bay while this
12 defendant was in the front attempting to rob the
13 workers in the store and ultimately shooting and
14 killing them.

15 Police began canvassing the area to see
16 if anybody had witnessed anything. They had K-9
17 units attempting to track possible suspects, and
18 the bureau -- the crime lab people who came out
19 to process the crime scene started looking for
20 evidence. Amongst the evidence that they found
21 were numerous discharged cartridge casings at
22 varies locations in the store, one nearby Anwar
23 Mohammed's head in a pool of blood.

24 They also noticed that there was a large
25 amount of money in the cash register, and a bag

1 underneath the cash register with a large amount
2 of money, which didn't appear to be taken. It
3 was a robbery gone bad; nothing was taken.

4 The investigation. Within days the
5 police received information as to possible
6 suspects. One of the names that came up was
7 Abdisalan Ali, police brought him in, started
8 questioning him, he cooperated and started
9 telling them where he had been in the hours
10 before this happened and who he was with. He was
11 with Ahmed Ali the co-defendant, he was with
12 Mahdi Ali, this defendant. The police did what
13 detectives should do, they did detective work.
14 They went to these places that Abdisalan said
15 they had been, obtained surveillance video and
16 started comparing that to the market video and
17 they could see this isn't making any sense. We
18 can see what Abdisalan looks like, we met with
19 him, he's here, his physical size, the clothing
20 he was wearing doesn't fit either of the
21 individuals who they saw in the Seward
22 surveillance footage.

23 They also, within hours of the murders,
24 received some information from an individual
25 named Mohamud Galony, an individual who

1 testified. He said, you know, a couple weeks
2 earlier the defendant mentioned to me he was kind
3 of casing the Seward Market and he was thinking
4 of robbing it, take this information for what
5 it's worth, and he directed them in a way that
6 they could find the defendant.

7 As I mentioned, they started pulling
8 together the surveillance footage from not only
9 the market but the Dahabshiil wire transfer
10 business, the SuperAmerica, as well as the
11 Minneapolis Impound Lot.

12 The impound lot they noticed, just like
13 Abdisalan had said, that the three of them had
14 gone in an effort to get the defendant's car out
15 of impound, they noticed what they were wearing,
16 and what their comparative sizes, height and so
17 forth. They also looked at the SuperAmerica
18 video and they were able to confirm that, yes, in
19 fact that red Crown Victoria was used and that
20 the co-defendant, Ahmed Ali, was in fact on that
21 video.

22 People at the Dahabshiil business
23 notified the police. They said, you know, we saw
24 some two individuals come in late afternoon,
25 early evening of January 6th and they were acting

1 a little strange. I don't know if this has
2 anything to do with what happened but here's some
3 surveillance video. That video also proved to be
4 valuable in the investigation in terms of what
5 the people were wearing and their clothing. The
6 police noted the different clothing that these
7 three individuals were wearing and were able to
8 compare to what they saw the individuals in the
9 market at the time of the murders were wearing.
10 They noted the physical appearance and they
11 learned that Abdisalan's coat was being worn by
12 the defendant after Abdisalan had shoplifted a
13 Sean John coat and was wearing that as we noted
14 in the impound surveillance.

15 The police received authorization from a
16 judge to search the defendant's home on January
17 8th. They took numerous items of evidence, and
18 as they told you, Sgt. Folkens, seasoned homicide
19 investigator, they don't always find everything.
20 There are certain things that people get rid of,
21 such as guns, ammunition, clothing.

22 But sometimes, oftentimes, people who do
23 criminal acts, they get overconfident, they get a
24 little sloppy, and, fortunately, that's what the
25 defendant did. Because he forgot to get rid of a

1 pair of stonewashed jeans, cuffed, which testing
2 at the BCA revealed had Mr. Warfa's DNA on it in
3 two locations. One of the spots was blood and it
4 tested, DNA revealed that it was Mr. Warfa and
5 Mr. Warfa's only. Another spot on those jeans on
6 the cuff was a mixture that the BCA was able to
7 determine that the predominant profile in that
8 mixture was also Mr. Warfa's.

9 As I mentioned, the police began looking
10 and comparing things on the surveillance videos.
11 And as you'll note here at the impound lot, the
12 defendant appears to be wearing a glove on his
13 right hand, which of course he'll later deny
14 wearing gloves. His hat that had the strings
15 hanging down which you later -- which will later
16 be seen in the market video swinging around as
17 he's aiming the gun and directing the victims.
18 He had a white shirt on. He had different
19 colored shoes than both Abdisalan and Ahmed,
20 brown or reddish looking shoes. He had
21 stonewashed jeans cuffed.

22 They looked at the surveillance video
23 from Dahabshiil. Again, they noted the shoes,
24 they noted the cuffed pants. They noticed the
25 cap, a little piece of white showing, which I

1 submit to you is his shirt, and the grey puffy
2 coat that Abdisalan said he had left in the car
3 and the defendant put on when he went into
4 Dahabshiil because, again, Abdisalan had stolen a
5 brand new coat which he was wearing.

6 They made those comparisons to the
7 market video. Again, same coat as the individual
8 in the Dahabshiil was wearing, cuffed pants,
9 similar looking shoes, similar looking jeans.

10 As the defendant extends his hand out
11 with the gun, white is seen. You remember the
12 defendant has been wearing a white shirt again.
13 Again, puffy coat with the hood, the cuffed jeans
14 and the shoes. Again, the shirt sleeve sticking
15 out as he extended his arm pointing the gun at
16 them. Note the tassel, string tassel flipping
17 around as he's directing the victims. They noted
18 Abdisalan what he was wearing. He's not wearing
19 brown shoes, he's wearing white shoes. He's not
20 wearing a white shirt, he's wearing a plaid
21 shirt. His coat doesn't have a hood, he's
22 wearing a black stocking cap, no tassels. They
23 noted the comparative size of the individuals.
24 Abdisalan and Ahmed are about the same height,
25 certainly much taller than the defendant in the

1 middle. You can note that the defendant has a
2 glove on. You can note that Abdisalan does not
3 have a glove. And I submit to you, you can see
4 in this picture Abdisalan has no glove. You'll
5 note in the jacket that Abdisalan had just
6 stolen, a Sean John jacket, that there is some
7 type of identifiable markings or something on the
8 back of that coat. You don't see those in the
9 market video.

10 They noted something about the other
11 individual in Dahabshiil. Again, the white shoes
12 similar to what Ahmed had been wearing. The
13 shirt with the black and white stripes that stuck
14 out from underneath his top which corresponds to
15 what they saw in the SuperAmerica video where you
16 can clearly -- the detectives could clearly see
17 that this was Ahmed Ali. Compare that to the
18 surveillance video at the market. And, again,
19 saw that same characteristics in the clothing, a
20 striped shirt, the hood.

21 Again, they noted what the defendant was
22 wearing, the cuffed pants, the shoes were
23 different color than the other two individuals
24 and he had the white shirt. You can see what
25 Abdisalan looked like that day, again, a

1 comparison of the three as they stood at the
2 counter. I submit to you that the two
3 individuals who were in the impound lot, Ahmed
4 Ali and Mahdi Ali, are the same two individuals
5 who you see in the market video and are the same
6 two individuals that you see in the Dahabshiil.
7 You can see the clothing similarities.

8 I want to talk to you a little bit about
9 what the witnesses in this case have said. If I
10 recite something that differs from your
11 recollection of what they said, by all means,
12 it's your recollection that's important, it's not
13 intentional on my part, but it's my recollection.
14 It's your recollection that's important in terms
15 of what these witnesses said.

16 You heard from Officer Brugger. He was
17 the first to arrive. He saw, he was met by three
18 dead bodies. He was met by Peter Fleck and two
19 other individuals who had been from out of town
20 and finds Jamiila Ahmed and Youb Ala in the
21 freezer.

22 By the time Officer Brugger gets there,
23 which is two, three, several minutes, not several
24 minutes but a short time after he got the call,
25 the victims were already dead. You heard from

1 Mahamud Galony, and again he had told the police
2 that night, hey, I was talking to Mahdi Ali,
3 didn't know his name at that point, but he was
4 able to direct the police to Mahdi Ali on the
5 basis of he lived at the Seward Tower, and Galony
6 knew that because Galony had met the defendant at
7 the Seward Towers when Galony was visiting his
8 friend there. And he knew what kind of car the
9 defendant had, a black Caprice with a broken out
10 window, and where he parked that car. And the
11 police went there and where that car was parked,
12 just like Galony told them, and that parking spot
13 was for Apartment 1310 at the Seward Towers where
14 the defendant lived.

15 Leandro Garcia. He was housed with the
16 defendant in the Carver County Jail for several
17 days in a medical unit. And he told you why he
18 had been placed in that medical unit because the
19 guards wanted him to help out with this other
20 inmate named Sam because Sam was a little nervous
21 about something. And Garcia tried to keep to
22 himself, but the defendant was the third person
23 in that unit. They're watching 48 Hours one
24 night and the defendant is critiquing the suspect
25 or criminal on that show and pointing out to Sam

1 and Garcia about how the person in that show is
2 kind of screwing up, how he's going to get
3 caught.

4 Eventually, the defendant starts telling
5 Garcia about why he, the defendant, is in jail.
6 And he admits to killing three people, going into
7 the Seward Market, he's in there with the other
8 person who had already been arrested, which is
9 Ahmed Ali. And he gives them many details. The
10 defendant shows him some paperwork, which you
11 heard from the detectives the only paperwork he
12 would have had at that point was called a
13 criminal complaint. But Garcia said, I don't
14 want to read it. All he saw was homicide on it.
15 It wasn't his business, he didn't care. The
16 defense would have you believe that Garcia just
17 down and memorized and scoured it and that's
18 where he got the information.

19 Problem. Many of the details that
20 Garcia provided to the police about what the
21 defendant said was not in that complaint. It was
22 not public. It hadn't been in the media. Such
23 items as having gone to the impound lot, that
24 there was a safe under the counter, that there
25 would be a lot of money at the time of the month

1 at that store, and that the individuals at the
2 market were killed because they recognized the
3 defendant.

4 MR. GOETZ: Objection, misstates the
5 testimony.

6 THE COURT: Overruled.

7 MR. STREITZ: Garcia got nothing in
8 return for this. The defense would have you
9 believe that Garcia may not have gotten anything
10 now but apparently he's on the books so if
11 something happens we're going to do something for
12 him. There is no promises. He's not getting
13 anything out of this. What he got out of this is
14 to come into court, tell you what happened and be
15 cross-examined. What he got out of this is for
16 you to learn that, yes, he's a felon, he's
17 committed burglary. He was convicted of failure
18 to register as a predatory offender and he has a
19 felony DWI. But this was all too much for even
20 Garcia to not come and tell the police. This was
21 so heinous what the defendant was telling him,
22 that even a felon thought it was bad and needed
23 to report it to the police and didn't want
24 anything in return.

25 Jamiila Ahmed went in to buy Somali

1 coffee. She told you that the accomplice who was
2 back by her was Somali, spoke in Somali, tall and
3 skinny, maybe 5'10. Corrals her and Youb Ala to
4 keep them from moving around, and you can see
5 that on the video.

6 Once the co-defendant, Ahmed Ali, flees
7 after the gunshots that the defendant started
8 firing, she and Youb go into the freezer and she
9 calls 911. Youb Ala also told the police that
10 the masked man by him was tall, skinny, a Somali
11 man, maybe 5'10". But he told you that the
12 person in the front of the store with the gun was
13 shorter, medium build, something blue by his
14 nose.

15 Peter Fleck, on his way to supper, he's
16 in the alley just about to 25th Avenue, alley
17 behind the market, heard some noise, not sure if
18 it was a gunshot or whatever. And as he's just
19 by the street, he glances by the market, the
20 front door of the market on Franklin, and sees an
21 individual a few feet away from that front door
22 in a dark winter coat, hood, possibly a hood,
23 about 5'6", shorter than Abdisalan, shorter than
24 Ahmed. He circles around, comes back and finds
25 the bodies laying in the front of the store and

1 calls 911.

2 Abdisalan Ali. Cousin of the
3 co-defendant, Ahmed. He knew Mahdi. He told the
4 police, January 8th when he was brought in,
5 here's who I was with, here's where we went and
6 here's what we did. He talked about the clothing
7 they were wearing, he talked about the coats.
8 The coat he stole, he bought, which he really
9 stole, he later admitted he stole the coat. And
10 that the coat he had been wearing, the grey puffy
11 coat was one the defendant then put on after
12 that.

13 He told the police that he was dropped
14 off 6:30, 7 o'clock, after they had been at the
15 area of Nicollet and Franklin. He was arrested
16 January 8th, kept down there for several hours as
17 the police went out and got the surveillance
18 videos from the places that he said he had been.
19 And the detectives doing what detectives should
20 do, they didn't act immediately on what Abshir
21 had told them. Abshir, remember, had told them
22 he was down there at the same time that they were
23 talking to Abdisalan. And Abshir said, yeah, you
24 know, Abdisalan, the day after the murder, we
25 were in school and Abdisalan said that he,

1 Abdisalan and Mahdi Ali, had participated in the
2 market robbery and murders. Well, rather than
3 rushing to judgment about Abdisalan's
4 participation, they did detective work and they
5 got those surveillance videos and they started
6 looking at them and said, this can't be, this is
7 not the same person in the market as we see in
8 the impound lot. Height, clothing, body build.
9 They release him later that night. They take him
10 home and they're able to corroborate with his
11 mother when he had gotten home and that he had
12 stayed there after he was dropped off.

13 The next day at school Abdisalan tells
14 you that, yes, he did talk to Abshir but he
15 denies telling him anything about the market
16 murders or his participation. He tells you that
17 he did talk to Ahmed, his cousin, and he asked
18 Ahmed, hey, did you get the car out? And Ahmed
19 said, no, we didn't get the car out, some other
20 shit happened. But he didn't tell him what that
21 other shit is.

22 And according to Abdisalan, he leaves it
23 alone. But he cooperated with the police. He
24 took them, in fact, to the various places that
25 he went to, so he could point out, here's the

1 Coat Factory, here's the impound lot, here's
2 where we were parked over by Nicollet and
3 Franklin near the Dahabshiil. Gives them a DNA
4 sample.

5 Where did Abshir get this information
6 about what happened in the market? Did he
7 misunderstand Abdisalan? Did he overhear
8 Abdisalan and Ahmed talking? Did he hear parts?
9 Did he embellish some? Well, we know some of the
10 things that he claimed he was told didn't happen
11 in the market. This business about him,
12 Abdisalan, supposedly being in the market, he
13 being the role of person in the back, being in a
14 bear hug by one of the victims and that's when
15 the victim was shot. That didn't happen.
16 Something about running out and opening the door
17 with his elbow, that didn't happen.

18 Does it matter though? Because you have
19 to come back to the evidence that we have that
20 you can look at. What he tells you he did and
21 who he was with is consistent with what Ahmed Ali
22 says. What the defendant told the police in his
23 three interviews, when he finally gets to the
24 partial truth.

25 And you heard from Ahmed Ali, who at the

1 time he gave his statement to the police on
2 January 14th knew that he had to come clean
3 because the police were going to test what he had
4 to say against the evidence they had gathered,
5 and Ahmed didn't know what the evidence was that
6 the police had. And if Ahmed had not been
7 telling the truth, the police would know and he
8 wasn't going to get a deal. And he said, yeah, I
9 told a couple of people. The next day at school
10 I did tell my cousin Abdisalan. And a couple of
11 days later he did tell his brother when he turned
12 himself in.

13 We also know that the market videos show
14 the defendant and Ahmed in the store, again,
15 based on clothing. We know that the defendant
16 was in the market because the jeans that were
17 taken in the search warrant of his apartment
18 looked just like the jeans that you see in the
19 impound lot at the Dahabshiil, at the market, and
20 they have Mr. Warfa's DNA on those jeans. DNA
21 that statistically means that the chance of
22 anybody else having that same DNA profile is one
23 in the world population.

24 You heard from Jamal Hassan, the manager
25 of the market. He told you that on January, in

1 the early part of January, there is more money in
2 the market because that's when people are coming
3 in and wanting to wire money back to the
4 homeland. Ring a bell? Remember Garcia?
5 Information. Wasn't public.

6 Safe under the counter? Again, ring a
7 bell? Garcia. Not public, not in that
8 complaint.

9 Kadra Ahmed. Remember, she worked
10 across from the Dahabshiil. She's the one that
11 saw these two individuals, who I submit to you is
12 the defendant and Ahmed Ali walking down the
13 hallway. You see in the video they both peer
14 into the Dahabshiil and then began walking in the
15 hallway. She reports it to the individual who's
16 working at Dahabshiil and Dahabshiil in return
17 notifies the police, hmm, suspicious activity.
18 Two males, black, one short, one tall and skinny.

19 Schroering and Steinhour. Worked for
20 Target, Mr. Schoering now with the FBI, but back
21 then when he did some video analyzing in this
22 case was with Target. He told you what they do,
23 he viewed the various surveillance video so we
24 can try around and get some additional
25 information if possible. He told you sometimes,

1 depending upon the quality of the footage,
2 depending upon the type surveillance camera, that
3 they can do some things, such as enhancing the
4 video, making it a little more clear. But they
5 can only do with what they get, sometimes you
6 can't do much. He also said it's very rare to
7 make a positive match between two individuals who
8 you are comparing, or items that you see in those
9 videos. He was candid with you.

10 But he did notice class characteristics
11 amongst the various videos that he reviewed. One
12 of the things he said was, you can tell that
13 Ahmed and Abdisalan are the same height and the
14 defendant is shorter. That is pretty clear from
15 the impound video where you see all three of them
16 next to each other at the counter. He compared
17 the gunman that you see in the surveillance video
18 at the market, the defendant, I submit. And he
19 noted in the market video the tassel that flies
20 around on the cap was similar, the shoes, the
21 cuff, and the gunman was shorter than the
22 individual who came in just behind him who is
23 Ahmed Ali.

24 What he noted about the impound
25 surveillance was the cuffs, the shoes, the build,

1 the skin tone, and the defendant was shorter,
2 consistent with what he saw about the gunman.

3 In the Dahabshiil, he noted the skin
4 tone, the build, the shoes, the cuffs, the
5 tassel, and he said, I can't eliminate the
6 defendant. It's consistent with what I see the
7 individual holding the gun in the market video.

8 They can tell us when looking at the
9 videos they can help us out, they can enhance
10 things, they can tell us what's artifacts and
11 what we shouldn't pay attention to. But I submit
12 in addition to what Schroering and Steinhour told
13 you, the defendant is wearing a white shirt in
14 the impound lot. You see the sleeve of that
15 white shirt come out when he's extending the gun
16 towards the victims in the market. Abdisalan
17 does not have a white shirt. Abdisalan does not
18 have the shoes even close to the color the
19 defendant is wearing that day. His shoes are
20 white.

21 There is a thread running through this
22 case, one tall, skinny; one shorter, medium.
23 Ahmed Ali, Mahdi Ali. Ahmed Ali, yes, no denial.
24 He cut a deal. He made a plea agreement. Call
25 it what you want. It was done. We did it.

1 Trust me, nobody likes cutting deals with people
2 who are responsible for murder, it's distasteful,
3 but sometimes you want information for the case
4 that only individuals who are involved would
5 know, and a deal was cut, an agreement was
6 signed. An agreement that required him to first
7 give a statement that could be tested against the
8 evidence. He had to be honest, he had to
9 cooperate. He gave a statement that was
10 consistent with the evidence.

11 He didn't get a pass, he's in prison.
12 Yes, he got less time that he could face if he
13 was convicted for the charges he was indicted
14 for, the same as the defendant, but he's going to
15 prison. I didn't put him up here for you to
16 believe he is a saint. I didn't put him up here
17 so he could get citizen of the year. He's a
18 criminal. He participated in this crime with the
19 defendant, but he's not the gunman.

20 I submit to you as you heard and watched
21 him testify and you heard and watched the
22 interviews the defendant gave with the police,
23 Ahmed Ali is not the brains of this outfit. He's
24 not the leader of the mission that they went on.
25 He provided the police information that was

1 corroborated. He told you that after dropping
2 Abdisalan off, again, the defendant admits that,
3 they dropped Abdi off and then it's only two.
4 Ahmed Ali and Mahdi Ali.

5 They sit in the car nearby the market
6 nearby the defendant's home, and the defendant
7 says, you know what, I know a place that's got
8 some money, we're going to get that car out, it's
9 going to be a mission and here's how it's going
10 to work. Now, Ahmed said he wasn't keen about
11 doing this at first, but he admitted that, yep, I
12 agree.

13 The defendant said, here's how it's
14 going to go down. Ahmed, here's a mask, you go
15 in and you take care of the people in the back,
16 I'll go in the front, I got the gun, I'll get the
17 money. They put on gloves, the defendant, Ahmed,
18 put on a mask and he said the defendant put on a
19 light-blue bandana and they walked down towards
20 the market and entered that market, just as the
21 defendant told the police, because the police
22 have the video. And you saw what the clothing
23 was like they wore.

24 Let's talk a little bit about the
25 defendant Mahdi Ali and what he told the police.

1 He was arrested Friday night, January 8th. You
2 judge for yourself, but I mean I lost count how
3 many lies he told the police, Sgt. Porras and Ann
4 Kjos when they interviewed him on January 8th.
5 Why would he lie about the things he did? He
6 would lie because he knew that the things he was
7 lying about would lead back to him being
8 connected to the market murders.

9 Folks, there is no coincidence that the
10 defendant denied or lied about the things that
11 did connect him to the market. For well over an
12 hour he denied having a cap on, a cap with
13 strings, wearing gloves that day. It's cold, you
14 heard Sgt. Folkens say that it was seven degrees
15 that night. So cold, but he didn't have a
16 jacket. Don't know what you're talking about,
17 Crown Victoria, what's that all about? Nope, I
18 wasn't with anybody other than -- I'll call him
19 St. Paul Abdi and his girlfriend Mariam.

20 (Audio played.)

21 MR. STREITZ: He knew from the get-go
22 during that interview why they were interviewing
23 him but continued to lie.

24 (Audio played.)

25 MR. STREITZ: Very simple, what did you

1 do Wednesday? I know everything I did on
2 Wednesday. I'll tell you everything. And for
3 well over an hour, lie after lie after lie.

4 (Audio played.)

5 MR. STREITZ: St. Paul Abdi and Mariam.
6 A lie.

7 (Audio played.)

8 MR. STREITZ: So cold he's just wearing
9 a sweater.

10 (Audio played.)

11 MR. STREITZ: They're trying to help him
12 out. It's cold that day, are you sure you
13 weren't wearing a cap? You sure you weren't
14 wearing gloves? We know that he was because we
15 see it in the impound lot video and we know it
16 because you see the Dahabshiil and we know it
17 because of the market video.

18 (Audio played.)

19 MR. STREITZ: Now, remember this comes
20 about because now he knows they have some
21 surveillance video and he's got to tell them a
22 little bit. But rather than tell them the truth
23 and then, well, yeah, they were there, I didn't
24 come with them, I didn't, I don't know what they
25 were doing. Oh, well. Doesn't know Ahmed's

1 name? That's a lie because he'll later tell us.

2 (Audio played.)

3 MR. STREITZ: I can tell you why he lied
4 because, again, being with those two individuals
5 connects him back to the market because who he
6 was with, where he had been that leads to what
7 they were wearing, what kind of car they were in.

8 (Audio played.)

9 MR. STREITZ: So he's admitted that up
10 to that point he's lied. He says, now I'm going
11 to tell you the truth. He gets a little closer
12 to the truth as this goes on, but not all the
13 way.

14 (Audio played.)

15 MR. STREITZ: This is very important for
16 you to keep in mind. He's admitted that
17 Abdisalan is no longer with him, it's just him
18 and Ahmed from the time they dropped Abdi off
19 until Ahmed is dropped off at a time after the
20 market murders.

21 Now, I'm going to come back to that.
22 Just the two of them together.

23 (Audio played.)

24 MR. STREITZ: Remember now, he's told
25 them from the get-go to the get-go or from the

1 top, I'm going to start telling them the truth.
2 But they had to press him to start talking about
3 Nicollet and Franklin because he wasn't telling
4 them.

5 (Audio played.)

6 MR. STREITZ: No, he wasn't.

7 (Audio played.)

8 MR. STREITZ: This isn't making any
9 sense. They're good buddies, they park the car
10 over by Dahabshiil. Ahmed and Mahdi, according
11 to Mahdi, have to get out of the car because
12 we're going to talk about normal stuff and they
13 don't want Abdisalan to hear. Well, I guess if
14 talking about doing a robbery at Dahabshiil is
15 normal, I guess that's what you do.

16 He has throughout this interview
17 listened to see what he thought the police knew,
18 only then would he give a little bit. He knows
19 they may have surveillance video so he has to put
20 himself outside the car with Ahmed because that's
21 what happened, but he won't give them any more
22 until he thinks the police have a little more.

23 (Audio played.)

24 MR. STREITZ: Well, it wasn't inside the
25 car at least when the police got it two days

1 later. And, yes, it was a red hat because you
2 could see that in the impound, but you also heard
3 from Ahmed and Abdi that he turned it inside out
4 and when he turned it inside out it was dark like
5 black but you could still see, as you can in the
6 market video, those tassel strings flying all
7 over the place.

8 (Audio played.)

9 MR. STREITZ: Now, the defendant told
10 the police he hadn't been in the market for --
11 I'm relying on my recollection, mine was a long
12 time, but he knew the old man, Youb Ala worked
13 there. Well, if you hadn't been in the market
14 for a long time, how do you explain Mr. Warfa's
15 DNA in two areas of the pants? Pants taken in a
16 search warrant that looked just like the pants he
17 was wearing that day, the cuffed faded blue
18 jeans. Because he was in the market at the time
19 of the murders.

20 (Audio played.)

21 MR. STREITZ: Well, we can't account for
22 the blood getting on the defendant's jeans
23 because Ahmed, who was involved, got up there in
24 his apartment because Ahmed, according to Mahdi,
25 has never been in his apartment.

1 You also heard evidence about cell
2 towers. And what that evidence shows you is that
3 the timing of where they were and the location of
4 where they were corroborates that.

5 The Crown Victoria. Cliff Johnson, who
6 works in the crime lab unit with video, such as
7 surveillance video, looked at it and told the
8 detective, you know, I'm seeing something wrong
9 with that backup light on the right side because
10 I see it on the left side. And he thought he saw
11 lights go on in the car and he thought could be
12 the dome lights. They took the car, the Crown
13 Victoria, when they got it on Friday night and
14 they did some testing. And you heard Officer
15 Shepeck say that they did testing. And low and
16 behold, the brake -- or the backup lights were
17 just like Cliff Johnson viewed on the
18 surveillance video looking down 25th.

19 You heard evidence about the search
20 warrant. You heard evidence about the jeans with
21 the cuffs that were taken and that they had blood
22 on it and that blood was analyzed and that Mr.
23 Warfa's DNA was on those jeans.

24 You heard from Ahmed Ali who confessed.
25 He implicated himself. He implicated the

1 defendant. You heard about the agreement and
2 what he had to do before that agreement was
3 entered. He had incentive, folks, to tell the
4 truth because he was going to be tested and he
5 wasn't going to get a deal if he blew it. What
6 he told you is borne out by the surveillance
7 video and the other evidence in the case.

8 You heard from the crime lab about their
9 efforts in processing various things, including
10 the crime scene. They didn't find any
11 identifiable prints, not a big surprise. They
12 told you about the various surfaces, there would
13 be a lot of people in there, overlay print, that
14 kind of thing.

15 Also, the gunman wore gloves. Ahmed
16 wore one glove. There was no DNA at the scene.
17 They swabbed the rack that they thought Ahmed had
18 touched with his ungloved hand, but, again, the
19 gunman had gloves on. The gunman had a mask and
20 bandana, so I don't know how you get saliva or
21 anything else there. They did process the car
22 and they didn't find blood in the car. I submit
23 to you that's not a big surprise. The victims
24 were shot and within seconds the two
25 co-defendants fled the market, and as they fled

1 they jumped over the bodies, the bodies had not
2 bled out yet, there wouldn't be a whole lot of
3 blood yet, but a little. Mr. Warfa's got on the
4 defendant's pants, but not enough to carry back
5 and transfer all over that car.

6 The car was printed, no big surprise,
7 everybody admits that they were in the car.
8 There is no claim that the victims were in the
9 car but they're going to corroborate if the
10 prints of the three individuals, Abdisalan,
11 Ahmed, and Mahdi were in that car, but then they
12 all admit they were in the car.

13 Blood from the scene wasn't submitted.
14 Detectives make judgment calls. Detectives work
15 in tandem with BCA analysts. They determined
16 that there is no evidence that the suspects were
17 ever injured, and you can see that in the videos.
18 There is no struggling. The only thing that
19 comes close to that is when Mr. Warfa is running
20 out after the defendant, the two are out in
21 front, but they're not fighting, the defendant
22 pulls his gun, has his gun out and shoots Mr.
23 Warfa and he collapses. Close enough to get some
24 blood, but he hadn't bled out yet.

25 The officers and the detectives noted

1 that there are no tracks in blood leading out of
2 the market. Again, makes sense because it wasn't
3 like they got shot and gallons just came out all
4 at once. It's going to take some time for them
5 to bleed out so it looks like the pictures that
6 are taken several hours later.

7 A gun wasn't recovered, but we know a
8 gun was used, obviously, because of the wounds,
9 the discharged cartridge casings, the fragments,
10 there was a semiautomatic gun. There was one
11 gun. One gun fired all those discharged
12 cartridge casings. From the bullets Chris
13 Reynolds was able to tell you one gun was fired.
14 There is no evidence in the video of any other
15 gun than the one the defendant is using when he
16 kills those three individuals.

17 But what we do have is the victim's
18 blood at the scene, which ends up on the
19 defendant's jeans. Jeans from a search warrant
20 that you can compare to the surveillance video,
21 and there is three areas of blood. The front
22 inside pockets is the defendant's. The back
23 cuff, Mr. Warfa's DNA. A little higher up on
24 that same leg, you'll see the cutting, Mr.
25 Warfa's DNA. One in the world would have that

1 profile.

2 Before I move onto Carver County, I want
3 to take you back to last Friday. Remember James
4 Schroering from Target was being cross-examined
5 by counsel. This is part of a quote he was read
6 from a Strengthening Forensic Science in the
7 United States, A Path Forward. He was read this:
8 With the exception of nuclear DNA analysis,
9 however, no forensic method has been rigorously
10 shown to have the capacity to consistently and
11 with a high degree of certainty demonstrate a
12 connection between evidence and a specific
13 individual or source. You heard all about that
14 yesterday from the BCA.

15 Again, you heard from Mr. Garcia and
16 what he had to tell you, including details that
17 weren't public.

18 When I'm done, the defense has an
19 opportunity to get up and talk with you. I don't
20 know what they may talk about, I can guess,
21 anticipate, and I will a few things, but I submit
22 to you that you will be diverted from the real
23 evidence in this case.

24 MR. GOETZ: Objection, Your Honor.

25 THE COURT: Sustained. Jury will

1 disregard the last remark.

2 MR. STREITZ: One of the things they may
3 talk about is the car light where Cliff Johnson
4 said it was a dome light versus a courtesy light.
5 Well, there is no real issue there. Remember
6 when the car was taken to the forensic garage,
7 they noted that the bulb was out, the dome light
8 bulb was out, it was in the ashtray.

9 Again, police did the -- detectives did
10 what detectives do. They continued to do
11 investigative work. Cliff Johnson, I submit, was
12 right as it turns out with the testing of the
13 backup light. If Cliff Johnson really meant the
14 dome light, the investigation revealed that it
15 really wasn't the dome light. But what was it?
16 And you heard Sgt. Kjos look, she showed you
17 pictures, that Crown Victoria had courtesy lights
18 just under the armrest on both the front
19 passenger and the front driver's side. And I
20 submit that when you look at that video back in
21 that jury deliberation room, that it's consistent
22 with Ahmed getting out of one side of the car,
23 the door opening, stepping around that light and
24 you'll see it flicker again and the door closing.
25 And the same thing when the defendant gets out of

1 the car on the driver's side.

2 So much blood at the scene, none in the
3 car, the jeans should have been saturated with
4 blood. No. Again, the victims just didn't bleed
5 immediately all the blood out, that would take
6 time. The victims -- excuse me, the two
7 defendants fled from that store instantly and you
8 can see them jumping over the bodies avoiding any
9 blood that would have been there within seconds
10 of the shots.

11 There were no bloody tracks outside the
12 store for the police to analyze.

13 They want you to believe that Abdisalan
14 is the gunman, it's not true. Remember I told
15 you I was going to come back to this part of the
16 defendant's statement to the police when he said
17 he was going to come clean and tell you
18 everything that had. Follow the logic here of
19 what the defendant said. The defendant is with
20 Ahmed from the time they drop Abdi off. Now,
21 using the defendant's timeframe that would be
22 about 7 o'clock. The defendant then is with
23 Ahmed until Ahmed is dropped off at approximately
24 8 o'clock. The market murders happen between the
25 time Abdi is dropped off and the time Ahmed is

1 dropped off. If the defendant and Ahmed are the
2 only two together, and Ahmed is in that market,
3 there can only be one other person who's in that
4 market with him, and that's Mahdi Ali.

5 You would have to believe that after the
6 defendant dropped off Abdisalan at his house that
7 Abdi somehow got into some clothes, a cap, shoes,
8 faded jeans, cuffed them, cap with tassels, so
9 that he would look just like the defendant, find
10 a car, because remember the defendant and Ahmed
11 are in the Crown Vic, that would have the same
12 light malfunction and somehow appear shorter than
13 he really is when he goes into the market.

14 Didn't happen.

15 The Judge will read to you what the law
16 is, and by all means whatever the Judge tells you
17 is what it is. I'm going to try and paraphrase
18 some things, and if what I paraphrase is
19 different from what the Judge tells you,
20 absolutely what the Judge tells you.

21 Ahmed Ali and Mahdi Ali are charged with
22 six counts in an indictment. The theory is
23 aiding and abetting, and that is when two or more
24 individuals get together and commit a crime
25 together, they could have different roles, they

1 participate together. I submit to you that
2 they're equally liable, no matter what their role
3 is.

4 The first three counts are first-degree
5 premeditated murder, one count each for each of
6 the victims, Mr. Warfa, Mr. Mohammed and Mr.
7 Elmi. Then there is three counts of
8 first-degree felony murder. What that means is
9 during the course of an attempted robbery, you
10 don't have to complete it, an attempted robbery,
11 intentional killings took place. Premeditation
12 isn't required for those counts, only intent to
13 kill. There is no element, no motive as an
14 element of any crime. But I think it's fair to
15 say here that the motive for doing these crimes
16 was to get money to get the car out of impound
17 that's why they went to the money transfer at
18 Dahabshill, that is why they went to the Seward
19 Market, to get the money to get the car.

20 Premeditation. You think about
21 something and you think about what to do and what
22 you're going to do before you do it.
23 Premeditation, as you'll hear the instruction, is
24 not always susceptible to direct proof, it's
25 subjective. It's not like you can go to somebody

1 and unscrew their head and see what he's
2 thinking, oh, he's thinking premeditation. You
3 can't do that. And I submit to you that the
4 instruction you're going to get talks about that
5 why, because of that it isn't always susceptible
6 by direct proof. You can infer premeditation
7 from all the circumstances surrounding the crime.
8 It makes sense.

9 Intent. That's what you want to do,
10 it's your purpose, your objective, again, not
11 always susceptible by direct proof so the law
12 says you can infer a person's intent by all the
13 circumstances. One thing intent isn't is
14 accidental.

15 First-degree murder. And, again, the
16 Judge will read you the instructions and the
17 elements, but briefly they are the State has to
18 prove the deaths of all three victims. And then
19 either the defendant or another caused the
20 deaths, they don't both have to have fired the
21 gun. The defendant or another acted with
22 premeditation or intent. They both don't have to
23 have premeditation or intent. In this case the
24 defendant and Ahmed Ali have planned, a plan was
25 before they went into the market, they thought

1 about things beforehand, that plan involved the
2 defendant introducing a deadly weapon into this
3 robbery. They didn't have to take a gun into the
4 robbery. They chose beforehand to take that gun
5 in. You can do a robbery without a gun. The gun
6 was loaded, it was a semiautomatic deadly weapon.
7 I submit to you that the gun was taken in there
8 as a demonstrative as to how they determined they
9 were to be successful in their mission of getting
10 money from the market.

11 I submit to you that that gun is there
12 because if things went wrong they could get away,
13 they could overcome resistance. They knew when
14 you go in to take property from somebody, people
15 don't like that. People may resist. People may
16 interfere with your mission. People may find out
17 who you are, even though you have masks on, so
18 you've got that gun for insurance. They made
19 that decision to take that deadly weapon into
20 that market in case they had to use it when they
21 got out of that car and they walked down 25th
22 Avenue towards the market.

23 Things did go wrong. They went wrong
24 quickly. I have no reason to doubt Ahmed Ali.
25 Boy, I didn't -- I didn't want this to happen. I

1 don't think the defendant probably wanted it to
2 happen. But they still had decided to take that
3 weapon in case things did go wrong. The
4 defendant, I submit to you, was recognized. He
5 said as much to Ahmed when they got back to the
6 car. I submit when you see the clerks in there
7 pointing at Mahdi Ali who's holding that gun that
8 they're recognizing him. The robbery was in
9 jeopardy. They were going to get caught. Rather
10 than leaving, the defendant chose to stay. He
11 chose to stay before he fired that first shot.
12 Poor Anwar Mohammed. All smiles coming into the
13 market. He interrupted the robbery. The
14 defendant had that gun trained on the clerks when
15 Anwar Mohammed comes in, the defendant takes that
16 gun, aims it at Anwar Mohammed, pulls the trigger
17 causing Mr. Mohammed to fall to the ground. I
18 submit to you that the first wound that Mr.
19 Mohammed received was the wound to the shoulder,
20 the nonfatal wound. And I'll tell you why in a
21 matter of second. And you heard the M.E. tell
22 you that that shoulder wound, you'd still be able
23 to move around after suffering that.

24 Mohamed Warfa then runs out after the
25 defendant. The defendant could have kept going,

1 but he chose, his thinking process he chose to
2 stay there. And you can see from the video, once
3 outside Mr. Warfa is otherwise, the defendant
4 shoots him three times, one severing his jugular.
5 He had to stop, aim, shoot, three times. That's
6 a thought process that's going on before you do
7 it.

8 Meanwhile, Mr. Elmi, Osman Elmi has his
9 phone out and is walking towards the front door
10 thinking it's over. The defendant does go out of
11 camera range, he looks like he pokes around the
12 corner on 25th, just like Mr. Fleck saw. But he
13 comes back, a decision is made to stop, go back
14 in and get the last witnesses.

15 I submit to you he chased Mr. Elmi down
16 like a dog. Finds him, shoots him three times.
17 Raised that gun up, aim it and shoot him three
18 times.

19 If that wasn't enough, on his way out,
20 as you saw in the video, he pauses ever so much,
21 goes down like this, and who's he aiming that gun
22 at? Anwar Mohammed. There would be no reason to
23 shoot him unless he was moving. No witnesses. I
24 submit to you that he shot him by the ear, the
25 one that severed his brain stem.

1 I submit to you the State's proven that
2 this defendant and Ahmed Ali committed
3 first-degree murder on all three victims.

4 The next three counts, murder while
5 attempting a robbery. Again, the death of the
6 victims has to be proven, I suggest to you there
7 is no question about that. That the defendant
8 and another person were aiding each other and
9 they caused the deaths. I submit that's been
10 proven.

11 Now, premeditation isn't needed for
12 these counts of first-degree murder. Just intent
13 during the course of an attempted robbery. I
14 submit to you that these weren't accidental
15 shootings. I submit to you that the defendant's
16 behavior was purposeful and cold-blooded. He had
17 a deadly weapon, a .40 caliber, he aimed it at
18 each of these victims, he aimed it at vital areas
19 of their body, be it their neck, their chest,
20 their head, pulled the trigger multiple times on
21 each of those victims at close range. Folks, I
22 submit to you it couldn't be any more
23 intentional.

24 The Judge will instruct you again about
25 what proof beyond a reasonable doubt is. I

1 submit to you as you listen to that instruction
2 that the cornerstone of that instruction is
3 common sense, logic. It's not proof beyond all
4 doubt.

5 Common sense. I trust that when you go
6 back in the deliberation room and discuss this
7 case with common sense as your guide, you'll
8 convict the defendant of first-degree murder.
9 Thank you.

10 THE COURT: Members of the jury, we'll
11 take our 20-minute recess for the morning.
12 Please be in the usual places at 11:10. Thank
13 you.

14 (Recess.)

15 (Jurors not present.)

16 THE COURT: Mr. Goetz.

17 MR. GOETZ: Your Honor, defense moves
18 for a mistrial based upon on improper argument of
19 counsel. Not only did the State intend to
20 belittle the defense verbally, but also the
21 record should reflect there was a graphic
22 display, by rough account for about a minute and
23 a half, of defense's version. So on that basis,
24 defense moves for a mistrial.

25 THE COURT: Mr. Streitz.

1 MR. STREITZ: Your Honor, the Court
2 instructed the jury to disregard my comment. I
3 trust that the jury will follow your instruction,
4 and I would oppose any mistrial.

5 THE COURT: Okay. I did sustain the
6 objection and the jury was ordered to disregard
7 it. I think that is sufficient. It was a
8 passing comment. Even though the text was up on
9 the screen, there was no graphic of any sort with
10 it, just simple text. And Mr. Streit
11 immediately moved on to other topics, so the
12 motion for mistrial is denied.

13 Bring in the jury.

14 (Jurors enter the courtroom.)

15 THE COURT: Mr. Goetz, are you prepared
16 to close for the defense?

17 MR. GOETZ: I am, Your Honor.

18 THE COURT: You may proceed.

19 MR. GOETZ: Good morning.

20 Misidentification. That's what I told
21 you this case would be about last Monday, and
22 that's what we've seen. Because at the end of
23 the day, when you consider all of the evidence
24 that was presented, the State has not presented
25 proof beyond a reasonable doubt that Mahdi Ali,

1 to the exclusion of all others, was the person
2 who took those three lives at the Seward Market
3 on January 6th of 2010.

4 MR. STREITZ: Your Honor, I object.
5 That's a misstatement.

6 THE COURT: Overruled.

7 MR. GOETZ: Let's make no mistake,
8 ladies and gentlemen, that is the prosecution's
9 theory. Mahdi Ali was the shooter and the
10 motive, even though it's not an element, we heard
11 it again and again and again, the motive was to
12 get money for a car that was in the impound lot.
13 But, ladies and gentlemen, the car wasn't in the
14 impound lot.

15 We heard evidence that Mahdi Ali owned
16 one car, a black Caprice. And where did law
17 enforcement find it within hours of this
18 shooting? Sitting in the parking ramp for the
19 Seward market, no motive, no identification
20 beyond a reasonable doubt, not guilty.

21 Proof beyond a reasonable doubt, ladies
22 and gentlemen, is the State's burden in this
23 case. As we talked about during jury selection,
24 an accused in this country has no burden
25 whatsoever. I want to talk a bit about proof

1 beyond a reasonable doubt and how high that
2 burden actually is. In a few moments, after the
3 arguments, the Court will give us instructions,
4 the Judge will tell us what the law is. And one
5 of the instructions that we will get is a
6 definition of proof beyond a reasonable doubt.
7 And you will hear that it is such level of proof
8 as ordinarily prudent men and women would act
9 upon in their most important affairs. Think
10 about that for a minute.

11 And, again, we talked about to some
12 extent in jury selection, but what are the most
13 important affairs in life? And what level of
14 proof does someone have to have in their mind
15 before they make a decision? For example, many
16 of us may have had older parents. You reach a
17 point where are they going to stay in the home
18 they've lived in for 30, 40 years, or do they
19 need more care? That is an important life
20 decision. You don't make that recklessly. You
21 don't make that on the spur of the moment. You
22 make that with careful consideration, and only if
23 you have no reasonable doubt that that is the
24 right thing for that person do you make that
25 choice. To get married, to get divorced. Make

1 no mistake, ladies and gentlemen, the decision
2 you will make in this case will be the most
3 important decision in this young man's life.
4 Period.

5 Another way to think about proof beyond
6 a reasonable doubt. Do you recall again back to
7 jury selection we talked about the verdict forms
8 that jurors in criminal cases actually have to
9 complete. And the choice comes down to guilty,
10 proven beyond a reasonable doubt, or not guilty,
11 it's not between guilt and innocence.

12 So, this is a bit old school --

13 But if you go back and you consider all
14 the evidence and you conclude, well, Mr. Ali is
15 innocent, obviously, your verdict would be clear,
16 not guilty.

17 Might be guilty, may be guilty, even
18 50/50, the evidence could go either way, you're
19 verdict would still be not guilty. Possibly
20 guilty, even probably guilty, as long as at the
21 end of the day after careful consideration all
22 the facts you have doubt based upon reason as to
23 whether or not the prosecution has proven this
24 charge beyond a reasonable doubt, your verdict
25 will be not guilty.

1 Only, ladies and gentlemen of the jury,
2 when you can say at the end of the day that you
3 have no reasonable doubt as to any element of any
4 count is your verdict of that count is only then
5 is guilty.

6 And, finally, just to put this in terms
7 of the dynamic that you will soon be experiencing
8 when you're back in that jury room around that
9 big table deliberating. If you talk about all
10 the evidence and you're listening to each other
11 and giving your thoughts and comparing notes of
12 other jurors and mental notes and you think,
13 well, you know, the prosecution had a pretty good
14 point, you know, there is DNA, there is video,
15 there is the Ahmed Shire testimony, there is the
16 jailhouse snitch down at Carver County, there is
17 all of that, but, and you hesitate, you hesitate
18 based on reason. That is the manifestation of
19 reasonable doubt, and you must acquit.

20 Now, there are six counts, ladies and
21 gentlemen, two charges. Three counts of
22 premeditated first-degree murder, one for each of
23 the three victims. Three counts of first-degree
24 murder while committing a felony, in this case an
25 attempted robbery, we call that felony murder.

1 So you have three counts of first-degree murder
2 premeditation, three counts of first-degree
3 murder, felony murder.

4 Each count has parts, and as I said,
5 each part must be proven beyond a reasonable
6 doubt. Each count, though, ladies and gentlemen,
7 requires proof that it was Mahdi Ali who
8 committed these crimes. In other words, that he
9 was one of the two robbers. In other words,
10 given the State's theory that we heard that he
11 was the shooter.

12 The counts also have what are called
13 state of mind requirements, and the State talked
14 about that briefly.

15 Premeditation and intent for the
16 first-degree murder premeditation counts and
17 intent. Intent to kill for the felony murder
18 counts. And I want to talk about the state of
19 mind requirements for a little bit. Judge
20 Cahill, again, will give us the law, and the law
21 on premeditation that I expect he will give us
22 will include a definition of what premeditation
23 means, and it will be something like the
24 following: Premeditation means that the
25 defendant or another person, aided and abetted by

1 the defendant, considered, planned, prepared for,
2 or determined to commit the act before it was
3 committed.

4 Premeditation being a process of the
5 mind is wholly subjective and hence not always
6 susceptible to proof by direct evidence. It may
7 be inferred from all the circumstances
8 surrounding the event. It is not necessary that
9 premeditation exists for a specific length of
10 time, however, an unconsidered or rash impulse,
11 even though it includes an intent to kill, is not
12 premeditated.

13 Taking away from that important things,
14 you must -- and we'll talk about this -- you must
15 consider all of the circumstances, all of the
16 circumstances that surrounded this tragic event.
17 And also consider whether or not an unconsidered
18 or rash impulse resulted in the deaths of these
19 three men.

20 The Court will also define intent. With
21 intent to means that the actor either has a
22 purpose to do the thing or cause the result
23 specified, or believes that the act, if
24 successful, will cause that result.

25 Identification has not been proven

1 beyond a reasonable doubt. The state of mind
2 requirements have not been proven beyond a
3 reasonable doubt. Why, why are they not met?

4 What I want to do in my presentation is
5 talk first about evidence of identification.
6 We'll talk about the witness, we'll talk about
7 the DNA evidence, we'll talk about the videotape
8 evidence. Next we'll talk about the shorter
9 extent, evidence of state of mind. And after
10 we've concluded all of that, ladies and
11 gentlemen, I will ask that you find Mr. Ali not
12 guilty of all six counts.

13 You will have among the jury
14 instructions an instruction that you've already
15 actually received about evaluating the
16 credibility of witnesses, perhaps you recall
17 that. There are some factors that the Court gave
18 us. Interest in the outcome of the case, ability
19 and opportunity to know, remember, and relate the
20 facts. Frankness or sincerity or lack thereof.
21 Reasonableness or unreasonableness of testimony
22 in light of all the other evidence in the case.
23 Let's think about those factors and let's apply
24 them now to the testimony of some of the
25 witnesses.

1 Now, for all this talk about he's the
2 guy, he's the triggerman -- and if your
3 understanding of the evidence is different from
4 mine, your evidence or your recollection
5 certainly controls, but as I heard the testimony,
6 really there were only two witnesses who directly
7 said this man was the shooter, only two people.
8 And I submit they're the cornerstone of the
9 State's case. Those two people are Ahmed Shire
10 Ali and Leandro Garcia, the accomplice and the
11 jailhouse snitch. Neither, ladies and gentlemen,
12 when you consider all of their testimony in the
13 light of the factors that the Court will give us,
14 neither gave us reliable testimony or testimony
15 that is trustworthy in critical respects.

16 Let's talk about Ahmed Shire Ali first.
17 I told you last Monday that we would hear that he
18 got a sweetheart deal, and I didn't use that
19 phrase lightly, it wasn't a causticized phrase,
20 it was exactly what happened. Consider, ladies
21 and gentlemen, that he was facing the same
22 charges, first-degree murder with premeditation,
23 there is no more serious charge in the Minnesota
24 criminal code. None. We can all estimate what
25 sort of penalty that would include. The most

1 significant penalty we have in our laws in
2 Minnesota.

3 We also heard, ladies and gentlemen, and
4 he begrudgingly admitted that he received a
5 substantial reduction in his sentence.

6 Now, the deal he hopes to get calls for
7 him getting a sentence of 18 years of which he'll
8 serve 12 with good time. If that's a substantial
9 reduction, you have some idea of what he was
10 initially facing. But what does he have to do to
11 get at that deal? The deal he wants so bad. He
12 has to come in here and tell the truth. But who
13 determines what the truth is? Who has the power
14 out of everybody in this courtroom? Who has the
15 power to give him the deal he so desperately
16 wants? The prosecution. They determine if he
17 has told the truth or not as they see it.

18 Suffice it to say, ladies and gentlemen,
19 that he's going to play the tune that they want
20 him to get the conviction that they want, which
21 is against this young man, Mahdi Ali. And he has
22 a powerful incentive, interest in the case, a
23 powerful incentive to twist the facts and blame
24 him as the fall guy so he can get out in 12
25 years. He'll be a young man still, 29 years old.

1 Is Ahmed Shire Ali the type of person
2 that will come in, take an oath to tell the
3 truth, and even in the case as serious as this
4 lie to protect himself or to protect other
5 people? And the evidence showed us that he is.
6 No doubt about it. And how can I say that?
7 Well, let's consider the testimony of Christa
8 Thorne. Do you remember her, the woman from the
9 Coat Factory who came in here and told us about
10 her encounter with Mr. Abshire Ali, or Ahmed
11 Shire Ali. And it wasn't in the encounter of
12 this artificial environment of a courtroom, it
13 was his real word on the street, how he really
14 is. And she caught him red-handed, but what did
15 he start to do to get out of his little jam? He
16 lied. Oh, this beeper went off because I have a
17 cell phone. No, she could see the coat. You
18 have a coat, sir, you're trying to steal that.
19 No, I don't have anything, I'm not doing anything
20 wrong. He lied to get out of a minor shoplifting
21 deal. Do you think he's going to have any
22 compulsion or reservation about lying to get out
23 of this case and to get the deal he wants by
24 blaming this man for a crime he did not commit?
25 That is what is going on here, ladies and

1 gentlemen.

2 And he also, he lied to the police to
3 protect his cousin, Abdisalan Ali. We'll talk a
4 lot more about these cousins and their
5 interaction and the Ahmed Shire Ali family. They
6 knew what was going to go down at that Coat
7 Factory when they walked in there. They knew
8 what the plan was. The plan was to go in there
9 and steal coats. Period. Yet Ahmed Shire Ali
10 stood up, sat down in this witness stand and
11 said, oh, I didn't have any idea that Abdisalan
12 was going to steal a coat when we got in, that's
13 rubbish, that's hogwash. He told the police that
14 Abdisalan bought a coat because he was lying to
15 protect his cousin.

16 He's willing to lie about a small thing,
17 he's willing to lie about a big thing. And I
18 submit he is lying about who really committed
19 that shooting. Well, they've got Ahmed Shire,
20 he's fessed up, but who is the shooter? Who
21 really is the shooter? Ahmed Shire wants us to
22 believe that this was, and the State wants us to
23 believe that this was all Mahdi Ali's idea.

24 The word mission, mission, how many
25 times did we hear this? I have a mission for

1 you. I know this store, I need money to get my
2 car out of impound. The car that wasn't actually
3 in impound, it was sitting in the parking ramp.

4 Ahmed Shire Ali told us that he needed
5 to be talked into committing this robbery or
6 attempted robbery. How would that -- how would
7 that be? How does that fit? How does somebody
8 who has just tried to rip-off a check cashing
9 facility, who in fact had the power of that
10 incident to be able to call it off, because that
11 was the testimony, Ahmed Shire was the one who
12 called off the robbery at the check cashing
13 facility because he thought there was too many
14 people. How does that type of person then need
15 to be talked into doing another mission? It
16 doesn't fit. It doesn't make sense. Ahmed Shire
17 was in control, ladies and gentlemen.

18 Now, he and the State want you to
19 believe he's some sort of naive innocent. But
20 consider, ladies and gentlemen, the kind of
21 hubris, chutzpah, bravado, that he displayed
22 when, after he's caught red-handed trying to
23 rip-off that coat from the Coat Factory, he tries
24 to hit on Ms. Thorne, the woman just arrested
25 him. Does that sound like a meek and mild

1 mannered person? He's lying about his role here,
2 ladies and gentlemen.

3 Also consider the testimony of Youb Ala.
4 His testimony shows us that Ahmed Shire is, as I
5 remember, not telling us the truth. He's trying
6 to put himself consistently in a better light and
7 casting all the blame on Mahdi Ali. Remember,
8 Mr. Ala told us the man in the mask saying, if
9 you move, I will shoot, that's the conversation
10 that was going on in the back of the store, Mr.
11 Ala told us. But Ahmed Shire said, oh, I was
12 just saying, I'm not going to hurt you, I'm not
13 going to hurt you. Mr. Ala told us the man in
14 the mask punched him on the shoulder when he
15 tried to get away, when he tried to leave.
16 Jamiila Ahmed confirmed that. Yet Ahmed Shire,
17 what did he tell us, oh, that never happened, I
18 never punched anybody. Mr. Ala told us that the
19 man in the mask was going through his pockets.
20 What did Ahmed Shire tell us? It never happened.

21 You'll also have, and I'm not going to
22 take the time to display it, we can all look at
23 these photographs and evidence the same. Exhibit
24 99. I commend that to you. It's the Camera 8
25 view that is in the back of the store and that

1 shows exactly what Ahmed Shire was doing when Mr.
2 Ala thinks he got up on that witness stand and
3 under oath denied. He lied.

4 Was he also lying about having a gun?
5 That's what he told Christa Thorne, I've got a BB
6 gun. Christa Thorne believed him, that's what
7 she told us.

8 Ladies and gentlemen, the evidence that
9 we've seen, I submit, shows that Ahmed Shire's
10 family members and clan planned from almost right
11 after these murders happened that Mahdi Ali was
12 going to be the fall guy. How do we know that?
13 What shows that?

14 Well, we have the testimony of Mohamud
15 Galony. And, again, one of the factors is the
16 relationship of when you're evaluating the
17 testimony of witnesses what relationship does a
18 person have to other people involved in a case or
19 interest. We heard about his clan, the Darod
20 clan. And if you remember -- now, Mr. Galony --

21 THE COURT: Members of the audience are
22 to stop their conversations and reactions to the
23 argument or you'll have to leave.

24 MR. GOETZ: Mr. Galony was a little less
25 than forthcoming when I asked him about his clan

1 questions. It's a simple question, why would he
2 not hide? Well, first he said, well, I'm from
3 the Somali clan. But then he finally
4 acknowledged, I'm in the Darod clan. Well, we
5 heard that the Darod clan and Majeerteen clan are
6 connected, they're all part of the same clan
7 tree. The Majeerteen is a subclan of the Darod
8 clan. Who's part of the Majeerteen clan? Ahmed
9 Shire Ali.

10 And think about that connection when
11 we're evaluating Mr. Galony's testimony. And
12 what was his testimony, in essence, and again, if
13 your recollection is different, your recollection
14 controls, but as I distill it, as I break it
15 down, well, there is this guy, I see him around
16 the Seward Towers a couple of times, I saw him at
17 the rec center and then all of a sudden out of
18 the blue, this guy, I don't know his name, I've
19 never been to his place, don't know his family,
20 he comes and tells me about a robbery he's going
21 to commit. And it's actually the police who
22 later on give him, oh, that's Mahdi. Oh, yeah,
23 Mahdi, that's the guy, Mahdi. But when he told
24 the police about this plan, he said it was a
25 planned robbery. But what words did he use when

1 he got up on this witness stand? Mission. Lick.
2 He even went so far, if you remember that, to use
3 the little quotations mark when he was saying,
4 oh, yeah, Mahdi Ali told me about a mission that
5 he wanted to do. Where did that word come from?
6 He didn't use it with the police, that's what
7 Sgt. Kjos told us. Yet, somehow it so clearly
8 stood out in his mind when he testified here he
9 was able to put in those little quotes for us
10 directly attributing it to Mahdi Ali.

11 But who else used the word mission?
12 Where did we hear that word? Where did we hear
13 it? Ahmed Shire Ali. Part of the same clan
14 tree. He was the one who used the word mission.
15 Not on January 10th when he first sat down with
16 the police, he wouldn't talk then because they
17 didn't have the family lawyer and everything
18 ready, but on January 14th, that's when he makes
19 up this thing about a mission. And then now all
20 of a sudden conveniently Galony has adopted that
21 word. Same story, same script, same fall guy.

22 And we also know that from Galony all of
23 a sudden he started talking about a red Caprice.
24 Or, yeah, Mahdi Ali drives a red Caprice, red and
25 black. Different colors. He said, I'm not going

1 to get those two confused. Why would he use the
2 descriptive term red to describe the car that
3 Mahdi Ali drives? Because red, we know, was the
4 color of the car involved in the law enforcement
5 suspected in the murders. Red. Where did that
6 come from? How is Galony going to use the term
7 red now when back when he was interviewed by the
8 police he described it as a black car? He's
9 trying to get his story straight, the story to
10 blame Mahdi Ali.

11 Now, I don't know who they are trying to
12 protect. I'm not able to stand up before you,
13 ladies and gentlemen, and say, that person is the
14 triggerman or this person is the triggerman, I
15 don't know, but we do know, ladies and gentlemen,
16 and we can see that there is a clear effort for
17 Ahmed Shire's family to make Mahdi Ali the fall
18 guy. They're trying to protect somebody.

19 We also see this, ladies and gentlemen,
20 I think really chillingly with what we know about
21 Abdisalan Ali, Ahmed Shire's cousin. He told
22 Abshir Asse the details of the crime that only
23 someone with direct involvement would know. Now,
24 was he involved himself? Talk about that.
25 Maybe, maybe not. But that is not important,

1 what's important is that he knew, he knew
2 intimately what happened at that Seward Market
3 and he tells Abshir Asse the next day. But he
4 said Ahmed Shire wasn't involved, it was me and
5 Mahdi. Mahdi. Mahdi. Mahdi was the shooter.

6 If we know that Abdisalan Ali was not
7 involved, as the State will argue, and we know
8 that Ahmed Shire Ali was the other person, and we
9 know that Abdisalan Ali never talked to Ahmed
10 Shire because that's what he says, and we know
11 Abdisalan Ali never talked to Mahdi because they
12 didn't get along, Abdisalan Ali could only have
13 gotten the facts of this shooting from the actual
14 shooter, whoever that might be. Someone, I
15 submit, that is associated with that family, with
16 their cousins.

17 And think what also we learned when we
18 heard from Abshir Asse yesterday, ladies and
19 gentlemen, and this, I think, is critical. The
20 cousins are trying to frame people for this
21 murder. He knew of one person, someone else that
22 they were trying to frame. Do you think it's any
23 stretch that they're now trying to frame this
24 young man? And we also know, ladies and
25 gentlemen, that Abdisalan Ali wanted Mahdi Ali

1 dead. He wanted to kill him. I'll come back to
2 that.

3 Either Ahmed Shire or Abdisalan, or most
4 likely both, are lying about what happened at
5 that robbery in respect to who the shooter was.
6 Who else are these guys lying to protect, that is
7 the question?

8 Now, the prosecution went to great
9 lengths, and we listened to a lot of recordings
10 saying, well, Mahdi Ali was lying to the police.
11 We don't dispute that. We don't dispute that,
12 he's not on trial though, ladies and gentlemen,
13 this is not a false information to a police
14 officer prosecution, this is a murder
15 prosecution.

16 Mahdi Ali is not the one who has to
17 prove anything here. Did he lie? Yes. Am I
18 asking you to condone that behavior? No. And I
19 understand how the law enforcement officers would
20 be frustrated, but that's not what this case is
21 about.

22 Consider, ladies and gentlemen, that at
23 least one of the people we know who had some
24 information about this robbery wanted this young
25 man dead. If he knows something about what

1 happened and thinks he might be killed because he
2 tells law enforcement about it, do you think
3 that's a reason to lie to the police? We don't
4 accept it, we don't condone it, but can we
5 understand it?

6 Consider also, ladies and gentlemen,
7 that Ahmed Shire Ali, Abdisalan Ali, they're all
8 lying. Which brings me to Leandro Garcia. A
9 three-time felon. One of his felonies, failure
10 to register as a predatory offender. Someone
11 who, and I don't know how to put it otherwise, I
12 think we saw is somewhat of a -- he wants to be
13 charitable, he wants to put himself in the best
14 possible light to law enforcement, to people in
15 authority. He wants to please people in
16 authority. That's how he gets by when he's in
17 the jail. That's why he gets promoted to the
18 trustee status and gets the relatively nicer
19 housing.

20 But yet he stands up, sits down and
21 tells us that he's testifying about this
22 confession that he heard from Mahdi Ali because
23 he feels bad for the victims. It rings hollow,
24 ladies and gentlemen, it rings hollow. He did
25 not feel so bad that he failed to register as a

1 predatory offender so the State of Minnesota
2 couldn't keep track of him. He did not feel so
3 bad that he was not willing to break into someone
4 else's property. And he did not feel so bad that
5 he was willing to put all the public safety at
6 risk when he was convicted of a felony driving
7 under the influence of alcohol.

8 Ladies and gentlemen, Leandro Garcia
9 never spoke to Mahdi Ali. And how do we know
10 that is so? It comes down to one thing that he
11 said, one word. Mahadi. Mahadi. Every time he
12 referred to this young man, this young man who
13 supposedly gained his confidence, they were
14 close, they were connected. According to Garcia,
15 this young man shared his most intimate and
16 darkest secret, but he can't even pronounce his
17 first name. Does that make sense? Mahdi, that's
18 not a hard name to pronounce. I mean, there is a
19 baseball player here, Doug Mientkiewicz, I mean,
20 if you have a last name like that, I can see it.
21 But Mahdi. That's easy.

22 If this young man had opened up to him
23 as he claims he would have said, hey, what's your
24 name? Mahdi. Hey, Mahdi, I'm Leandro. He would
25 know what his name is. He would know.

1 didn't sit down with the police until March of
2 2010, three months after he supposedly had the
3 conversation, after this case had extensive
4 publicity. And some things are simply not hard
5 to figure out for an experienced criminal. Like
6 you go into a store to rob it because you think
7 there might be money there. And if Garcia knows
8 anything about wiring money, you know that there
9 are certain times of the month that the store
10 might have more money. These are not hard things
11 to figure out.

12 Should have worn gloves, didn't wear
13 gloves. Again, not a detail that's beyond an
14 experienced criminal to figure out to add and
15 embellish. And was he doing that? Well, he
16 claimed that some of the facts, according to him,
17 were that the gun came from Ahmed Shire's
18 brother, and that it was Ahmed Shire's brother
19 who disposed of the gun. That's what Leandro
20 Garcia told us he learned. But was there any
21 evidence of that? That wasn't a fact that we
22 heard about.

23 I can't tell you exactly how he came up
24 with his story, ladies and gentlemen, but we know
25 that jailhouses, they're hot houses of deceit.

1 And that's what we have here. Whatever his
2 reason, whether he's a suck up to law enforcement
3 or something else, he is not worthy of belief.

4 Now, I want to talk now about the video
5 evidence from Target. In the end, it doesn't
6 tell us that much. If you boil the testimony of
7 the two Target staff down, it comes down to this,
8 you cannot include or exclude Mahdi Ali as the
9 shooter. But one thing the State did not argue
10 about, but I think is important in their
11 testimony, you cannot include or exclude
12 Abdisalan Ali as the shooter.

13 In fact, if you remember the testimony
14 was that we're not able to determine the
15 shooter's height. We don't know, we can't
16 determine it, we don't have enough.

17 More on the video evidence. Now, the
18 police sergeants want to tell us some things in
19 the video evidence that really it cannot tell us.
20 The color of the shoes. We heard from the Target
21 expert that you can't tell what color the shoes
22 are that the shooter has from that.

23 Whether the lights were on in the car or
24 not. Now, it doesn't matter whether there were
25 dome lights or courtesy lights in that car. But

1 what I think is important is that you have two
2 experienced law enforcement, Sgt. Kjos and
3 Forensic Scientist Johnson, who disagree. They
4 see the same video evidence and it shows them two
5 different things. We all know what a dome light
6 is. Sgt. Kjos knows what a dome light is. It's
7 not a courtesy light. But these two experienced
8 law enforcement officers saw the evidence totally
9 different. The video evidence, ladies and
10 gentlemen, is of only limited value. It does not
11 show, it does not come close to showing that
12 Mahdi Ali, who he admitted, that's me at the
13 impound lot, that that is the same person who
14 shot and killed those three people at the Seward
15 Market.

16 We cannot say the pants are the same.
17 We cannot say the shoes are the same. We cannot
18 say the hat is the same. Similarities, yes, but
19 think about the Target testimony. This was only
20 at the most general level, the general class
21 characteristics, not the limited class
22 characteristics, no unique characteristics. How
23 many people are out there with stonewashed jeans
24 and brown shoes wearing a hat with strings? Not
25 many, but we can't say, certainly can't say that

1 Mahdi Ali to the exclusion of all others was the
2 person in those clothes that day.

3 And we know some of these guys were
4 changing clothes. Abdisalan Ali, you remember
5 Christa Thorne's testimony, when he went into
6 that coat store, he was wearing camouflaged
7 pants, but yet when he's at the impound lot he
8 has different pants. People change clothes.
9 Different people wear different clothes.
10 Different people wear similar clothes. We just
11 don't know.

12 But the video evidence is helpful in one
13 respect because it can show us general movements
14 of people. Obviously, we have the chilling
15 videos of the shooting itself, and I'll talk more
16 about that when we talk about state of mind, but
17 you also have the video of what happened outside
18 the store, video that, again, showed us that
19 Ahmed Shire is not telling us the truth.

20 And this is Exhibit 102. We're going to
21 look at this in just a second. But remember
22 Ahmed Shire's testimony, he said that he got out
23 of the car, he was walking north on 25th Avenue,
24 paused, sat at the side of the building by the
25 alley, then walked across the street to the

1 church, stopped, turned around and walked back.
2 So we should be able to see that on the video.
3 But let's take a look. This is Exhibit 102.

4 (Video played.)

5 MR. GOETZ: Just to set this up, the car
6 has already parked. See the subject walking
7 down. There is two of them. Pause, and they
8 keep walking north.

9 Ahmed Shire is lying. Why is he saying
10 that? I submit that when you consider all of the
11 evidence, there was a third person, and it's
12 probable and reasonable to conclude that that
13 third person was Mahdi Ali. A third person that
14 didn't go into the store with Ahmed Shire Ali and
15 the shooter, but the third person that Peter
16 Fleck saw walk down the alley, go up the ramp or
17 the steps by that side entrance to the church and
18 stand there. Not just for a second, he wasn't
19 there and back, he was standing, maybe five
20 minutes maximum is what Mr. Fleck told us while
21 he's doing his dishes. He sees this person, and
22 they look but didn't give -- excuse me, didn't
23 give much of a description, but it's a
24 description not being inconsistent with being Mr.
25 Ali.

1 So consider, ladies and gentlemen, if
2 someone says, I don't want anything to do with
3 this, I'm walking away from you, I'm leaving
4 this. Do you think they've got a fall guy?
5 Somebody who might know something about what
6 these other two people did? Somebody they might
7 want to kill to get rid of? To blame for their
8 crime.

9 Let's talk for just a minute about the
10 cell phone data before I get to the DNA. And
11 I'll just talk about this briefly. It really
12 didn't tell us much. If you remember Sgt.
13 Wente's testimony, it's about a mile radius. So
14 while the prosecution wanted to have this nice
15 pinpoint chart, it's just not that precise, it's
16 not that precise.

17 But part of the theory is that sometime
18 around, and it would have to be sometime around
19 6:45, 7 o'clock, they're down at 2912 Clinton,
20 because that's where Abdisalan Ali, but I submit
21 that cell phone data does not support that
22 because that ping at 7:04 is on a tower that's
23 well north of that.

24 And that brings us to the DNA. Now,
25 Mohamed Warfa's DNA are on the pants. The DNA is

1 on the pants. Warfa's DNA is on the pants. We
2 heard that time and time again. But the
3 prosecution perhaps misspoke because the
4 identification was not Mr. Warfa's DNA profile to
5 the exclusion of everyone else in the world,
6 that's not what she testified to. It was the
7 exclusion to all unrelated persons in the world.
8 To all unrelated persons. So we also know that
9 this was not a complete DNA profile for Mr. Warfa
10 because if you remember that one loci is missing.
11 We cannot say, first of all, that the DNA that
12 fits the profile of Mr. Warfa does not also fit
13 the profile of somebody related to him and that
14 that's what is on Mr. Ali's pants.

15 But also, ladies and gentlemen, if we're
16 to believe Leandro Garcia, Mr. Ali got rid of all
17 the clothes, that's inconsistent. The fact that
18 those pants would be there, and the State would
19 say, oh, sloppy criminal. But everything else
20 was supposedly disposed of, the hat, the gloves,
21 the jacket, the shoes. It doesn't make sense.
22 If, in fact, all those things were with Mahdi Ali
23 and he got rid of them as Garcia would have us
24 believe, the pants would be gone too.

25 But we also know, ladies and gentlemen,

1 that Mr. Warfa was a frequent visitor to the
2 Seward Market and Mr. Ali was, too. We know that
3 he lived right across the street. All we know is
4 that his DNA, or the DNA of somebody related to
5 him was on that pair of trousers. How it got
6 there, when it got there, we do not know. It's
7 entirely possible that transference occurred on
8 some occasion other than January 6th of 2010.
9 You cannot eliminate that.

10 We can also not eliminate contamination
11 at the BCA lab. How is it, ladies and gentlemen,
12 that a profile, a DNA profile of a DNA
13 criminal -- of a BCA criminal investigator,
14 somebody who had no contact, as far as we know,
15 no contact with the evidence, no contact with the
16 case, how is it that their DNA profile shows up
17 as possible contributor to the minor profiles
18 that are on the 2B-2. Again, that's the profile
19 with Mr. Warfa as a mixture. How is it on there?
20 Did some kind of contamination occur?

21 We heard about transference and
22 secondary transference. If that investigator
23 were to touch something and then the item of
24 clothing or the substances would somehow get in
25 contact with that item, perhaps his DNA is on

1 the weaknesses in the forensic evidence, the
2 dubious nature of the testimony of those saying
3 Mahdi was the shooter, and the demonstrated
4 efforts of Ahmed Shire Ali and his family and his
5 clan to set up, to frame Mahdi Ali, the State has
6 not proven that he was the shooter beyond a
7 reasonable doubt.

8 Let's talk then, finally, about state of
9 mind. Ladies and gentlemen, before I do that,
10 I've gone a bit longer than I had wanted to.
11 There are a few things that I have left that are
12 important to talk to you about, I appreciate your
13 patience in listening. And, in fact, I meant to
14 say earlier, on behalf of myself and Mr. Ali, I
15 want to thank you for your participation in the
16 case. As we know, you're pulled out of your
17 lives and we ask you to step up and perform a
18 duty, and I thank you for that.

19 I do need to talk a bit about the state
20 of mind issue. Now, the State, and Mr. Streit
21 is a very experienced and skilled prosecutor,
22 stood up in the very dramatic and moving and
23 powerful way trying to break this murder down
24 into its most chilling, cold, calculated,
25 deliberate as possible. But that's not the way

1 it went down. That is not what happened.
2 Whoever did the shooting, ladies and gentlemen, I
3 need to talk about this.

4 Consider, ladies and gentlemen, all of
5 the circumstances in determining state of mind,
6 that's part of the instruction. Consider,
7 because you've got Ahmed Shire Ali, who is a
8 teenager, that we're dealing with a teenage
9 brain. From our common experience, ladies and
10 gentlemen, we know that teenagers do not think
11 like adults, they're not the same. So it is
12 wrong to attribute adult rational thinking
13 characteristics and abilities to teenagers. It
14 is wrong.

15 61, 62 seconds, that's all this took.
16 And the shots, wildly disbursed in terms of where
17 they are. Watch the videotape, I can't give you
18 a more powerful presentation than that, but this
19 was a rash, unconsidered, unthought, melee that
20 resulted in the deaths of three people. The
21 shooter is clearly surprised when Mr. Mohammed
22 comes in. And, yes, he was -- he was smiling.
23 If I remember, he was just picking up some things
24 to get his mother. But the shooter is surprised
25 and the panic, and the first shot, it's not

1 aimed, it's just a panic first shot. And once
2 that shot goes off, once there's that bang, what
3 did Mr. Ahmed Shire Ali tell us? What was his
4 experience? It's like his mind switched off. He
5 wasn't thinking. He was acting. He was moving,
6 he was running. That teenage brain was acting in
7 its most animalistic, animalistic way.

8 And, yes, the video shows the shooter
9 because he leaves. And then Mr. Warfa goes after
10 him. And there is some sort of a struggle at the
11 door. And, remember, we saw the stippling, or
12 the mark on Mr. Warfa's hand and, perhaps, the
13 medical examiner, as I recall the testimony, told
14 us the same shot that inflicted the wounds here
15 actually went up and caused the fatal injuries.
16 But there was that struggle. I submit, if that
17 had not happened, I submit the person, the
18 shooter, would have just kept running. And then
19 the autopilot goes in. And, yes, the shooter
20 comes back and, yes, Mr. Elmi is tracked down,
21 that happens, there is no denying that.

22 But you cannot look at this in just a
23 two-dimensional fashion. You have to consider
24 the brains that were involved. And am I saying
25 that you excuse the conduct because it was

1 committed by teenagers? No, not at all. But if
2 any crime was committed here, it was the
3 second-degree murder counts that you will also
4 here as lesser included. And the Judge will give
5 those instruction to you, but they have a
6 different state of mind requirements.

7 Now, the State I expect will say, well,
8 we heard from Ahmed Shire that this was Mahdi
9 Ali, again, the blame shifting, the fall guy, who
10 went back in because they knew me, they knew me.
11 And this is the argument that is the
12 rationalization. But consider the source, ladies
13 and gentlemen. Again, the only person that they
14 knew me from was Ahmed Shire Ali and then also
15 indirectly -- because he never admitted that he
16 said anything -- from Abdisalan Ali. It's the
17 Ahmed Shire Ali family and clan who's saying
18 that.

19 According to Leandro Garcia, as I
20 remember his testimony, he said something
21 completely different. On the one hand, he said,
22 well, Mahdi was telling me, no face, no case.
23 But on the other hand, he told me he wanted to go
24 back because there are no witnesses. Well, if
25 they don't have a case, what are you worried

1 about witnesses for? It's inconsistent.

2 But, again, ladies and gentlemen -- also
3 I forgot, Jamiila Ahmed, she heard the yelling
4 coming from the part of the store. I submit if
5 that was accurate, that the yelling, and the
6 pointing was, we know you, we know who you are,
7 she would have heard something like that, but she
8 never said she heard anything like that.

9 And the fact that there was no money
10 taken from the store showed that they were not
11 thinking. The plan went out the window. There
12 was no plan, there was no action, there was no
13 intent.

14 Ladies and gentlemen, within 62 seconds,
15 teenagers, kids who had no idea of the power that
16 they had in their hands committed this crime.
17 It's not first-degree murder.

18 Finally, ladies and gentlemen, again, I
19 appreciate your attention. In our system the way
20 it's structured, this is my only opportunity to
21 argue the case summarily in front of you. The
22 State, under our system now has the opportunity
23 for what's called rebuttal. I'm not sure exactly
24 what Mr. Streitz will argue, but if you could,
25 consider, because I don't get to say anything,

1 that I'm probably going to be disagreeing with
2 just about everything he says.

3 So as you're listening to it, just if
4 you would, think critically, what would the other
5 side to that argument be? Because in the end,
6 ladies and gentlemen, the prosecution has not
7 proven beyond a reasonable doubt that Mahdi Ali,
8 to the exclusion of all others, is the person who
9 took those three lives on January 6th, 2010.
10 That's why I ask that you find him not guilty.
11 Thank you.

12 THE COURT: Members of the jury, we've
13 been working pretty hard this morning, but I'm
14 going to push you a little more because we are
15 going to actually take a lunch break now, but I'm
16 going to limit it to 45 minutes so we can get to
17 the rebuttal and the final instructions from the
18 Court, which we will do after lunch. So for now,
19 please be back in the usual places at five
20 minutes to one and we will resume at that time.

21 (Recess for the noon hour.)

22

23

24

25

(Afternoon session:)

1 THE COURT: Mr. Streitz, you may
2 proceed.

3 MR. STREITZ: Thank you, Your Honor.

4 Your Honor, staff, counsel, members of
5 the jury. I won't be too long, I hope, but I do
6 want to address a few things the defense brought
7 up in their closing.

8 First of all, as a prosecutor, I don't
9 have to prove everyone who didn't do this crime.
10 I have to prove whether the defendant committed
11 the crime, and I submit to you that I've proven
12 it beyond a reasonable doubt.

13 Secondly, the defense would have you
14 view certain testimony or certain items of
15 evidence in isolation, I would ask that you
16 consider all of the evidence together.

17 One of the things that he took -- the
18 defense took great pains to suggest was that the
19 defendant wasn't going to the impound lot to get
20 a car out. Well, the defendant told the police
21 that. Abdisalan told the police that. Ahmed
22 told the police that. And in the pictures that
23 you will see at the impound lot, the defendant is
24 holding a license plate, the same license plate
25 that's found in the Crown Victoria. If he wasn't

1 going to pick up a car, I have no idea why
2 somebody would be going to the impound lot and
3 then claiming he didn't have enough money to get
4 the car out of the impound lot.

5 The defense would also have you believe
6 that there is some type of Somali clan conspiracy
7 going on. For example, Ahmed Ali and Galony
8 somehow conspired to frame the defendant. I
9 submit to you that Galony would have no time to
10 do and enter into such a conspiracy when he gave
11 the information he had within hours after the
12 murder, gave that information to the police.
13 There's absolutely no information that he and
14 Ahmed Ali had ever gotten together to figure out
15 how to conspire to frame this defendant.

16 The defendant would have you believe
17 that Leandro Garcia, because he's a felon, has
18 some ability to just know certain facts. For
19 example, because he's a felon, he would somehow
20 know about money wiring -- money transfer stores.
21 He would have you believe that because Leandro
22 Garcia is a felon that that gives him the ability
23 to know that Mahdi Ali or whoever would do this
24 murder robbery, would have been at an impound lot
25 just before they committed these crimes. It's

1 preposterous.

2 We've moved from misidentification to
3 third person, and if there is a third person,
4 it's Mahdi Ali because Ahmed said he went across
5 the street briefly and then came back and went in
6 the store. You heard Cliff Johnson say there is
7 a gap in coverage between the camera that shoots
8 down 25th under the awning and before the
9 camera -- and the camera coverage going down
10 25th. There is not one bit of evidence that
11 there is some third person involved in this. The
12 evidence you have is that there is two people
13 that went into the store and it's the defendant
14 and it's Ahmed Ali.

15 The defendant talked to you about the
16 Target video analysts. Folks, you look at the
17 pictures, you do the comparisons for yourself and
18 you see if what Target, the Target witnesses told
19 you is supported by those pictures. And I submit
20 it will.

21 The defense wants you to disbelieve the
22 DNA evidence. Again, after having read that
23 quote that I read this morning, when he read that
24 quote last Friday to James Schroering, how great
25 DNA evidence is, but now let's not believe it.

1 And you shouldn't believe it because there is a
2 missing loci, a site on the chromosomes that she
3 didn't get a reading on Mr. Warfa's known blood,
4 DNA. She calculated the statistics without using
5 that loci and that statistic still came out one
6 in the world population would have that DNA
7 profile.

8 Now, if you think the odds of that are
9 staggering, couple that with the odds that an
10 individual goes into the market with shoes just
11 like the defendant's wearing, pants -- jeans just
12 like the defendant's wearing, cuffed just like
13 the pants the defendant was wearing. The
14 defendant was using a car that just happened to
15 have the same defect in the backup light and the
16 defendant is captured on video. The odds become
17 extremely staggering the chances of that.

18 You heard the two witnesses from the BCA
19 tell you about all the care that goes into
20 avoiding contamination, they have controls, they
21 have reagent blanks. They also run a check to
22 see if any of the analyst's DNA, or any of the
23 employees could show up in the sample and have
24 contributed to contamination.

25 Now, she didn't say that the BCA

1 investigator's DNA, that there is proof he
2 contaminated that -- any of those samples. She
3 said she couldn't exclude him as a source in the
4 mixed sample, that quality control check, she
5 then went and found out that he had no access to
6 the lab unless escorted. He had absolutely no
7 connection with this case. He didn't have any of
8 the evidence whatsoever. There were a lot of
9 people who couldn't be excluded, but there is no
10 proof that he is the source of that
11 contamination.

12 The defense talked about state of mind
13 and how wildly these bullets, shots were fired.
14 Wild dispersion. Folks, these were six
15 discharged cartridge casings, and I submit to you
16 there were six wounds and none of them missed the
17 mark. They all struck the victims.

18 And, finally, the suggestion that Mr.
19 Warfa is somehow responsible for his death
20 himself because had he not gone outside after the
21 gunman is offensive. The defense claim had he
22 not done that, the gunman would have gone away
23 and Mr. Warfa would be alive. That is offensive.

24 I submit to you, use your common sense,
25 view the evidence in its totality, and I trust

1 you'll return guilty verdicts of first-degree
2 murder. Thank you.

3 THE COURT: Members of the jury, it is
4 your duty to decide the questions of fact in this
5 case. It is my duty to give you the rules of law
6 that you must apply in arriving at your verdict.
7 Now that I have heard the evidence and the
8 arguments of counsel, I will instructs you in the
9 law applicable to this case. You will be given
10 several copies of these instruction to refer to
11 when you retire to the jury room. Nevertheless,
12 you should listen carefully and attentively as I
13 read them to you now.

14 You must follow and apply the rules of
15 law as I give them to you, even if you believe
16 the law is or should be different. Deciding
17 questions of fact is your exclusive
18 responsibility. In doing so, you must consider
19 all of the evidence you have heard and seen in
20 this trial, and you must disregard anything you
21 may have heard or seen elsewhere about this case.

22 I have not by these instructions, nor by
23 any ruling or expression during the trial,
24 intended to indicate my opinion regarding the
25 facts or the outcome of this case. If I have

1 said or done anything that would seem to indicate
2 such an opinion, you are to disregard it.

3 You may consider these instructions as a
4 whole and regard each instruction in the light of
5 all the others. The order in which the
6 instructions are given is of no significance.
7 You are free to consider the issues in any order
8 you wish.

9 The defendant is presumed innocent of
10 the charge made. The presumption remains with
11 the defendant unless and until the defendant has
12 been proven guilty beyond a reasonable doubt.
13 That the defendant has been brought before the
14 court by the ordinary processes of the law and
15 is on trial should not be considered by you as in
16 any way suggesting guilt. The burden of proving
17 guilt is on the States. The defendant does not
18 have to prove innocence.

19 Proof beyond a reasonable doubt is such
20 proof as ordinary prudent men and woman would act
21 upon in their most important affairs. A
22 reasonable doubt is a doubt based upon reason and
23 common sense. It does not mean a fanciful or
24 capricious doubt, nor does it mean beyond all
25 possibility of doubt.

1 A fact may be proven by either direct or
2 circumstantial evidences or by both. The law
3 does not prefer one form of evidence over
4 another. A fact is proven by direct evidence
5 when, for example, it is proven by witnesses who
6 testified to what they saw, heard or experienced
7 or by physical evidence of the fact itself. A
8 fact is proven by circumstantial evidence when
9 its existence can be reasonably inferred from
10 other facts proven in the case.

11 Attorneys are officers of the court. It
12 is their duty to make objections they think
13 proper and argue their client's cause. However,
14 the arguments or remarks of an attorney are not
15 evidence. If the attorneys or I have made or
16 should make any statement as to what the evidence
17 is which differs from your recollection of the
18 evidence, you should disregard the statement and
19 rely solely on your own memory.

20 If an attorney's argument contains any
21 statement of the law that differs from the law I
22 give you, disregard the attorney's statement.

23 Each count set forth against the
24 defendant charges a separate and distinct
25 offense. You must consider the evidence

1 applicable to each alleged offense as if it was
2 the only accusation before you for consideration.
3 And you must state your findings as to each count
4 in a separate verdict, uninfluenced by the fact
5 that your verdict as to any other count or counts
6 is in favor of or against the defendant. The
7 defendant may be found guilty or not guilty of
8 any or all of the offenses claimed, depending
9 upon the evidence and the weight you give it
10 under the Court's instructions.

11 The law provides upon the prosecution of
12 a person for a crime, if the person is not guilty
13 of the crime, the person may be guilty of a
14 lesser crime. The lesser crime in this case is
15 murder in the second-degree. The presumption of
16 innocence and the requirement of proof beyond a
17 reasonable doubt apply to these lesser crimes.
18 If you find beyond a reasonable doubt that the
19 defendant has committed each element of the
20 lesser crime, but you have a reasonable doubt
21 about any different element of the greater crime,
22 the defendant is guilty only of the lesser crime.

23 A defendant is guilty of a crime
24 committed by another person when a defendant has
25 intentionally aided the other person in

1 committing it or has intentionally advised,
2 hired, counseled, conspired with, or otherwise
3 procured the other person to commit it.

4 If a defendant intentionally aided
5 another person in committing a crime, or
6 intentionally advised, hired, counseled,
7 conspired with, or otherwise procured the other
8 person to commit it, that defendant is also
9 guilty of any other crime the other person
10 commits while trying to commit the intended
11 crime, if that other crime was reasonably
12 foreseeable to the defendant as a probable
13 consequence as trying to commit the intended
14 crime.

15 A defendant is not liable criminally for
16 advising, hiring, counseling, conspiring or
17 otherwise procuring a commission of a crime unless
18 some crime, including an attempt, is actually
19 committed.

20 The defendant is charged in Counts One,
21 Two and Three with murder in the first degree
22 with premeditation.

23 The statutes of Minnesota provide that
24 whoever, with premeditation and with the intent
25 to effect the death of -- of the person or

1 another, causes the death of a human being is
2 guilty of a crime.

3 As to Count One, the elements of murder
4 in the first-degree are: First, that the death
5 of Anwar Salah Mohammed must be proven. Second,
6 that the defendant, or another, person aided and
7 abetted by defendant, caused the death of Anwar
8 Salah Mohammed.

9 Third, the defendant, or another person
10 aided and abetted by the defendant, acted with
11 the intent to kill Anwar Salah Mohammed. In
12 order to have intent to kill, the defendant, or
13 another person aided and abetted by defendant,
14 must have acted with the purpose of causing death
15 or believed that the act would cause death.

16 Fourth, the defendant or another person
17 aided and abetted by defendant, acted with
18 premeditation. Premeditation, or another person
19 aided and abetted by the defendant, considered,
20 planned, prepared, prepared for, or determined to
21 commit the act before it was committed.

22 Premeditation being a process of the mind is
23 wholly subjective and hence not always
24 susceptible to proof by direct evidence. It may
25 be inferred from all the circumstances

1 surrounding the event. It is not necessary that
2 premeditation exists for a specific length of
3 time. A premeditated decision to kill may be
4 reached in a short period of time. However, an
5 unconsidered or rash impulse, even though it
6 includes an intent to kill, is not premeditated.

7 Fifth, the defendant's act took place on
8 or about January 6th, 2010 in Hennepin County.

9 If you find that each of these elements
10 has been proven beyond a reasonable doubt, the
11 defendant is guilty. If you have a reasonable
12 doubt that there was premeditation, but you find
13 that all the other elements have been proven,
14 then the defendant is guilty of murder in the
15 second-degree. The crime of murder in the
16 second-degree differs from murder in the
17 first-degree in this count only in at that the
18 killing was done with intent to kill another
19 person, but not with premeditation.

20 If you find that any element other than
21 premeditation has not been proven beyond a
22 reasonable doubt, the defendant is not guilty.

23 As to Count Two, the elements of murder
24 in the first-degree are: First, the death of
25 Mohamed Abdi Warfa must be proven.

1 Second, the defendant, or another person
2 aided and abetted by defendant, caused the death
3 of Mohamed Abdi Warfa.

4 Third, the defendant, or another person
5 aided and abetted by defendant, acted with the
6 intent to kill Mohamed Abdi Warfa. In order to
7 have had an intent to kill, the defendant, or
8 another person aided and abetted by defendant,
9 must have acted with the purpose of causing death
10 or believed that the act would cause death.

11 Fourth, the defendant, or another person
12 aided and abetted by defendant, acted with
13 premeditation. Premeditation means that the
14 defendant, or another person aided and abetted by
15 the defendant, considered, planned, prepared for
16 or determined to commit the act before it was
17 committed. Premeditation, being a process of the
18 mind, is wholly subjective and hence not always
19 susceptible to proof by direct evidence. It may
20 be inferred from all circumstances surrounding
21 the event. It is not necessary that
22 premeditation exist for a specific length of
23 time. A premeditated decision to kill may be
24 reached in a short period of time. However, an
25 unconsidered or rash impulse, even though it

1 includes an intent to kill, is not premeditated.

2 Fifth, the defendant's act took place on
3 or about January 6th, 2010, in Hennepin County.

4 If you find that each of these elements
5 has been proven beyond a reasonable doubt, the
6 defendant is guilty.

7 If you have a reasonable doubt that
8 there was a premeditation, but you find that all
9 the other elements have been proven, then the
10 defendant is guilty of murder in the
11 second-degree. The crime murder in the
12 second-degree differs from murder in the
13 first-degree in this count only in that the
14 killing was done with intent to kill another
15 person but not with premeditation.

16 If you find that any element other than
17 premeditation has not been proven beyond a
18 reasonable doubt, the defendant is not guilty.

19 As to Count Three, the elements of
20 murder in the first-degree are: First, the death
21 of Osman Jama Elmi must be proven.

22 Second, the defendant, or another person
23 aided and abetted by defendant, caused the death
24 of Osman Jama Elmi.

25 Third, the defendant, or another person

1 has been proven beyond a reasonable doubt, the
2 defendant is guilty. If you have a reasonable
3 doubt that there was premeditation, but you find
4 that all the other elements have been proven,
5 then the defendant is guilty of murder in the
6 second-degree. A crime of murder in the
7 second-degree differs from murder in the
8 first-degree in this count only in that the
9 killing was done with the intent to kill another
10 person but not with premeditation.

11 If you find that any element other than
12 premeditation has not been proven beyond a
13 reasonable doubt, the defendant is not guilty.

14 The defendant is charged in Counts Four,
15 Five, and Six with murder in the first-degree
16 while committing or attempting to commit
17 aggravated robbery. The statutes of Minnesota
18 provide that whoever, while committing or
19 attempting to commit the crime of aggravated
20 robbery causes the death of a human being with
21 intent to effect the death of that person or
22 another, is guilty of a crime.

23 Now, in order for you to evaluate the
24 evidence as it pertains to Counts Four, Five and
25 Six, you must decide if it has been proven that

1 defendant or another person, aided and abetted by
2 defendant, attempted or committed an aggravated
3 robbery. I'll define those terms, attempt and
4 aggravated robbery more specifically for you now.

5 First, attempt. The statutes of
6 Minnesota provide that a person is guilty of an
7 attempt to commit a crime when with intent to
8 commit a crime the person does an act that is a
9 substantial step toward and more than mere
10 preparation for the commission of the crime. An
11 attempt to commit a crime requires both an intent
12 to commit the crime and a substantial step toward
13 the commission of the crime.

14 In determining whether a substantial
15 step has been taken, you must distinguish between
16 mere preparation for and actually beginning to
17 commit the criminal act. Mere preparation, which
18 may consist of planning the offense or obtaining
19 or arranging the means for its commission is not
20 sufficient to constitute an attempt. An act by a
21 person who intends to commit a crime is an
22 attempt if the act itself clearly indicates the
23 intent to commit the specific crime and it tends
24 directly to accomplish the crime. The act itself
25 need not be criminal in nature.

1 The statutes of Minnesota provide that
2 whoever, knowing he was not entitled to do so
3 takes personal property from another, either from
4 the person or in the presence of the person, and
5 uses force or the threat of imminent force
6 against any person to overcome resistance or
7 compel acquiescence in the taking or carrying
8 away of the property, is guilty of aggravated
9 robbery, if the defendant is armed with a
10 dangerous weapon or any article used or fashioned
11 in a manner to lead the victim to reasonably
12 believe it to be a dangerous weapon, or inflicts
13 bodily harm upon a person.

14 The elements of aggravated robbery are:
15 First, the defendant took personal property from
16 the person of another or in the person's presence
17 knowing the defendant was not entitled to take
18 it.

19 Second, that the defendant used force or
20 the threat of imminent force against the person
21 to overcome resistance or to compel acquiescence
22 in the taking or carrying off with the property.
23 The term threat of imminent force means the
24 intentional creation in a person's mind of an
25 understanding that if he or she resisted or

1 refused to cooperate, force would immediately be
2 used against him or her.

3 Third, the defendant was armed with a
4 dangerous weapon. A firearm whether loaded or
5 unloaded is a dangerous weapon. You should keep
6 these definitions in mind as they pertain to the
7 elements of murder in the first-degree as charged
8 in Counts Four, Five and Six.

9 As to Count Four, the elements of murder
10 in the first-degree while committing or
11 attempting to commit aggravated robbery are:
12 First, the death of Anwar Salah Mohammed must be
13 proven.

14 Second, the defendant or another person
15 aided and abetted by the defendant, caused the
16 death of Anwar Salah Mohammed.

17 Third, the defendant or another person
18 aided and abetted by the defendant, acted with
19 the intent to kill Anwar Salah Mohammed.

20 To find that the defendant, or another
21 person aided and abetted by the defendant had an
22 intent to kill, you must find the defendant, or
23 another person aided and abetted by the
24 defendant, acted with a purpose of causing death,
25 or believed that the act would have that result.

1 Intent being a process of the mind is not always
2 susceptible to proof by direct evidence but may
3 be inferred from all the circumstances
4 surrounding the event. It is not necessary that
5 the person's act be premeditated.

6 Fourth, at the time of the act causing
7 the death of Anwar Salah Mohammed, the defendant,
8 or another person aided and abetted by the
9 defendant, was committing or attempting to commit
10 the crime of aggravated robbery.

11 Fifth, the act took place on or about
12 January 6th, 2010, in Hennepin County.

13 If you find that each of these elements
14 has been proven beyond a reasonable doubt, the
15 defendant is guilty. If you have a reasonable
16 doubt that there was intent to kill, but you find
17 that all the other elements have been proven,
18 then the defendant is guilty of murder in the
19 second-degree.

20 The crime of murder in the second-degree
21 differs from murder in the first-degree in this
22 count only in that the killing was done while the
23 defendant, or another person aided and abetted
24 by the defendant, was committing or attempting to
25 commit the crime of aggravated robbery, but not

1 with intent to kill.

2 If you find that any element other than
3 intent to kill has not been proven beyond a
4 reasonable doubt, the defendant is not guilty.

5 As to Count Five, the elements of murder
6 in the first-degree while committing or
7 attempting to commit aggravated robbery are:

8 First, that the death of Mohamed Abdi
9 Warfa must be proven.

10 Second, the defendant or another person
11 aided and abetted by the defendant, caused the
12 death of Mohamed Abdi Warfa.

13 Third, the defendant, or another person
14 aided and abetted by defendant, acted with the
15 intent to kill Mohamed Abdi Warfa. To find that
16 the defendant, or another person aided and
17 abetted by the defendant, had an intent to kill,
18 you must find that the defendant, or another
19 person aided and abetted by the defendant, acted
20 with the purpose of causing death, or believed
21 that the act would have that result. Intent
22 being a process of the mind is not always
23 susceptible to proof by direct evidence but may
24 be inferred from all the circumstances
25 surrounding the event. It is not necessary that

1 the person's act be premeditated.

2 Fourth, at the time of the act causing
3 the death of Mohamed Abdi Warfa, the defendant or
4 another person, aided and abetted by the
5 defendant, was committing or attempting to commit
6 the crime of aggravated robbery.

7 Fifth, the act took place on or about
8 January 6th, 2010 in Hennepin County.

9 If you find that each of these elements
10 has been proven beyond a reasonable doubt, the
11 defendant is guilty.

12 If you have a reasonable doubt that
13 there was intent to kill, but you find that all
14 the other elements have been proven, then the
15 defendant is guilty of murder in the
16 second-degree.

17 The crime of murder in the second-degree
18 differs from murder in the first-degree in this
19 count only in that the killing was done while the
20 defendant, or another person aided and abetted
21 by the defendant, was committing or attempting to
22 commit the crime of aggravated robbery, but not
23 with intent to kill.

24 If you find that any element, other than
25 intent to kill has not been proven beyond a

1 reasonable doubt, the defendant is not guilty.

2 As to Count Six, the elements of murder
3 in the first-degree while committing or
4 attempting to commit aggravated robbery are:

5 First, that the death of Osman Jama Elmi
6 must be proven.

7 Second, the defendant or another person,
8 aided and abetted by the defendant, caused the
9 death of Osman Jama Elmi.

10 Third, the defendant, or another person
11 aided and abetted by defendant, acted with the
12 intent to kill Osman Jama Elmi. To find that the
13 defendant, or another person aided and abetted by
14 the defendant, had an intent to kill, you must
15 find that the defendant, or another person aided
16 and abetted by the defendant, acted with the
17 purpose of causing death, or believed that the
18 act would have that result. Intent being a
19 process of the mind is not always susceptible to
20 proof by direct evidence, but may be inferred
21 from all the circumstances surrounding the event.
22 It is not necessary that the person's act be
23 premeditated.

24 Fourth, at the time of the act causing
25 the death of Osman Jama Elmi, the defendant, or

1 another person, aided and abetted by the
2 defendant, was committing or attempting to commit
3 the crime of aggravated robbery.

4 Fifth, the act took place on or about
5 January 6th, 2010 in Hennepin County.

6 If you find that each of these elements
7 has been proven beyond a reasonable doubt, the
8 defendant is guilty.

9 If you have a reasonable doubt that
10 there was intent to kill, but you find that all
11 the other elements have been proven, then the
12 defendant is guilty of murder in the
13 second-degree.

14 The crime of murder in the second-degree
15 differs from murder in the first-degree in this
16 count only in that the killing was done while the
17 defendant, or another person, aided and abetted
18 by the defendant, was committing or attempting to
19 commit the crime of aggravated robbery, but not
20 with intent to kill.

21 If you find that any element, other than
22 intent to kill, has not been proven beyond a
23 reasonable doubt, the defendant is not guilty.

24 "To know" requires only that the actor
25 believes that the specific fact exists.

1 "Intentionally" means that the actor
2 either has a purpose to do the thing or cause the
3 result specified, or believes that the act
4 performed by the actor, if successful, will cause
5 the result. In addition, the actor must have
6 knowledge of those facts that are necessary to
7 make the actor's conduct criminal and are set
8 forth after the word intentionally.

9 "With intent to" or "with intent that"
10 means that the actor has a purpose to do the
11 thing or cause the result specified, or believes
12 that the act, if successful, will cause that
13 result.

14 You are the sole judges of whether a
15 witness is to be believed and the weight to be
16 given to a witness's testimony. There are no
17 hard and fast rules to guide you in this respect.
18 In determining believability and weight of
19 testimony, you may take into consideration the
20 witness's interest or lack of interest in the
21 outcome of the case, relationship to the parties,
22 ability and opportunity to know, remember, and
23 relate the facts, manner, age and experience,
24 frankness and sincerity, or the lack thereof,
25 reasonableness or unreasonableness of their

1 testimony in lights of all the other evidence in
2 the case, any impeachment of the witness's
3 testimony, and any other factors that bear on
4 believability and weight.

5 You should rely on the last analysis
6 upon your own experience, good judgment and
7 common sense.

8 A witness who has special training,
9 education or experience in a particular science,
10 occupation or calling is allowed to express an
11 opinion as to certain facts. In determining the
12 believability and weight to be given such opinion
13 evidence, you may consider the education,
14 training, experience, knowledge and ability of
15 the witness, the reasons given for the opinion,
16 the sources of the information, and factors
17 already given you for evaluating the testimony of
18 any witness. Such opinion evidence is entitled
19 to neither more nor less consideration by you
20 than any other evidence.

21 In deciding the believability and weight
22 to be given the testimony of a witness, you may
23 consider evidence that the witness has been
24 convicted of a crime. You may consider whether
25 the kind of crime committed indicates the

1 likelihood the witness is telling or not telling
2 the truth. Also, evidence of a statement by or
3 conduct of the witness on some prior occasion
4 that is inconsistent with present testimony.
5 Evidence of any prior inconsistent statement or
6 conduct should be considered only to test the
7 believability and weight of the witness's
8 testimony.

9 In the case of the defendant, however,
10 evidence of any statement the defendant may have
11 made may be considered by you for all purposes.

12 You cannot find the defendant guilty of
13 a crime on the testimony of a person who can be
14 charged with a crime unless that testimony is
15 corroborated by other evidence that tends to
16 convict the defendant of the crime. Such a
17 person who could be charged for the same crime is
18 called an accomplice, in this case, Ahmed Ali,
19 who is also referred as to Ahmed Shire Ali, is a
20 person who could be charged with the same crime
21 as the defendant. You cannot find the defendant
22 guilty of a crime on the testimony of the
23 accomplice unless that testimony is corroborated.
24 The evidence that can corroborate the testimony
25 of an accomplice must do more than merely show

1 that a crime was committed or show the
2 circumstances of the crime. But the
3 corroborating evidence need not convince you by
4 itself that the defendant committed the crime.
5 It is enough that it tends to show that the
6 defendant committed a crime and that, taken with
7 the testimony of an accomplice, you are convinced
8 beyond a reasonable doubt that the defendant
9 committed the crime.

10 The testimony of one accomplice does not
11 corroborate the testimony of another accomplice.
12 The accomplice must be corroborated by evidence
13 other than accomplice testimony before you may
14 find the defendant guilty. But such other
15 evidence may corroborate the testimony of each
16 accomplice.

17 During these instructions, I have
18 defined certain words and phrases. If so, you
19 are to use those definitions in your
20 deliberations. If I have not defined a word or
21 phrase, you should apply the common, ordinary
22 meaning of that word or phrase.

23 During this trial I've ruled on
24 objections to certain testimony and exhibits.
25 You must not concern yourself with the reasons

1 for the rulings since they are controlled by
2 rules of evidence. By admitting into evidence
3 testimony and exhibits to which an objection was
4 made, I did not mean to intend the weight to be
5 given such testimony and evidence. You are not
6 to speculate as to possible answers I did not
7 require to be answered. You are to disregard all
8 evidence and statements I have ordered stricken
9 or have told you to disregard.

10 If you have a question about any part of
11 the testimony, or any legal question after you
12 have retired for your deliberation, please
13 address it to me in writing and give it to the
14 deputy with the signature of your foreperson on
15 the note.

16 As I told you, you will take with you
17 into the jury room several copies of the
18 instructions that I'm reading to you. The
19 lawyers and I have determined that these
20 instructions contain all the laws that are
21 necessary for you to know in order to decide this
22 case.

23 I cannot give you a trial transcript, no
24 such transcript exists. We count on the jury to
25 rely on its collective memory.

1 Also with the exception of audio and
2 video evidence, you have all the exhibits that
3 were received in evidence in the jury room for
4 your deliberation. If you wish to review any
5 audio or video evidence that was received, such
6 review will have to be done in the courtroom
7 under the Court's supervision. Any request to
8 review audio or video evidence should be made in
9 writing and given to the deputy.

10 You have been allowed to take notes
11 during the trial. You may take those notes with
12 you to the jury room. You should not consider
13 those notes binding or conclusive, whether they
14 are your notes or those of another juror. The
15 notes should be used as an aid to your memory,
16 and not a substitute for it. It is your
17 recollection of the evidence that should control.

18 You should disregard anything contrary
19 to your recollection that may appear from your
20 own notes or those of another juror. You should
21 not give greater weight to a particular piece of
22 evidence solely because it is referred to in a
23 note taken by a juror.

24 When you return to the jury room to
25 discuss this case, you must select a jury member

1 to be foreperson, that person will lead your
2 deliberations.

3 In order for you to return a verdict,
4 whether guilty or not guilty, each juror must
5 agree with that verdict, your verdict must be
6 unanimous. You should discuss the case with one
7 another and deliberate with a view towards
8 reaching an agreement if you can do so without
9 violating your individual judgment.

10 You should decide the case for yourself,
11 but only after you've discussed the case with
12 your fellow jurors and have carefully considered
13 their views.

14 You should not hesitate to reexamine
15 your views and change your opinion if you become
16 convinced they are erroneous, but you should not
17 surrender your honest opinion simply because
18 other jurors disagree or merely to reach a
19 verdict.

20 A single verdict form has been prepared
21 for your use. And I'm holding up an example at
22 this time as to Count One. It has what we call a
23 caption at the top which reads: State of
24 Minnesota, County of Hennepin, District Court,
25 Fourth Judicial District, State of Minnesota,

1 plaintiff, versus Mahdi Hassan Ali, defendant.
2 District Court File No. 27-CR-10-2076, we the
3 jury in the above entitled matter as to Count
4 One, murder in the first-degree premeditation,
5 and then in parentheses is an indication of the
6 victim's name for reference purposes only, find
7 the defendant, and then the choices which are
8 strictly in random order as I read them, guilty
9 of murder in the first-degree, not guilty of
10 murder in the first-degree but guilty of the
11 lesser included offense of murder in the
12 second-degree and not guilty. In other words,
13 three alternatives.

14 There is one verdict form for each count
15 and they read similarly. There are designated by
16 victim for each count only for reference
17 purposes.

18 The order in which the choices appear on
19 the verdict form, as I said, is purely
20 coincidence, and should not be taken as any
21 indication of what verdict you should arrive at.

22 But when you have finished your
23 deliberations and have reached a verdict as to a
24 specific count, foreperson should mark the
25 appropriate choice of the three on the form with

1 an "x" and then date and sign the verdict form.
2 All the verdict forms should be returned to the
3 Court when you return to the courtroom with your
4 verdict.

5 When you agree on a verdict, notify the
6 sheriff's deputy. You will return to the
7 courtroom where your verdict will be received and
8 read out loud in your presence.

9 After you return your verdict, there may
10 be additional issues for you to address and
11 decide, but I will instruct you further at that
12 time.

13 During your deliberations, you must not
14 be influenced by passion, prejudice, sympathy,
15 bias or public opinion. Your like or dislike of
16 any witness, attorney, or party should not have
17 an effect on the outcome of this case. The State
18 of Minnesota and the defendant have a right to
19 demand, and they do demand, that you will
20 consider and weight the evidence, apply the law
21 and reach a just verdict regardless of what the
22 consequences might be. You must be absolutely
23 fair.

24 Remember, that it is fair to find the
25 defendant guilty if the evidence and the law

1 require it. On the other hand, it is fair to
2 find the defendant not guilty if you are not
3 convinced of his guilt beyond a reasonable doubt.

4 Now, ladies and gentlemen of the jury,
5 this case is in your hands as judges of the
6 facts. I'm certain you realize this case is
7 important and serious and therefore deserves your
8 careful consideration.

9 Counsel, any errors or omissions to
10 bring to the Court's attention?

11 MR. STREITZ: None from the State, Your
12 Honor.

13 MR. GOETZ: None from defense, Your
14 Honor.

15 THE COURT: Before we swear the deputy,
16 Ms. Ewald, you are our last juror chosen, you are
17 our last remaining alternate. I'd ask that you
18 accompany Sean, another one of our clerks, to my
19 chambers for further instruction, but you will
20 not be deliberating with the rest of your
21 colleagues. We do thank you for your service.
22 It is very important. So if you can go with Sean
23 right now.

24 The deputy would be step forward to be
25 sworn.

1 (Deputy duly sworn.)

2 THE COURT: Members of the jury, before
3 you go with the deputy, I will advise you that
4 you are not being sequestered, which means that
5 you will deliberate during the business day from
6 8:30 to 4:30 but you will be allowed, if you have
7 not reached a verdict, to return to your homes at
8 night. Keeping in mind, of course, the Court's
9 admonition that you not discuss this case with
10 anyone and, in fact, affirmatively avoid any
11 evidence, or information that is, that you might
12 see outside of this courtroom.

13 With that, you may retire for your
14 deliberations.

15 All rise for the jury.

16 (Jurors retire to deliberate.)

17 THE COURT: We will be in recess until
18 the jury returns with any communication.

19 Counsel, please leave phone numbers with
20 Ms. Lutz.

21 MR. STREITZ: Can we approach, Your
22 Honor?

23 THE COURT: Yes.

24 (Recess.)

25 (Jurors enter the courtroom.)

1 THE COURT: Members of the jury, I've
2 received a note signed by Ms. Braegelmann, who is
3 apparently your foreperson, stating Seward Market
4 DVDs of shooting, Camera 1 equals time of 1940
5 zero seconds and Camera 4, Camera 3, Camera 9.

6 The method I'm going to use is we're e
7 going to show each of those disks in turn, I'll
8 ask if you need to have it replayed. We won't
9 stop and start it, but if you need it replayed,
10 if anybody needs it replayed, we'll have it
11 replayed a second time, possibly a third. Beyond
12 that, I'll ask you to return to deliberation.

13 While they're being played, you
14 technically are suspending your deliberations.
15 In other words, no discussing between each other
16 at this point, but simply observe the videos as
17 they play.

18 So with that, we will start with Camera
19 1, which is exhibit -- do we know which one that
20 is.

21 THE CLERK: 94.

22 THE COURT: 94.

23 (Video played for the jury.)

24 Can I see counsel at the bench.

25 (Discussion at the bench.)

1 THE COURT: Let me start with, members
2 of the jury, did you want to see another viewing
3 of that same video? As I reported it, it
4 appeared that it was jerky. I think that is a
5 function of the laptop it was playing on, and so
6 we do have the hard drive available in which it
7 would be a smoother view, if you would like to
8 see it without all the jerkiness.

9 I'm seeing indications from the jury
10 that everyone would like to see it so.

11 Why don't you give us -- Mr. Hartzell,
12 how long?

13 MR. HARTZELL: Ten minutes.

14 THE COURT: I'd ask you to go back and
15 deliberate to the extent you can, or if you want
16 to continue to suspend your deliberations and
17 take a short break, it's up to you.

18 But for now, we'll call you back out as
19 soon as this is ready to play. We're going to
20 play all four of those exhibits off the hard
21 drive so that you can see it without all the
22 jerkiness that is attributed not to the evidence
23 but to the player that it's on. Thank you.

24 (Jurors retire to deliberate.)

25 (Jurors enter the courtroom.)

1 THE COURT: Members of the jury, we've
2 moved from 1990s into the 21st century, let's
3 hope.

4 (Video played for the jury.)

5 THE COURT: Is there anyone on the jury
6 who wishes to have it played one more time?

7 I'm not seeing any hands so we'll move
8 to the next.

9 (Video played for the jury.)

10 THE COURT: Do we know what exhibit this
11 will be?

12 THE CLERK: 96.

13 THE COURT: This will be Exhibit 96.

14 (Video played for the jury.)

15 THE COURT: Are there any members of the
16 jury who need it played a second time? If so
17 raise your hands.

18 I don't see any hands, so we'll move to
19 the next camera.

20 THE CLERK: 3, Exhibit 95.

21 (Video played for the jury.)

22 THE COURT: Any member of the jury
23 require that exhibit be replayed? If so, raise
24 you hand.

25 No hands.

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Next.

THE CLERK: 9, Exhibit 100.

(Video played for the jury.)

THE COURT: Any member of the jury that requires that segment be replayed? If so, raise you hand. No hands.

At this time, members of the jury, you can reassume your deliberations.

All rise for the jury.

(Jurors retire to deliberate.)