

COPY

STATE OF MINNESOTA
COUNTY OF DAKOTA

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

File No. K6-04-736

State of Minnesota,
Plaintiff,

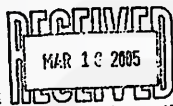
Appellate Court
File No. 24-0407

vs.

VOLUME 1

Philip Vance,
Defendant.

The above-entitled matter came duly on for Jury Trial before
the Honorable Rex D. Stacey, one of the Judges of the above-named
Court, commencing on September 20, 2004, at the Dakota County
Judicial Center, Hastings, Minnesota.



APPEARANCES:

KATHRYN M. KEENA, Assistant Dakota County
Attorney, Dakota County Judicial Center, 1560 Highway 55,
Hastings, Minnesota 55033, appeared representing the State.
NITU SINGH and CEAN SHANDS, Public
Defender's Office, appeared as co-counsel representing
defendant.

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FINAL ARGUMENTS (Volume 4)
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PART #

SEPTEMBER 27, 2004

THE COURT: The parties can remain seated.

Would the jury please rise and take the oath?

(An oath was administered by the court clerk)

THE COURT: Good morning. The trial is about to begin. During the trial, you are going to hear the testimony of several witnesses. You will have to make judgments about the credibility and weight of their testimony. Be patient and listen carefully to the testimony of all the witnesses. Keep it all in mind until you've heard all of the evidence.

As you listen to the witnesses, you should take note of such matters as the witness's interest or lack of interest in the outcome of the case; the witness's ability and opportunity to know, remember and tell the facts; their experience, frankness and sincerity or the lack thereof; the reasonableness or unreasonableness of their testimony in light of all the other evidence, and any other factors that bear on the question of believability and credibility. In the last analysis, you should rely on your own experience, judgment and common sense.

You may take notes during the trial, but you should not feel required to do that. The most important thing is to give full attention to the testimony as you hear it.

You should keep an open mind about all the

evidence until the end of the trial, until you have heard final arguments of the attorneys and until I have instructed you in the law.

Now evidence is what witnesses say and any exhibits received in evidence and submitted to you in the jury deliberation room is also evidence. What the attorneys say is not evidence. However, you should listen carefully to any statements the attorneys make. Those statements are made so that you can better understand the testimony.

During the trial an objection may be made to some evidence, and I may sustain or overrule the objection, and direct that a question not be asked or answered. You should not speculate about what the possible answer would have been.

If I instruct you during the trial to disregard some statement that a witness has made, then you must disregard it.

There are things you should not do during the trial. I will remind you again. You are not investigators. You are not to go out and do any looking and you are not to ask people about this matter. Above all, you must not talk to anyone who is involved, the lawyers or the witnesses.

You should not discuss the case among yourselves. At the end of the trial you will have as much time as you need to discuss it, but that's at the end and not during the trial.

When you go home during the trial, your family

OPENING STATEMENT BY MS. KEENA

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and friends will be curious as to what you were doing. You may tell them you are sitting as a juror in a criminal case and that's all you should tell them.

You don't have to stay away from people or refuse to speak to them. Do whatever you wish, just don't talk about this case. And don't read about it in the newspapers or listen to news about it on radio or television.

Please make a mental note of the seat you are in and keep that seat throughout the trial.

At this time we will listen to the attorneys' opening statements. This is their opportunity to tell you what they believe the evidence will show.

Thanks. Ms. Keena.

MS. KEENA: Thank you, Your Honor.

Good morning. Welcome back. I would just like to take this opportunity to introduce myself again. I am Kathy Keena, Assistant Dakota County Attorney, and I represent the state in this matter.

I would like to take this opportunity to introduce you to the reason why we are all here. This is Khaled Al-Bakri. Khaled was born on March 23, 1977, in Hebron, which is just south of Jerusalem.

Khaled attended Amon University in Jordan where he earned a degree in accounting. While at the University, he served as a student body president for three years. And when

OPENING STATEMENT BY MS. KEENA

8

he graduated, he graduated number one academically in his class.

Khaled came to the United States in the year of 2000 on a student visa. His brother, Tariq Bakri, was already here and was the owner of Sabreen's Market in South St. Paul.

Khaled lived with his brother Tariq and Tariq's wife Kate for about a year and then he moved out and got his own apartment where he lived for about a year.

While in Minnesota, Khaled was attending Century College where he was taking business classes and English classes. He had also taken a review course in preparation of taking the CPA exam, which he was scheduled to sit for in January of 2003.

Khaled was engaged to be married. His fiancée lived in Hebron, and Khaled was to return there to be wed on June 21, 2003. Unfortunately, it's a wedding that never took place because on the night of December 22, 2002, Khaled's life came to a very tragic end, for it was on that night that the defendant and his good friend, Dominic Johnson, entered Sabreen's and killed Khaled during the course of a robbery.

Khaled was shot twice in the back of his head. It was the defendant who pulled the trigger that night, ending the life of a young man with a bright, promising future.

The defendant has been indicted and is standing trial on three separate counts: Murder in the First Degree

OPENING STATEMENT BY MS. KEENA

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1 Premeditated, Murder in the First Degree while committing
2 Aggravated Robbery, and Murder in the Second Degree
3 Intentional.

4 Over the course of the next few days, the state is
5 going to prove beyond a reasonable doubt that the defendant is
6 guilty of committing these crimes. To do that, the state will be
7 introducing the testimony of several witnesses. And I would
8 like to highlight some of the witnesses' testimony with you at
9 this time.

10 As I already mentioned, Tariq Bakri is the victim's
11 brother. He's the owner of Sabreen's Market which is a
12 neighborhood grocery store located in South St. Paul.

13 On December 22, 2002, Tariq had opened the store
14 at about 8:00 in the morning and it was scheduled to remain
15 open until 10:00 that night.

16 On that day, as was common for Khaled to do, he
17 came down to see his brother at the store. He came in at about
18 2:00, and they had coffee and just shot the breeze.

19 Tariq was a new father at the time, and he left the
20 store at approximately 6:00, and Khaled agreed to work the
21 store in his brother's absence.

22 Tariq had kind of another sideline business and he
23 was faxing out some letters on that evening in regards to that
24 other business.

25 Tariq came back to the store at about 9:17 to fax a

OPENING STATEMENT BY MS. KEENA

1 letter. He left the store, and on his way home he got a phone
2 call telling him that he needed to fax the letter to another
3 location. So he returned to the store and left for the last time
4 at about 9:29.

5 According to the last entry on the cash register
6 tape, the till was opened at 9:35 for a no sale. That's when the
7 robbery was occurring.

8 When Tariq was finally allowed to go back into the
9 store, he determined that there were a number of items that
10 were missing. He estimates that there was between \$625 to
11 \$650 that was taken. He was missing a cordless phone, which
12 Khaled had a habit of carrying around in his waistband. They
13 were missing lottery tickets, cigarettes and a number of their
14 plastic bags that they loaded groceries into.

15 Kathleen Johnson had the misfortune of walking
16 into Sabreen's through the front door at the time that the
17 robbery was in progress. On that date she was at a friend's
18 residence just a few blocks from Sabreen's.

19 At approximately 9:40, she drove to Sabreen's to
20 buy some cigarettes. She parked on the street in front of
21 Sabreen's which has a glass front, but she couldn't see inside
22 because there were so many advertisements hanging in the
23 windows.

24 She entered the store and saw a man behind the
25 counter emptying the cash register. She heard the man behind

OPENING STATEMENT BY MS. KEENA

11

1 the counter yell something. She couldn't quite make out what
2 the word was, but yell something as if alerting a second person
3 in the store.

4 When the man behind the counter saw her, he
5 reached for his waistband and she thought he was reaching for
6 a gun. She ran out of the store and returned to her car.

7 While she was sitting in her car, she observed two
8 men run out the front of the store, turn and run around the
9 corner towards the back of the store. There's an alley that
10 runs behind the store.

11 She described both men as having thin builds, one
12 being approximately five-nine, the other approximately five-
13 seven. She described what both men were wearing, dark
14 hooded sweatshirts, baggy, low-slung jeans, and not able to
15 identify their faces because they both were wearing black ski
16 masks.

17 She immediately returned to her friend's residence
18 and told them what happened, and they called 911.

19 In the meantime, in the back of the store in the
20 alley, Sam and Matt Renville, who are kids, they are brother
21 and sister, they were walking to Sabreen's with Dale Marx, who
22 is a friend of theirs and who lives in the neighborhood. He lives
23 right across the street from Sabreen's, as a matter of fact.
24 Those three, along with a younger boy named Jacob, were
25 walking to the store to get snacks. They were having a

OPENING STATEMENT BY MS. KEENA

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1 sleepover at the Renville residence that night and knew that
2 the store closed at 10:00 and that they needed to get
3 themselves down there if they wanted to get there before it
4 closed.

5 They were walking to Sabreen's in the alley. And
6 as they were approaching the store, they see that there's a car
7 parked in the alley, and that it's running. They see two males
8 run out from between Sabreen's and a garage, run to the
9 waiting car, yelling, "Go, go, hurry, hurry."

10 They described the males as swearing baggy, dark
11 colored clothing. Samantha sees that both are wearing
12 hoodies, which are hooded sweatshirts. Again, because they
13 are so far away from the car, they were not able to provide a
14 description as far as the faces of what these two men looked
15 like.

16 So the kids enter Sabreen's and they don't see
17 anybody. They know Khaled well, they go to the store often.
18 Dale Marx helps out at the store. He works at the store every
19 once in a while. So he is looking around the store. He's
20 looking everywhere in the store to try to find Khaled.

21 As they get up to the counter, they notice that
22 something doesn't look right about the cash register, the
23 drawer is missing. So Dale peers over the counter and sees
24 that Khaled has been shot.

25 He tells the others to run from the store. They run

Begin of the 1st of the 7 days of the robbery

No hearing of the car at party of Sabreen's

OPENING STATEMENT BY MS. KEENA

13

1 to Dale Marx's house across the street, they tell his dad what
2 they discovered, and they call 911.

3 You are going to hear from the person who per-
4 formed the autopsy on Khaled. She was called to the scene of
5 the crime. Her name is Dr. Lindsey Thomas. In performing the
6 autopsy, she determines the cause of death to be as a result of
7 two gunshot wounds to the victim's head. She determines the
8 manner of death to be a homicide. During the autopsy she
9 extracts both bullets from the head. It did not go through.
10 They were still in his head.

11 The Minnesota Bureau of Criminal Apprehension
12 was called to the crime scene to process it. In processing the
13 crime scene, they found four .22 caliber cartridge casings near
14 the victim's body behind the counter. There was one bullet
15 found imbedded in a flashlight that was on a very low shelf
16 behind the counter. So they had one bullet from the flashlight.
17 They had two bullets from the head and they were never able to
18 find the fourth bullet, which you will understand when you see
19 the size of them. They are small.

20 Kurt Moline, with the BCA, examined the four
21 cartridge casings and determined that all four were fired from
22 the same weapon, boom, boom, boom, boom. Two of the casings
23 were Winchester brand and two of the casings were CCI brand.
24 He will describe to you how -- for those of you who are not
25 familiar with ammunition, that each cartridge has a head-

OPENING STATEMENT BY MS. KEENA

14

1 stamp on it identifying who the manufacturer is.

2 One of the witnesses you are going to hear from is
3 a woman by the name of Colleen McManus. On December 22,
4 2002, she was employed as the night manager at the Buttery
5 Bar, which is located in downtown St. Paul. At that point she
6 had worked there for approximately one and-a-half years and
7 was familiar with both Mr. Vance and his friend Dominic
8 Johnson.

9 Between 10:15 and 10:30 that night -- she had
10 been at the bar at 7:00, that's when she started work. She left
11 at about 8:15, or so, to go home and make sure that the kids
12 were all in bed. She has older teenagers. So she is returning
13 to the bar at 10:15, 10:30. And when she drives up, as she is
14 driving up to the bar, she sees Mr. Vance and Mr. Johnson
15 being dropped off.

16 She goes into the bar, puts her things away, and
17 has an opportunity to talk to Mr. Vance. She notices that there
18 is something not quite right. Mr. Vance and Mr. Johnson
19 aren't acting their normal selves. So she talks to them, and
20 Vance tells her that he really needs to leave town because he
21 had really fucked up this time.

22 Vance told her that he didn't mean for it to go off
23 and that he just wanted to scare him. As he was making these
24 comments, Mr. Vance held out his hand like he was holding a
25 gun. At this point Colleen McManus has no idea what had

*As the witness
states to PD
colleen*

OPENING STATEMENT BY MS. KEENA

15

1 happened at Sabreen's. She has no idea what he's talking
2 about.

3 She will describe to you that Mr. Vance seemed
4 very upset and started crying when talking to her, which was
5 very unusual for Mr. Vance.

6 Conversation continued and finally she asked
7 Vance, "Did you shoot someone?"

8 Vance's reply was "Yeah, I did."

9 Between 11:00 and 11:15, Vance and Johnson left
10 the Buttery Bar and then they returned at about 12:25 on
11 December 23rd.

12 She again spoke to Vance at that time. He was still
13 upset, cried again. She noted that Mr. Johnson was unusually
14 quiet and at one point went into the bathroom and vomited.
15 He vomited twice that night, and did once in the bathroom and
16 one outside the front door of the bar.

17 Both Vance and Johnson left the bar at closing.
18 Now Colleen McManus just happens to have a brother who is a
19 St. Paul Police Officer assigned to the Minnesota Gang Strike
20 Force. So she calls her brother and asks him, you know, "Have
21 you heard anything about any shootings?" She tells him what
22 Mr. Vance told her in the bar that night.

23 At that point, he wasn't aware of any homicides,
24 but he wasn't yet aware of what had happened at Sabreen's in
25 South St. Paul.

OPENING STATEMENT BY MS. KEENA

16

1 Eventually, after he found out about the shooting,
2 he relayed the information that his sister told to him to the
3 South St. Paul Police Department.

4 Following that night, Vance had been to the bar
5 after that night, December 22nd, on a number of occasions. On
6 one occasion Vance told Colleen McManus that he had spent
7 four hundred dollars on Christmas presents for his children.
8 Colleen found this very suspicious in light of the fact that Mr.
9 Vance had not been employed for over a year.

10 While at the Buttery Bar that night on December
11 22nd, 2002, there was a man there by the name of Eric Griffin.
12 He has a street name of St. Louis. Throughout this trial you
13 are going to hear people referred to both by their given name
14 and street names. A lot of these folks don't know each other
15 except by their street names. Mr. Vance's street name was
16 Florida and Mr. Johnson's street name was Stacks. So if you
17 hear that --

18 MR. SHANDS: Your Honor, I am going to object at
19 this time.

20 THE COURT: Why don't you approach.

21 (Off record discussion at bench)

22 MS. KEENA: I apologize, they are nicknames. The
23 nickname for Eric Griffin is St. Louis. The nickname for Mr.
24 Vance is Florida. And the nickname for Dominic Johnson is
25 Stacks.

*She found
Vance called to K. K. McManus*

OPENING STATEMENT BY MS. KEENA

17

1 Mr. Griffin was at the Buttery Bar on the night of
 2 December 22, 2002. He arrived at approximately 10:00 p.m.
 3 and spoke with Vance after Vance got there.
 4 Vance told him that he had just committed a
 5 robbery in South St. Paul. Vance indicated that the robbery
 6 went bad because the guy refused to give up the money and
 7 Vance fucked him up.
 8 The investigation revealed that prior to the murder
 9 Mr. Vance and Mr. Johnson were at the Radisson Bar which is
 10 also located in downtown St. Paul. It's technically, I think, the
 11 Capitol Grill and Bar, but a lot of people refer to it as the
 12 Radisson Bar.
 13 Melissa Stites was a bartender there. She came
 14 forward on December 23, 2002 and reported that on the night
 15 of December 22, 2002 she was working at the bar and that at
 16 approximately 8:00 p.m. Mr. Vance and Mr. Johnson were in
 17 the bar with a third individual who was later identified as John
 18 Martin.
 19 Ms. Stites reported that while seated in the bar,
 20 the three men appeared to be very secretive and appeared to be
 21 planning something. At one point Mr. Vance told her that they
 22 were just getting their plan on.
 23 As the men left the bar, she commented to them
 24 that tips were low that night. In response, Mr. Vance told her,
 25 "Baby, when I get back I will have a lot of money."

OPENING STATEMENT BY MS. KEENA

1 Melissa Stites decided to try and help in the
 2 investigation, and she did so by agreeing to go undercover in
 3 an attempt to purchase the murder weapon from Mr. Vance.
 4 *7* On January 3, 2003, she was wired and she met with Vance
 5 first at the Buttery Bar and they later traveled to a bar called
 6 the Lap.
 7 The conversations between she and Vance were
 8 monitored by members of the Minnesota Gang Strike Force, the
 9 South St. Paul Police Department, and a Special Agent from
 10 ATF.
 11 During the conversation between Melissa Stites
 12 and Vance on that night, Melissa asked Vance whether he had
 13 any guns and whether he would teach her to shoot.
 14 In response, Vance told her that he had four guns.
 15 She asked, "Well, when is the last time you used one?" In
 16 response, Vance told her "Two weeks ago, a Winchester over on
 17 the south side."
 18 When she asked Vance what happened, he told her
 19 that he shot a guy five times in the back. She asked Vance,
 20 "Well, did you stop to see if the guy was dead?" Vance replied,
 21 "Nope, I just kept going."
 22 You are going to hear the officers who are going to
 23 come in and testify, the officers that monitored that conver-
 24 sation.
 25 During the course of the investigation, officers talk

*NOT
TRUST*

OPENING STATEMENT BY MS. KEENA

19

1 to John Martin, who was the third individual that was at the
 2 Radisson Bar prior to the murder. They were at the bar
 3 together for approximately, what John Martin recalls, about *4*
 4 an hour and a half.
 5 While at the bar, Vance and Johnson told John
 6 Martin that they were going to South St. Paul that night. John
 7 Martin denies that they discussed any robbery plans in front of
 8 him, but that the two did mention -- and ignore my typo there.
 9 I just caught it -- did discuss how they were going to put two
 10 and two together to buy Christmas presents for their kids.
 11 While at the bar, using Vance's cell phone, Vance
 12 and Johnson called who John Martin refers to, and what they
 13 are commonly referred to, as the *South St. Paul Girls*, Yvonne
 14 and Nicole. They called Yvonne and Nicole for a ride.
 15 The three men then left the bar together. And
 16 John Martin was going over to his girlfriend's place, he wasn't
 17 going with Mr. Vance and Mr. Johnson that night. While he
 18 was waiting for his bus, he saw Mr. Vance and Mr. Johnson
 19 being picked up by Nicole and Yvonne in a blue Corsica.
 20 The car was being driven by Nicole. And as the
 21 testimony will bear out, Nicole is actually Nicole Rauschnot and
 22 she did in fact own a blue Corsica at the time.
 23 Another witness that you are going to hear from is
 24 Fabian Wilson. Fabian actually came to light through John
 25 Martin. John Martin told officers that "My half-brother Fabian

OPENING STATEMENT BY MS. KEENA

20

1 Wilson has information."
 2 Fabian Wilson has a child in common with Mr.
 3 Vance's sister. Fabian Wilson tells officers that when he was at
 4 Shawna Vance's house one night, Mr. Vance's sister, Vance
 5 was there and they briefly talked about the homicide at
 6 Sabreen's. In the context of that conversation, Vance told
 7 Fabian Wilson that he and Dominic did it and that they gave
 8 him fives to the back of the head.
 9 You are also going to hear testimony from Regina
 10 Haggerman. Regina Haggerman lives in St. Paul. In December
 11 of 2002, Mr. Vance was dating her niece, Darlene Jones.
 12 The Saturday before the January 2, 2003 Super
 13 Bowl, Vance was at her house and started talking about a
 14 homicide. This was the first time Regina Haggerman ever met
 15 Mr. Vance.
 16 In talking about it, Vance tells her that he and one
 17 of his friends killed someone. Vance told her that the police
 18 were investigating him for the murder, which he knew because
 19 by this point he has already been questioned by the police a
 20 couple times. He knows he is being investigated for the
 21 murder, but that the police had no evidence and that he had
 22 good lawyers.
 23 He said that he committed the murder, but that
 24 nobody is going to be able to prove it. And you know what?
 25 It's true about one of the statements. The state doesn't have

THAT

*NO
lawyer*

1 any actual physical evidence. If you're looking for DNA to be all
2 over a piece of clothing that Mr. Vance might have been
3 wearing that night, we don't have it.

4 One of the things when you are looking at the
5 evidence with the coroner, and the amount of blood, you are
6 going to see that there wasn't a lot of blood. There was no
7 blood splatter at this crime scene. It's one of the neatest crime
8 scenes I've ever seen. We don't have that.

9 We don't have foot imprints. You know, that was
10 one of the things why I asked you about CSI. We tried. The
11 BCA worked their buns off. We tried to get partial prints.
12 Nothing. So he is right about that. We don't have any physical
13 evidence. But, by God, we got a bunch of people that he told.

14 Another person that he told was Tyrone Crawford.
15 Tyrone Crawford was housed with Vance in the Sherburne
16 County Jail for a period of time in 2003. Vance knows he is
17 being investigated for this murder. He knows it. He can't keep
18 his mouth shut, though.

19 He tells Crawford that he and another person had
20 robbed a grocery store and shot a guy. When he tells it to Mr.
21 Crawford, he says that the shooting was an accident and that
22 the gun had discharged because Vance was nervous. It
23 discharged four times. And, granted, these guys have criminal
24 histories. You are going to hear about it. But he is telling this
25 to a lot of different folks in a lot of different settings.

Don't know

x

1 John Nunn. John Nunn and Vance were also
2 incarcerated together at the Sherburne County Jail and again
3 at the Sandstone Correctional Facility. And John Nunn came
4 to us after Tyrone Crawford said, "You know, he talked to these
5 other guys too. They were pretty close. You might want to go
6 interview them."

7 So the police did. And John Nunn said, "Yeah,
8 Vance told me he was being investigated for committing this
9 murder at Sabreen's."

10 During conversations between the two, Vance told
11 him that he had to merck somebody -- and Mr. Nunn will
12 explain that to merck somebody means that you actually hit
13 somebody with a bullet -- and that he did it at a store and that
14 he used a .22. Now there were .22 casings that were found at
15 the store.

16 Isaac Hodge. Isaac Hodge came to us through
17 John Nunn. John Nunn said, "Well, if you're talking to me, you
18 should talk to Isaac Hodge. He's my nephew. He and Vance
19 were even closer than we were."

20 Mr. Hodge and Mr. Vance were incarnated at the
21 Sherburne County Jail. In numerous conversations Vance told
22 him -- again knowing that he was being investigated for the
23 Sabreen's homicide -- that he had killed someone during the
24 course of a robbery and that it wasn't worth it. That they
25 didn't get that much money and it wasn't worth it.

1 Dontay Reese is another witness you're going to
2 hear from. Dontay Reese has a criminal history, and I'll be up
3 front with you. Dontay Reese, we found out about him through
4 another inmate at the Dakota County Jail. And when we first
5 approached Dontay Reese, he didn't want to talk. He wasn't
6 saying anything against Mr. Vance.

7 So after having a conversation with his dad and his
8 mom -- and I will be upfront with you, he was, and still is,
9 being held in jail on a serious felony matter and he is going to
10 get 36 months off of his sentence for coming in and cooperat-
11 ing. Sometimes it's something you have to do when you are
12 weighing seriousness of each case.

13 So the defense is going to pound on that, but
14 Dontay Reese, when you hear his testimony, it all kind of starts
15 to fit together. Dontay Reese has known Vance and Johnson
16 for six years. They were friends outside of jail.

17 They were housed together in the Dakota County
18 Jail, and while together Vance told him, "You know, I am
19 charged with the homicide at Sabreen's."

20 In conversations between the two, Vance provided
21 the following details to Mr. Reese: On December 22, 2002,
22 Vance and Johnson met John Martin at the Radisson Bar.
23 While at the bar, Johnson used Vance's cell phone to call two
24 women for a ride. Reese remembers the names as Yvonne and
25 Nicky. He has no idea who these South St. Paul girls are. He

1 thought it was Yvonne and Nicky or Ricky, or something like
2 that.

3 The two women picked Vance and Johnson up in
4 what Reese recalls as either a blue Corsica or an Accord. He
5 remembers it had an A in it. And he is recalling this con-
6 versation about five or six months after it actually happened.

7 The four meet up with a man by the name of
8 Richard Robinson who has a nickname of Hennessy. They also
9 meet up with a man by the name of Troy Crawford, and they
10 meet at a residence of Robinson's girlfriend, which is located in
11 South St. Paul. It actually is the residence of Keitha McKinney,
12 who was dating Robinson at the time, and she only lived about
13 a block and-a-half from Sabreen's.

14 Keitha McKinney is going to come in and testify.
15 She's never met Mr. Vance. She thinks that the night that this
16 happened she was battling -- she had hepatitis and had been
17 hospitalized and she doesn't recall whether she was in the
18 hospital at that time or whether she was home sick.

19 According to Dontay Reese, Vance told him that
20 he, Johnson, Crawford and the two girls drove to Sabreen's and
21 parked in the alley. Vance and Johnson entered the store
22 while Mr. Crawford acted as a lookout in the back of the store.

23 While inside Sabreen's, Johnson yelled something
24 at Vance, while Vance was behind the counter, which is
25 consistent with what Kathleen Johnson says, that she heard

*Does see Julie
Lynn
Reese's
statements*

They saw 20 people (names)

OPENING STATEMENT BY MS. KEENA

25

OPENING STATEMENT BY MS. KEENA

2/27/2025 10:46 AM

*Clara
Crime scene
100 feet
prints
1003 blue*

1 somebody yell something. It was Johnson alerting Vance that
 2 someone had entered the store.
 3 Vance told Reese that he "gave the dude five to the
 4 back of the head, got the money, and got out of there." They
 5 then got back into the car and got dropped off at the Buttery.
 6 As to the type of weapon used, Vance said he used a *deuce*
 7 *deuce*. That's how he described it to Dontay Reese. Dontay
 8 Reese, in his mind that means a .22 pistol.
 9 Finally, you are going to hear -- one of the
 10 witnesses you are going to hear from is Geronimo Estrada.
 11 Geronimo Estrada, in February of 2003, was housed in the
 12 Ramsey County Workhouse with Vance and Johnson. He
 13 actually was in the same unit as Mr. Vance.
 14 Vance told him that he was being investigated for
 15 the homicide at Sabreen's. Vance told him how it went down.
 16 He told Mr. Estrada that he and Johnson entered Sabreen's
 17 and that Vance went behind the counter. Vance described how
 18 he told the victim to get on the ground and that the victim was
 19 pleading with Vance not to hurt him. Vance stated that he laid
 20 the victim on the floor and popped him two times.
 21 Vance told him that they were wearing Ninja
 22 masks at the time that this happened, which is consistent with
 23 what Kathleen Johnson indicated, that the two men were
 24 wearing Ninja masks.
 25 Ninja masks are black masks that cover your

1 entire face. That was consistent with what Kathleen Johnson
 2 has indicated.
 3 Vance indicated that he threw away the shoes he
 4 was wearing the night of the homicide, and he indicated -- and
 5 this was never made public. He indicated that they got stacks
 6 of money, lottery tickets, cigarettes, a phone, and baggies. By
 7 gosh, what were they missing from the store? You know,
 8 what's Tariq Bakri going to testify to? Those are the exact
 9 things that they were missing from the store.
 10 So that's a brief summary of what some of the
 11 evidence that the state intends to introduce during the course
 12 of this trial.
 13 During your questioning that you underwent to be
 14 a member of this jury, I believe I asked every one of you
 15 whether you thought you had good common sense. And each
 16 of you assured me that you did. As you listen to the facts of
 17 this case, use your common sense.
 18 What does the evidence tell you? What does it tell
 19 your common sense? Make the reasonable conclusions of the
 20 facts that are presented to you.
 21 At the close of this case, the state is going to ask
 22 you to apply your common sense to the facts and law that are
 23 presented to you, and is going to ask you to return guilty
 24 verdicts on all three counts that Mr. Vance is charged with.
 25 Thank you.

OPENING STATEMENT BY MS. SINGH

27

OPENING STATEMENT BY MS. SINGH

28

1 THE COURT: Ms. Singh.
 2 MS. SINGH: Your Honor, may it please the court,
 3 ladies and gentlemen of the jury, Mr. Vance, Ms. Keena and
 4 Mr. Shands. On December 22, 2002, Khaled Al-Bakri told his
 5 brother, "Go home, take your young family home, I will close
 6 up, it's Sunday night. It's not very busy here."
 7 His family went and he stayed behind. Moments
 8 later, Kathleen Johnson walks into the store. She doesn't
 9 make it very far into that store. She walks into the front door,
 10 something's just not right, and she notices it right away.
 11 She's not in there for more than a couple
 12 moments. Remember, she sees a man behind the counter. He
 13 is dressed in all black, he's got a mask on. He's about five-
 14 seven, she says. So she turns around and walks out.
 15 She doesn't see anybody else inside of that store.
 16 She just sees that one man, but she notices he motions for
 17 somebody else. She knows something's wrong, so she walks
 18 out.
 19 When she walks out, she gets into her car. Now
 20 mind you, moments are going by. This isn't happening at a
 21 slow pace, it's happening very quickly. She gets into her car
 22 and as she is about to drive off, she sees two people walk out of
 23 Sabreen's, outside the front door, and run through the parking
 24 lot and into the back alley.
 25 She notices one man is small and one man is

1 bigger. She says their height's about five-seven for one of them
 2 and the other one about five-nine.
 3 It's an evening, it's winter time, it's dark out, it's a
 4 residential street. But that's what she notices.
 5 Moments later, four local teenagers are on their
 6 way to Sabreen's. It's Christmas vacation. They've got time off.
 7 They're watching movies at a friend's house, so they want to get
 8 some snacks. They're walking to Sabreen's, they're just having
 9 a good time, sliding on the ice, just having fun, not really
 10 paying attention to what's going on around them.
 11 They see two men getting into a car. And this is
 12 the testimony that you will hear from some of these kids.
 13 Samantha Renville and her brother Matt, they notice the car.
 14 They notice that it was a silver-grey automobile. And the size
 15 of that car is very critical. They notice it to be a full-sized car.
 16 They said it was a full-sized car.
 17 Samantha will identify it like a Cadillac and
 18 Matthew will say it's kind of like a police-sized car, a Crown
 19 Victoria; something bigger, not that small car, a bigger car.
 20 They see the two people getting into the car. One in the front
 21 passenger seat and one in the back passenger seat.
 22 Matthew Renville will testify they were all wearing
 23 black, baggy clothes, everything. The state told you that's what
 24 they were wearing. But that's what the kids saw. They don't
 25 think anything of it until they walk into Sabreen's. They're

1 having a good time, it's vacation and they don't have to worry
2 about school the next day.

3 Matthew walks in, he hangs out at the counter,
4 while Samantha and their other young friend go get snacks.
5 And Dale Marx, Jr., he notices that something is amiss. He
6 doesn't see the store owner there, the clerk, so he walks back
7 to the cooler to see if he can find the store owner. He knows
8 who these people are, he lives across the street.

9 He walks to the back, he goes to the cooler, he
10 doesn't see anybody, doesn't see anything, so he comes back
11 up front, and that's when he notices the register is open.

12 He walks behind the counter, he looks over the
13 counter, that's when he notices Khaled Al-Bakri on the ground.
14 He's laying on his side and he's got gunshot wounds, and
15 there's blood. There's change strewn everywhere.

16 So the young Mr. Marx runs across the street to
17 his parents' home and he says, "Something's wrong, some-
18 thing's wrong, call the cops." His father, not believing him, he's
19 a young teenager, goes across the street and checks it out
20 himself. And that's when the investigation began.

21 The Bureau of Criminal Apprehension is called, the
22 coroner's office is called. They block it off with yellow tape.
23 The crime scene is processed. The coroner takes the body to
24 later do an autopsy. Dr. Mohammed Sedqi, from the Bureau
25 of Criminal Apprehension, will come in here and he will tell you

1 about what he did as far as the crime scene -- the crime scene
2 things.

3 He will tell you how he took fingerprints, body
4 fluids, any body fluids that they could find, they took those to
5 process, any footprint impressions they could find in that store.
6 And he will tell you they did find a lot of footprint impressions
7 along with fingerprints. He will tell you this is a convenience
8 store, there's a lot of people. He will tell you that he finds
9 those.

10 He will also tell you that the other thing that they
11 did was they processed the crime scene and they found random
12 cigarette butts out in the parking lot, because they went as far
13 as the parking lot and to the back alley because they knew that
14 the individuals left from back there.

15 So they found cigarette butts, they took impress-
16 sions of tire tracks. They found empty soda cans, they took
17 anything and everything they could find, because they wanted
18 to process this crime scene to see what they could get off of it.

19 That same evening, on December 22, 2002, about
20 10:15, 10:30, Colleen McManus -- she's a night manager at the
21 BATTERY Bar in downtown St. Paul -- has a conversation with
22 Mr. Vance.

23 You will learn that Mr. Vance was kicked out of the
24 BATTERY Bar because he got into a fight with somebody earlier.
25 A few days earlier he got kicked out of there. So he walked in,

1 he was a little nervous, he doesn't know if she's going to kick
2 him out again. And Mr. Vance, being a smart fellow and
3 realizing that, you know, maybe I could have a few drinks, he
4 goes up to her and he does make a comment.

5 He tells her, "I was nervous." He says, "I shot him
6 five times in the south side." Do not forget that. It's very
7 critical because you will hear that more than once.

8 There are other people in that bar who he had
9 conversations with: Eric Griffin, and there's another individual
10 in that bar. There's a person by the name of Maynard Cross,
11 who will come in here and testify that he was there too.

12 Now the evening of December 22nd Ms. McManus,
13 after having a conversation with Mr. Vance, is a little con-
14 cerned. She has a right to be. She knows these people. She
15 knows that Mr. Vance's nickname is Florida. Why is his
16 nickname Florida? He grew up in Florida. He came to
17 Minnesota as a teenager, and he would tell people he grew up
18 in Florida, so they called him Florida.

19 Ms. McManus is a little concerned, so what does
20 she do? She asks Mr. Vance for his phone number. He gives
21 her his cell number. That same evening she contacts her
22 brother, John McManus from the St. Paul Police Department.
23 He tells her he doesn't know if there's been any shootings
24 tonight, but he'll check on it.

25 And he checked on it the next day. The police

1 department in South St. Paul has got a suspect. On December
2 23rd they've got a guy in a bar who's been drinking, he made
3 some comments to get a free drink, they got a suspect. This is
4 what I want you to remember and pay attention to as you hear
5 these witnesses come in and testify because this is the be-
6 ginning of the police officers in South St. Paul's tunnel vision.
7 It begins and ends with Mr. Vance and his friend, Mr. Johnson.

8 As the investigation proceeds, they get information
9 from other people in the neighborhood. This is a neighborhood
10 store. People know the people who run Sabreen's. They get
11 information from other neighborhood people who contact the
12 police officers and say, "Hey, there's been some rumblings
13 going on down at such and such a place, and so and so has
14 been saying this or that."

15 What do the police officers do with that information
16 they get? Now this is a homicide investigation. Anyone and
17 everyone should be investigated here. What do they do? They
18 dismiss those people after five minutes of checking out that
19 information.

20 You see, the eyewitnesses that were there that
21 night, very critical here, that were there that night, cannot tell
22 us who the people were inside of Sabreen's Supermarket. They
23 can't tell us that. They can't tell us if they were Black, Asian,
24 Hispanic or White. They can't tell us anything.

25 The only words we have that begin this process is

*Vance
Derek
Jeff He Had money
He would have
PARTS Hunt*

Should not have happened.
OPENING STATEMENT BY MS. SINGH

33

OPENING STATEMENT BY MS. SINGH

1 the words of Mr. Vance. So the South St. Paul Police
 2 Department, they've got their suspect. Now the next step here
 3 for them, instead of letting the evidence that they have
 4 collected lead them to the individual, they're going to create the
 5 evidence to get their suspect.
 6 MS. KEENA: Objection, Your Honor.
 7 THE COURT: It's a little argumentative.
 8 MS. SINGH: The evidence is being collected here.
 9 Now the evidence should lead them to the suspect. So the
 10 police officers contact Mr. Vance. They find out that he is
 11 being housed at the Ramsey County Workhouse. They contact
 12 Mr. Vance, he is in there. They interview him a couple times,
 13 and this is the consistent part of what he says to them. Every
 14 time the police officers speak to Mr. Vance he says, "I didn't do
 15 this. What do I do to clear my name? I didn't do this."
 16 What do the police officers do? They get Melissa
 17 Stites involved as an agent for them. She becomes an under-
 18 cover officer for them. She engages Mr. Vance in a conversa-
 19 tion because, remember, they've got their suspect, so now
 20 they've got to get some evidence against him.
 21 So they set up this operation with Melissa Stites.
 22 She goes undercover. They give her government funds to
 23 purchase a weapon from him. He'll admit it. She purchases
 24 a weapon from him. "Ding, ding, ding, we got our murder
 25 weapon, we're going ahead with this investigation." The police

1 officers are happy, they're excited, this is going along, this is
 2 what we want.
 3 Now this is critical. That gun that was purchased,
 4 it gets tested. It gets tested eventually and, low and behold, it
 5 doesn't match. It doesn't match to that gun.
 6 Let's talk about the other stuff that doesn't match.
 7 Kurt Moline will come in here and he will testify about the shell
 8 casings that were found and the bullets that were found, his
 9 testing that he did.
 10 The Bureau of Criminal Apprehension has a
 11 hundred year old method for testing guns and testing bullets,
 12 casings, and so forth. A tried and true method. This is some-
 13 thing they have been doing for years, and that's what they're
 14 good at, and this is what they do. None of it ever matches to
 15 that gun. The only tie that actually exists to Mr. Vance, the
 16 gun, it doesn't ever match.
 17 Now the other things that were collected. The
 18 other things that were collected that we talked about, the body
 19 fluids, any fluids they could find, fingerprints, the footprints,
 20 the cigarette butts, the empty soda can, any of that stuff that
 21 was collected at the crime scene, none of it ever matches to Mr.
 22 Vance. It never places him inside of Sabreen's on December
 23 22nd, 2002. Why doesn't it place him in there? Because he
 24 wasn't there. He's not the one that they have, even though the
 25 tunnel vision has begun and gone.

OPENING STATEMENT BY MS. SINGH

35

OPENING STATEMENT BY MS. SINGH

36

1 Now let's talk about the timeline here. The
 2 investigation for the BCA, that takes time. So they didn't have
 3 their reports back for the DNA analysis and the fingerprint
 4 analysis. That took some time, so they didn't have this
 5 information back until about, I would say, probably sometime
 6 in mid 2003. This evidence tends to take time. This isn't like
 7 on TV where everything gets resolved in an hour.
 8 It's about January -- late January, early 2000,
 9 early February 2003. Police officers have got Mr. Vance in
 10 mind, so they go to speak to him, and they talk to him. And
 11 what do they say to him?
 12 They say, "We've got evidence against you. We got
 13 the gun, we got the video surveillance from the store, and the
 14 guy was shot five times in the back of the head. We've got your
 15 fingerprints, when that stuff comes back, your DNA, everything
 16 is going to come back. It's going to match up to you." That's
 17 what they tell him. And these are trained police officers. They
 18 know it's their job to get information from people.
 19 How do they get information from people? They
 20 give them things. They tell them things. And what did Mr.
 21 Vance say? When presented with all this evidence that they
 22 had on him, what does he say? "I didn't do this. I don't know
 23 what you're talking about. What do I do to clear my name?"
 24 He was very consistent in saying this.
 25 Now Ms. Keena talked about a person by the name

1 of Geronimo Estrada. He is an individual who was in the
 2 Ramsey County Workhouse around the end of January-
 3 February, 2003. He tells the police officers in South St. Paul
 4 that he is in there with Mr. Vance and Mr. Johnson. He tells
 5 the police officers that he's engaged in a conversation with Mr.
 6 Vance and Mr. Johnson at different times.
 7 Now one of the things that you didn't hear Ms.
 8 Keena talk about, but Mr. Geronimo Estrada will definitely
 9 testify to, is this. Mr. Estrada contacted the South St. Paul
 10 Police Department through his girlfriend. And Mr. Estrada is
 11 getting a benefit for walking into this courtroom and taking the
 12 stand.
 13 MS. KEENA: Your Honor, objection. Could we
 14 approach?
 15 THE COURT: Yes.
 16 (Off record discussion at the bench)
 17 MS. SINGH: Mr. Estrada, he's in custody with Mr.
 18 Vance and Mr. Johnson. At this time Mr. Vance knows he is
 19 being investigated for a homicide in South St. Paul. He's had
 20 conversations with the police department. He's had many
 21 conversations with the police department. He knows he's being
 22 under investigation.
 23 And, ladies and gentlemen, I am going to tell you
 24 about something. When people are in custody, when people
 25 are in jail, there's a hierarchy among people. There are some

1 people that are in custody for petty crimes, misdemeanors, and
2 then there are some people that are in custody for very serious
3 offenses.

4 At that time, Mr. Vance was in there for something
5 petty. But he knew that he was being looked at for something
6 very serious. He knew that he was under investigation for a
7 homicide. And at that time he needed to get some information.
8 And you would be so surprised, the people in the criminal
9 justice system, they've got a lot of knowledge. Conversations in
10 jail, there's a lot of knowledge there. So he asks people about
11 that.

12 This, I want you to remember, this is very critical,
13 because this is where it all starts. It starts with Mr. Estrada--
14 the gravy train that becomes Mr. Vance. He's under investiga-
15 tion for a homicide. "Let's get this guy talking. Let's have him
16 talk about the sun, the moon and stars, and let's have him talk
17 about anything and everything," because we know that as soon
18 as we contact the police department, we could use that to
19 leverage our own case. That's what people in jail know. That
20 anyone and everyone who walks through these doors and takes
21 this witness stand, they either have a criminal record or
22 convicted felons. Or, they've got something pending.

23 Some of them, you will hear, were given actual
24 cash, money. Others, you will hear, will get their charges
25 dismissed. Wow, the ultimate benefit. They don't have to

1 worry about going to jail. And others, as Ms. Keena spoke of,
2 Dontay Reese, he's getting a full three years knocked off his
3 sentence. They are getting a benefit for being here. And don't
4 forget the other people who are getting a benefit for being here,
5 the people that you never hear about, the people that you don't
6 talk about, the individuals from the South St. Paul Police
7 Department.

8 This crime occurred almost two years ago. This
9 investigation has been going on for that long. It's been going
10 on for a very long time. The number of man hours, the number
11 of funds, the money that has gone into this, if you don't think
12 that the South St. Paul Police Department isn't invested in
13 coming in here and telling you about their case, then you are
14 very mistaken because they have a vested interest.

15 Their vested interest does exist here. They want
16 this case closed. They think they know who did it. But pay
17 attention, because they really don't know who did it. Their
18 tunnel vision took over a long time ago. They let a lot of
19 critical leads pass them by.

20 Now there's another individual who's going to
21 come in here and testify. He also was at the Buttery on
22 December 22nd, a person by the name of Maynard Cross. Mr.
23 Cross will be a witness. What will his testimony be?

24 He will testify, it's anticipated he will testify to
25 being there and having a conversation with Mr. Vance that

1 same night. And he will speak of the conversation of how Mr.
2 Vance told him about this event. Pay attention to Mr. Cross's
3 testimony. You see, Mr. Cross, he's in prison. Why is he in
4 prison? Because he and his associate and his girlfriend went
5 to a store in Minneapolis and --

6 MS. KEENA: Your Honor, objection.

7 THE COURT: Sustained.

8 MS. KEENA: Can we approach?

9 THE COURT: Yes.

10 (Off record discussion at bench)

11 MS. SINGH: Maynard Cross, that's where we left
12 off. He will come in here and he will testify. Maynard Cross,
13 ladies and gentlemen, is a convicted murderer. He only spoke
14 to the South St. Paul Police Department and various people
15 while his case was pending, and he wanted to work something
16 out with them as well. He wanted to ride the gravy train.

17 One thing that you will hear consistently through-
18 out these proceedings is this. A lot of people will come in and
19 testify that Mr. Vance told them a lot of things. "Number five to
20 the back of the head." That's a number that's used a lot, five.

21 X You will learn, through Lindsey Thomas, the
22 coroner -- excuse me. Dr. Lindsey Thomas will come in here
23 and she will testify that Khaled Al-Bakri died of two gunshot
24 wounds. One was in the neck and one was up on the top of his
25 head. Those were the two fatal bullets that killed him.

1 Dr. Sedqi will come in here and testify that as part
2 of their processing the crime scene, they found four shell
3 casings behind the counter. These four shell casings were then
4 matched up to three bullets. The three bullets that they were
5 matched up to, two inside Mr. Khaled Al-Bakri, and one in a
6 flashlight found on a shelf.

7 The fourth bullet was never found. He will testify
8 they did anything and everything to try to find that fourth
9 bullet. They even used, you know, this is the BCA Crime Lab,
10 they've got sophisticated techniques. This might be a small
11 bullet, but this is sophisticated stuff that they deal with. They
12 used various methods to try to locate that fourth bullet and it
13 was never found. They even used some type of a lead com-
14 ponent to try to detect lead inside of there and it wasn't found.

15 Remember that, ladies and gentlemen. Those are
16 the numbers that are going to be very critical here. Any and all
17 of the witnesses that come in here and testify will never say
18 "Mr. Philip Vance told me he talked into Sabreen's on Decem-
19 ber 22nd and he shot and killed the clerk. And this is how he
20 did it." None of them will ever say that.

21 You know who else will never come in here and say
22 anything? That phantom party. Those teenagers will testify,
23 the Renville children and Mr. Marx, they will come in here and
24 testify that two people got into a car, they got into the front
25 passenger seat and the back passenger seat.

1 Who drove that car? Who was there that night?
 2 Who has information about this? That person won't be here
 3 because Mr. Vance wasn't there. He doesn't know anything
 4 about this crime.
 5 There are a lot of things you are going to hear in
 6 this case about the way Mr. Vance lived. He didn't work, he
 7 didn't have a job, he ran around with many women. He is a
 8 young man in his early twenties. His lifestyle is not going to be
 9 to your liking. You know what? That's not what's on trial here.
 10 His lifestyle isn't an issue. It's whether the state can prove that
 11 Philip Reynold Vance was inside of Sabreen's on December 22,
 12 2002, and you will learn he wasn't there.
 13 The state cannot prove its case. There are way too
 14 many *ifs, ands* and *buts* throughout this whole case. It's a
 15 mystery, and it is still a mystery. This case hasn't been
 16 resolved. The family of Khaled Al-Bakri still doesn't know who
 17 did this.
 18 The tragedy that occurred that night, it is a
 19 tragedy. And Mr. Vance will tell you it's a tragedy. I will tell
 20 you it's a tragedy. It's awful what happened to Mr. Khaled Al-
 21 Bakri that night. Those emotions you have to put aside.
 22 Many, if not all of you, told Mr. Vance that you will
 23 be fair. You are to listen to all the evidence that's presented to
 24 you. Everything that's presented to you, every witness that
 25 takes the stand. You're going to have to weigh their credibility.

1 You're going to have to weigh their testimony. You are going to
 2 have to use you experiences in life to see if you believe what
 3 that person is saying. Even after you hear that -- they are
 4 coming in here to testify and they might have worked some-
 5 thing out with the state to come in and testify. Even after you
 6 hear that, you will have to weigh their testimony. That is your
 7 job as jurors.
 8 One of the other things I want you to remember
 9 about this case is this. Like I said, there are too many *ifs, ands*
 10 and *buts* here. I just want to step back here a little. After
 11 reviewing my notes, I forgot a critical point that I wanted to
 12 point out.
 13 Let's go back to the night of December 22nd to the
 14 one person, John Martin, who saw Mr. Vance and Mr. Johnson
 15 that evening. They are at the bar, they're drinking, they're
 16 having a couple cocktails. And you will hear that Mr. Vance
 17 likes to drink. Again, his lifestyle is not on trial here.
 18 They are having their cocktails, Mr. Martin leaves,
 19 he has got to go to his girlfriend's house, he has to catch the
 20 bus to the east side, he's on his way. He has a conversation
 21 with Mr. Vance and Mr. Johnson earlier that evening, where
 22 they talk about Mr. Vance and Mr. Johnson need money for
 23 Christmas gifts for their children.
 24 But you will never hear Mr. Martin say they
 25 planned a robbery. You will never hear him say that they

1 planned to go to Sabreen's Supermarket in South St. Paul and
 2 rob it.
 3 It's December 22nd, Christmas is two days away.
 4 They don't have any gifts for their children. They don't have
 5 jobs. They're a little concerned, well, you know, they would
 6 rather have a good time than worry about their children, but
 7 they still want to buy Christmas gifts for their kids.
 8 So Mr. Martin will talk about how he leaves, he
 9 gets on a bus, and he sees Mr. Vance and Mr. Johnson getting
 10 into a blue Corsica with two girls. A blue Corsica.
 11 A Corsica is a mid-sized car. It's not a compact
 12 car. It's a four-door. The only eyewitnesses to this crime,
 13 those teenagers and Ms. Johnson. Ms. Johnson didn't see the
 14 car, but the kids saw the car. And they described the car as a
 15 gray-silver, full-sized automobile.
 16 Don't forget those critical facts. Those are the
 17 critical facts and those are the small details that I want you to
 18 pay attention to throughout these proceedings because those
 19 are the ones that are going to lead you to the *ifs, ands* or *buts*
 20 in this case. And they're going to lead you to the conclusion
 21 the state cannot prove its case.
 22 The state cannot prove its case. And we are asking
 23 at the end of this trial, after you've given careful consideration
 24 to the testimonies of everyone that's brought in here, there's no
 25 physical evidence, it's just going to be testimony, after that,

1 that you return a verdict to Mr. Vance of not guilty.
 2 Thank you.
 3 THE COURT: Let's take a 19-minute break.
 4 (Morning break was taken)
 5 THE COURT: Have a seat. Please proceed, Ms.
 6 Keena.
 7 MS. KEENA: Your Honor, the state calls as its first
 8 witness Tariq Bakkri.
 9 THE CLERK: Please step forward and be sworn.
 10 Raise your right hand.
 11 **TARIQ BAKKRI.**
 12 being duly sworn, was examined and testified as follows:
 13 THE CLERK: For the record, please state your full
 14 name, spelling your first and last name.
 15 THE WITNESS: My name is Tariq Bakkri, first
 16 name T-A-R-I-Q. Last name Bakkri, B-A-K-K-R-I.
 17 THE CLERK: Thank you.
 18 **DIRECT EXAMINATION**
 19 **BY MS. KEENA:**
 20 Q Good morning.
 21 A Good morning.
 22 Q Are you the owner of Sabreen's Supermarket?
 23 A Yes, I am.
 24 Q Where is that located?
 25 A It's located at 345 Fourth Avenue South, South St. Paul,

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1 Minnesota 55075.
 2 Q Is that located in Dakota County?
 3 A Yes.
 4 Q How long have you owned the store?
 5 A Since September of 2000.
 6 Q Were you the owner of the store on December 22, 2002?
 7 A Yes, I was.
 8 MS. KEENA: Permission to approach, Your Honor?
 9 THE COURT: You may.
 10 (Exhibit Nos. 1 through 6 were
 11 marked for identification)
 12 **BY MS. KEENA:**
 13 Q Mr. Bakkri, I am showing you what's been marked for
 14 identification as Exhibit 1. Do you recognize that?
 15 A Yes.
 16 Q What is that?
 17 A This is the front of the store.
 18 Q It's a picture of the front of your store?
 19 A Yes.
 20 Q Does that picture accurately reflect what the front of the store
 21 looked like on December 22, 2002?
 22 A Yes, it does.
 23 MS. KEENA: Your Honor, for the record, I am
 24 showing counsel. The state would offer Exhibit No. 1.
 25 MR. SHANDS: We have no objection, Your Honor.

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1 THE COURT: Exhibit 1 is received.
 2 (Exhibit No. 1 was received
 3 in evidence.)
 4 MS. KEENA: Your Honor, I am just going to
 5 publish it to the jury by showing it up on the screen.
 6 THE COURT: Go ahead.
 7 **BY MS. KEENA:**
 8 Q So, Mr. Bakkri, just behind you on the screen, that's the
 9 picture that I just showed you?
 10 A Yes.
 11 Q Is this the only entrance into Sabreen's or is there another
 12 entrance?
 13 A Well, this is the main, but there's an emergency exit in the
 14 back. But this is the entrance, yes.
 15 Q I am now showing you what's been marked for identification as
 16 Exhibit 2. Do you recognize that?
 17 A Yes.
 18 Q What is that?
 19 A This is the store.
 20 Q Is that a picture of the store?
 21 A Yes.
 22 Q Is that an aerial view of the store?
 23 A Yes.
 24 Q Does that picture accurately depict what the store looked like
 25 on December 22, 2002?

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1 A Yes, it does.
 2 MS. KEENA: For the record, I am showing defense
 3 counsel Exhibit 2. Your Honor, the state would offer Exhibit 2.
 4 THE COURT: Any objection?
 5 MR. SHANDS: No objection, Your Honor.
 6 THE COURT: Exhibit 2 is received.
 7 (Exhibit No. 2 was received
 8 in evidence.)
 9 **BY MS. KEENA:**
 10 Q Mr. Bakkri, I am going to put a picture up on the screen
 11 behind you. Is that the picture that I just showed you?
 12 A Yes.
 13 Q Could you get up and kind of explain the buildings that are
 14 around Sabreen's and where the alley is?
 15 A This is the entrance to the store. This is the building, the
 16 whole building, all the way to the end. The emergency exit will
 17 be right here (indicating), and that's fenced too. This is the
 18 three garages of the store. You could walk out all the way to
 19 the alley from here and a small car could get into to drive.
 20 Q Is that the parking lot then?
 21 A Yes, and this area is the whole parking lot to the store.
 22 Q What's the street that runs in front of Sabreen's?
 23 A This is Fourth Avenue.
 24 Q Thank you. You may be seated. I am now showing you a
 25 picture that's been marked for identification as Exhibit 3. Do

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1 you recognize that?
 2 A Yes.
 3 Q What is that a picture of?
 4 A This is a picture of the store right here (indicating).
 5 Q Is that an aerial view of the store again?
 6 A Yes.
 7 Q From the back side?
 8 A Yes.
 9 Q Does that picture accurately depict what the area looked like
 10 on December 22nd, 2002?
 11 A Yes.
 12 MS. KEENA: For the record, I am showing Exhibit
 13 No. 3 to defense counsel. Your Honor, the state would offer
 14 Exhibit 3.
 15 MR. SHANDS: No objection, Your Honor.
 16 THE COURT: Exhibit 3 is received.
 17 (Exhibit No. 3 was received
 18 in evidence.)
 19 **BY MS. KEENA:**
 20 Q Mr. Bakkri, again I am going to put a picture up on the screen
 21 behind you. Is that the picture that I just showed you?
 22 A Yes.
 23 Q Could you just explain to the jury what we are seeing here?
 24 A Okay. This is aerial pictures of the store, the back side of it.
 25 This is the whole store right here (indicating), and this is the

1 three garages to the store. And the parking lot right here
 2 (indicating).
 3 Q Is that the alley, then, that runs behind the store?
 4 A Well, this is the alley right here (indicating).
 5 Q All right, you may be seated. Thank you. I am now showing
 6 you a picture that's been marked for identification as Exhibit 4.
 7 Do you recognize that?
 8 A Yes.
 9 Q What's that a picture of?
 10 A This is when you walk into the store, the front of the store
 11 when you walk in.
 12 Q Does that picture accurately depict what the store looked like
 13 on December 22, 2004?
 14 A Yes.
 15 MS. KEENA: For the record, I am showing Exhibit
 16 No. 4 to defense counsel.
 17 MR. SHANDS: No objection, Your Honor.
 18 MS. KEENA: Your Honor, the state would offer
 19 Exhibit No. 4.
 20 THE COURT: Exhibit 4 is received.
 21 (Exhibit No. 4 was received
 22 in evidence.)
 23 BY MS. KEENA:
 24 Q Mr. Bakkri, again I am putting a picture up on the screen
 25 behind you. Is that the picture I just showed you?

1 A Yes.
 2 Q Could you again explain to the jury what it is that we are
 3 seeing here?
 4 A This is the main entrance of the store when you walk in. This
 5 is the front area of the store.
 6 Q So if you walk into the front entrance of the store, where is the
 7 counter in relation?
 8 A That would be when you walk in on the right side, right in this
 9 area it would be (indicating).
 10 Q At the time this happened, was that the only way you could get
 11 behind the counter?
 12 A Well, you mean just walking, yeah. You walk in from here
 13 (indicating), and -- yeah.
 14 Q You may be seated. Thank you. I am now showing you a
 15 picture that's been marked for identification as Exhibit No. 5.
 16 Do you recognize that?
 17 A Yes.
 18 Q What's that a picture of?
 19 A This is the counter of the, you know, the cash register, counter
 20 of the store.
 21 Q Does that picture accurately reflect what it looked like on
 22 December 22, 2002?
 23 A Yes, it does.
 24 MS. KEENA: For the record, I am showing Exhibit
 25 No. 5 to defense counsel.

1 MR. SHANDS: No objection, Your Honor.
 2 MS. KEENA: The state would offer Exhibit 5.
 3 THE COURT: Exhibit 5 is received.
 4 (Exhibit No. 5 was received
 5 in evidence.)
 6 BY MS. KEENA:
 7 Q Mr. Bakkri, I am putting a picture up on the screen behind
 8 you. Is that the picture that I just showed you?
 9 A Yes.
 10 Q Would you please describe what it is we are seeing here.
 11 A This is the counter of the store, this is the cash register, and
 12 behind it the cigarettes.
 13 Q So where would you enter to get behind the counter?
 14 A You'll walk -- well, as an employee, right?
 15 Q Yes.
 16 A You walk in to here, this area is open so you could walk in and
 17 go behind the counter.
 18 Q Was there any way to get out from this side of the counter if
 19 you were down past the cash register?
 20 A No. It has next to it some coolers for pop and soda.
 21 Q You may be seated.
 22 A Thank you.
 23 Q Showing you a picture that's been marked for identification as
 24 Exhibit 6, do you recognize that?
 25 A Yes.

1 Q What's that a picture of?
 2 A This is the picture as you walk in the front. On the right side
 3 of the counter and cash register and this would be the first
 4 aisle going all the way to the end of the store.
 5 Q Does that picture accurately reflect what the store looked like
 6 on December 22, 2002?
 7 A Yes.
 8 MS. KEENA: For the record, I am showing Exhibit
 9 No. 6 to defense counsel.
 10 MR. SHANDS: No objection, Your Honor.
 11 MS. KEENA: The state would offer Exhibit 6.
 12 THE COURT: Exhibit 6 is received.
 13 (Exhibit No. 6 was received
 14 in evidence.)
 15 BY MS. KEENA:
 16 Q Mr. Bakkri, I am placing a picture up on the screen behind
 17 you. Is that the picture I just showed you?
 18 A Yes.
 19 Q Again, this is the first aisle as you are walking through the
 20 front door?
 21 A Yes, all the way to the end of this one (indicating).
 22 Q How many aisles are there total in the store?
 23 A This first aisle, second and third, but long one.
 24 Q Thank you. Be seated. I would like to draw your attention to
 25 December 22, 2002. Did you work on that date?

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1 A Yes, I did.

2 Q Did you typically work at the store?

3 A Yes.

4 Q What were your hours of operation on that date?

5 A On the date of December 22nd we opened at 8:00 in the morning until 10:00 p.m. at night.

6 Q And those were your typical hours of operation?

7 A Yes.

8 Q That's the hours you were open on December 22nd?

9 A Yes.

10 Q Did anyone help you at the store on December 22nd?

11 A Yes.

12 Q Who was that?

13 A That was my brother Khaled.

14 Q What time did he arrive at the store that day?

15 A He arrived about 2:00 p.m., afternoon.

16 Q Was he an employee?

17 A No, he wasn't.

18 Q How often would he help you out at the store?

19 A Whenever I need him.

20 Q Did your wife work at the store?

21 A Yes.

22 Q How often would she work?

23 A She was working since we opened up in the morning, she used to manage it. In the morning and at night, I usually work from

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1 one or two o'clock until ten o'clock. Most of the time, or sometimes, my brother would help me out, Khaled.

2 Q So what's your wife's name?

3 A Katie, Katherine.

4 Q Katie would work in the morning?

5 A Yes.

6 Q During this timeframe in December was she working in the store?

7 A No, she wasn't. Actually, in December frame she had -- she was pregnant. We had our baby, a newborn, December 1st. So at that time of the month I had a cousin of mine help me for a little bit, trained to be hired in January as a manager to take over the store. And Khaled, too. He was helping me.

8 Q On December 22nd were you initially planning to work until 10:00 that night?

9 A Yes, I was.

10 Q When your brother arrived at 2:00, what did the two of you do?

11 A Well, you know, he is not even supposed to be there. He just came 2:00, he came, I was talking overseas to the family. He talked to the family too. And we just chatting and, you know, drinking coffee together. So he stayed for his time with me.

12 Q Did you leave the store at some point?

13 A Yes, I did.

14 Q What time did you leave the store?

15 A Well, I was not behind the cash register probably from, I would

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1 say, 5:30 all the way until -- well, maybe 5:00 until 7:00. I was doing, you know, we have a huge parking lot, as you see, so I was cleaning the whole leaves, you know, I was cleaning the whole parking lot because it's my job to do that.

2 Q Then did you actually leave the store?

3 A Then actually I left the store. I had some business to take care of, you know, for emergency. I had to go and do some typing. I have to do invitation letter for a businessman supposed to come to do some business with me. So it was actually Sunday, and overseas would be the next day in the morning, and so he needed it on Monday. So I went to Kinko's and then to my mother-in-law to do the typing. And my wife she was at her family. Then I picked her up and we came back at the store.

4 Q What time did you arrive back at the store?

5 A I did arrive back, I left a few hours, probably I was -- the first time it was 9:10, 9:17, along that. And then I -- this is when my wife and my newborn child was and she, my wife, she went inside, got some grocery items, you know, and then she came back to the car. I was waiting in the car because we have a newborn. We can't leave a newborn in the car.

6 Q So you went into the store and did your letter --

7 A Yes.

8 Q -- came back out to the car --

9 A Yes.

10 Q -- and let Katie go into the store to get groceries?

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1 A Yes. Then I drove all the way to Fifth Avenue, it's about a couple blocks down from the store, and I received a phone call from overseas requesting me to fax some paper to the Embassy of United States in Dubai, United Arab Emirates. So I came back, I did the faxing and I left after that.

2 Q What time did you leave?

3 A I would say 9:27 to 9:30, at the most, I was gone.

4 Q Did you talk to your brother when you came back to the store that second time?

5 A Yes, "Do you need anything?" I said. You know, every Sunday we would usually go to -- there is a cafe, you know, they serve Middle Eastern food, so we go every Sunday at night. I told him, "Do you want me to come back?"

6 He said, "No, just go help your wife," because she cannot carry stuff. So I said, "Okay, I'll come back before you close."

7 He said, "No, no, don't come back. I'll come to the house and we'll drive one car and we go and have dinner."

8 Q Did you then go home?

9 A Yes, I did.

10 Q When did you learn of your brother's death?

11 A After 10:00.

12 Q How old was your brother when he died?

13 A He was twenty-five years old.

14 Q How long had he been in the United States?

15 A About two years.

1 Q Was he going to school?
 2 A Yes, he was.
 3 Q For what?
 4 A He was doing his master's degree in accounting, plus he was
 5 doing -- last month he was accepted actually to do the test of
 6 CPA, certified public accounting.
 7 Q How tall or how big was Khaled?
 8 A Same, typical like me.
 9 Q Same size as you?
 10 A Yeah, if you look at the back, you cannot recognize one or the
 11 other.
 12 Q How tall are you?
 13 A That's a good question. Maybe five-eight, I don't know.
 14 Q After the crime scene was investigated, did you have an
 15 opportunity to go back into your store?
 16 A Yes.
 17 Q Did you determine whether anything was missing from the
 18 store?
 19 A Yes.
 20 Q What did you determine to be missing?
 21 A There was some of the items we determined that it was actually
 22 missing for sure, like moneywise. When we did the "Z" closing
 23 for the cash register and the money that the police of South St.
 24 Paul gave us, we got the difference. It was approximately
 25 between six hundred twenty-five to six hundred fifty dollars.

1 That's the first. The second, we believe there was some
 2 cigarettes items missing by cartons.
 3 Q But you weren't able to tell exactly how many?
 4 A Couldn't tell exactly. Then some lottery tickets and the way
 5 how they were displayed.
 6 Q Were you missing anything else?
 7 A At the time or after? After we found out that we were missing
 8 the cordless phone for the store.
 9 MS. KEENA: Your Honor, permission to approach?
 10 THE COURT: Go ahead.
 11 (Exhibit 7 was marked for identification)
 12 BY MS. KEENA:
 13 Q I am showing you what's been marked for identification as
 14 Exhibit 7. Do you recognize that item?
 15 A Yes.
 16 Q What is that?
 17 A This is the base of the cordless phone that was missing.
 18 Q This is the one that was in your store?
 19 A Yes.
 20 Q And it was in your store on December 22, 2002?
 21 A Yes.
 22 MS. KEENA: For the record, I am showing defense
 23 counsel Exhibit 7.
 24 MR. SHANDS: Your Honor, can I voir dire briefly?
 25 THE COURT: Sure.

1 BY MR. SHANDS:
 2 Q Mr. Bakkri, the telephone base in your store, did you put any
 3 markings on that so you could specifically distinguish that
 4 telephone base from any other telephone base like it?
 5 A We have only that phone in the store.
 6 Q Right. Did you do anything to the base at the store so that you
 7 could identify it from others?
 8 A Not that I am aware of.
 9 MS. KEENA: Your Honor, may I show him what he
 10 is referring to?
 11 THE WITNESS: Maybe that would be a good idea.
 12 BY MS. KEENA:
 13 Q Mr. Bakkri, I am showing you the exhibit again. There is some
 14 writing that appears to be, possibly a case number. Did you
 15 write that on there?
 16 A No, I didn't.
 17 Q Did the police come and take this from you and put it into
 18 evidence?
 19 A Yes.
 20 MS. KEENA: Okay.
 21 MR. SHANDS: Your Honor, we object to the
 22 foundation from this witness to admit it into evidence.
 23 THE COURT: Overruled. It's received.
 24 (Exhibit No. 7 was received
 25 in evidence)

1 BY MS. KEENA:
 2 Q Mr. Bakkri, where was that phone kept, the phone base?
 3 A The phone base was next to the fax, behind the counter, and if
 4 there's a picture I could show you exactly where it was.
 5 Q Mr. Bakkri, I am showing you what's been marked for
 6 identification as Exhibit 8. Do you recognize that?
 7 A It's right here (indicating).
 8 Q We'll get there. I am showing you a picture. Would you just
 9 please describe what that is a picture of?
 10 A This is a picture of the base of the phone. This is behind the
 11 counter. It's sitting on a cabinet next to the fax.
 12 Q Does that picture accurately depict what Sabreen's looked like
 13 on December 22, 2002?
 14 A Yes.
 15 Q Does that picture accurately depict where the base of the
 16 phone was located on that date?
 17 A Yes.
 18 Q Would you just take this marker and draw a circle around the
 19 phone base?
 20 A (Witness complies)
 21 Q Then just put your initials by it.
 22 A (Witness complies)
 23 MS. KEENA: Your Honor, for the record, I am
 24 showing Exhibit 8 to defense counsel.
 25 MR. SHANDS: We have no objection, Your Honor.

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1 THE COURT: Exhibit 8 is received.
 2 (Exhibit No. 8 was received
 3 in evidence)
 4 BY MS. KEENA:
 5 Q Mr. Bakkri, I am going to put a picture up on the screen
 6 behind you. Is that the picture that I just showed you?
 7 A Yes.
 8 Q Would you point out to the jury --
 9 A This is the base.
 10 Q That's behind the counter?
 11 A Yes.
 12 Q Where would the cash register be located in relation to that?
 13 A A little bit further on that side (indicating).
 14 Q Right on the corner of the picture?
 15 A This is the credit card machine, so next to it.
 16 Q Thank you. You may be seated.
 17 MS. KEENA: Permission to approach, Your Honor?
 18 THE COURT: Granted.
 19 BY MS. KEENA:
 20 Q Mr. Bakkri, did you have like shopping bags that you used in
 21 your store?
 22 A Yes.
 23 Q What did they look like?
 24 A They're a *Smiley* bag, yellow surrounds with the blue.
 25 Q What's the primary color of the bag?

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1 A White.
 2 Q Okay. I am showing you what's been marked for identification
 3 as Exhibit 9. Do you recognize that?
 4 A Yes.
 5 Q What is that?
 6 A This is the shopping bags that we use.
 7 Q Are these the bags that you were using on December 22, 2002?
 8 A Yes.
 9 MS. KEENA: For the record, I am showing
 10 Exhibit 9 to defense counsel.
 11 MR. SHANDS: We have no objection, Your Honor.
 12 MS. KEENA: The state would offer Exhibit 9.
 13 THE COURT: Received.
 14 (Exhibit No. 9 was received
 15 in evidence)
 16 BY MS. KEENA:
 17 Q Where were those bags kept?
 18 A They are in a box -- next to the cash register, they come with a
 19 hook, so we hook them up with it.
 20 Q Mr. Bakkri, I am showing you what's been marked for
 21 identification as Exhibit 10. It's a picture. Could you please
 22 describe what it's a picture of?
 23 A This is the picture of behind the counter.
 24 Q And does that picture accurately depict what the counter --
 25 behind your counter at Sabreen's looked like on December 22,

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1 2002?
 2 A Yes.
 3 Q And the white hook that you talked about that you kept the
 4 bags on, is it present in that picture?
 5 A Yes.
 6 Q Just please take this pen and draw a circle around that.
 7 A It's right here (indicating).
 8 Q And put your initials down.
 9 A (Witness complies)
 10 MS. KEENA: For the record, I am showing Ex-
 11 hibit 10 to defense counsel.
 12 MR. SHANDS: We have no objection, Your Honor.
 13 MS. KEENA: The state offers Exhibit 10.
 14 THE COURT: Received.
 15 (Exhibit No. 10 was received
 16 in evidence)
 17 BY MS. KEENA:
 18 Q Mr. Bakkri, I am going to put a picture up behind you on the
 19 screen again. Is that the picture that I just showed you?
 20 A Yes.
 21 Q And could you point the hook out to the jury.
 22 A This is the white hook right here (indicating).
 23 Q So that's where you kept the bags?
 24 A Yes.
 25 Q When you were at the store earlier in the day, any idea how

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1 many bags were on that hook?
 2 A There was at least a stack, you know, it comes in a bundle, so
 3 at least -- bundle, two bundle.
 4 Q So how many in a bundle, like fifty or one hundred?
 5 MR. SHANDS: Objection, Your Honor, leading.
 6 THE COURT: How many in a bundle, do you
 7 know?
 8 THE WITNESS: It's like, I think they come five
 9 packs -- 1,000 so it should be about two hundred, Your Honor,
 10 I believe so.
 11 THE COURT: Thank you.
 12 MS. KEENA: All those bags were missing?
 13 MR. SHANDS: Objection, Your Honor, leading.
 14 THE COURT: Can you rephrase it?
 15 BY MS. KEENA:
 16 Q Were there any bags present on that hook when you got back
 17 into the store?
 18 A After I get back, not on the -- I didn't see none.
 19 Q Did you find any of those bags around the store anywhere?
 20 A No.
 21 Q Could you point out to the jury where the lottery tickets are?
 22 A Right here (indicating).
 23 Q Now there appears to be one set of lottery tickets that's pulled
 24 out to the floor.
 25 A Yes, which is that one (indicating).

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1 Q And is that unusual?
 2 A Yes.
 3 Q How did you usually keep them?
 4 A Okay. This is the way how we keep them. Like you see, like
 5 the first tray right here (indicating), this is the way how we
 6 keep our lottery, you know. At the most, it will be one ticket
 7 out or two. That's at the most, not all the way down.
 8 Q You can be seated.
 9 A Thank you.
 10 Q Mr. Bakkri, the cash register that you had in the store, did that
 11 have like a cash register tape?
 12 A Yes.
 13 MS. KEENA: Permission to approach, Your Honor?
 14 THE COURT: Granted.
 15 (Exhibit 11 was marked for identification)
 16 **BY MS. KEENA:**
 17 Q Mr. Bakkri, I am showing you what's been marked for
 18 identification as Exhibit 11. Do you recognize that?
 19 A Yes.
 20 Q What is that item?
 21 A This is the cash register tape that show all the sales that have
 22 been done through the whole day.
 23 Q Was that the cash register tape that was in your cash register--
 24 A Yes.
 25 Q On what date?

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1 A December 22nd of 2002.
 2 Q Now on your cash register tape, when there's a sale that's rung
 3 up, what does it show?
 4 A It will say the date, the time and exactly what was sold and
 5 how much change. If the cash register get opened, it will still
 6 register that the cash register got open and what time.
 7 Q Now did you have any problems with the time --
 8 A Yes.
 9 Q -- on your cash register?
 10 A Yes. Like this right here, like it said 22:22. It's actually 21:22. X
 11 Q So it was off an hour?
 12 A Yes, and we didn't fix it because I am the one that usually do
 13 the closing, so I know it's off an hour.
 14 Q There are some initials and a date at the very bottom of the
 15 cash register tape. That isn't anything that you did, correct?
 16 A No, I didn't do that.
 17 Q This is something that the police took into evidence, is that
 18 correct?
 19 A Yes.
 20 Q According to the cash register tape, what was the last item on
 21 the tape?
 22 A Well, 9:22 p.m. there was a sale for three thirty-nine and
 23 somebody gave five dollars to the tiller and the change was one
 24 dollar and sixty-one. Then you see "NS", no sale, cash got
 25 opened at 9:35.

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1 Q So the cash register was opened at 9:35 according to the tape?
 2 A Well, "NS" mean no sale. In the cash register there is a button,
 3 you just push it and it will open the cash register. That was at
 4 9:35, 21:35.
 5 Q There's another little receipt in this bag. Do you have any idea
 6 what that is?
 7 A Yes.
 8 Q What is that?
 9 A Okay. This is the batch -- we do a batch, every time we do like
 10 for the credit cards we have to do like the total sales, so this is
 11 a batch of total sales.
 12 Q For that date?
 13 A For that-- that was done, at 12/23/02 at 5:37 in the morning }
 14 that was done. So I didn't do it. *
 15 Q You didn't do it?
 16 A I didn't do it.
 17 MS. KEENA: For the record, I am showing Exhibit
 18 Number 11 to defense counsel.
 19 MR. SHANDS: We have no objection, Your Honor.
 20 THE COURT: Exhibit 11 is received.
 21 (Exhibit No. 11 was received
 22 in evidence.)
 23 **BY MS. KEENA:**
 24 Q The cigarettes, where were they kept in the store?
 25 A Behind the counter, the display.

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1 Q So in order to get to them, the clerk would have to get them for
 2 you -- if I were to come in and buy some cigarettes?
 3 A Yes.
 4 MS. KEENA: Your Honor, the state has no further
 5 questions of this witness.
 6 THE COURT: Thanks. Mr. Shands.
 7 MR. SHANDS: Thank you, Your Honor.
 8 (Exhibit 12 was marked for identification)
 9 MR. SHANDS: Your Honor, may I approach, please?
 10 THE COURT: Sure.
 11 **CROSS-EXAMINATION**
 12 **BY MR. SHANDS:**
 13 Q Mr. Bakkri, I am showing you what's marked as Exhibit 12 for
 14 identification. Do you recognize that?
 15 A Yes.
 16 Q How do you recognize that?
 17 A This is my signature.
 18 Q What is it?
 19 A It's a letter. Do you want me to read it?
 20 Q No, not yet. Does that letter appear to be in the same condition
 21 as when you wrote it?
 22 A It is.
 23 Q Does it look like -- is that the letter that you wrote?
 24 A Yes.
 25 Q Besides the three holes that have been punched on the side

1 and there's a little highlight of your name here, other than that,
2 does this appear to be a true and accurate depiction of the
3 letter?

4 A Yes.

5 MR. SHANDS: We offer Exhibit 12.

6 MS. KEENA: Your Honor, I am going to object. If
7 we may approach?

8 THE COURT: Sure.

9 (Off record discussion at the bench)

10 THE COURT: I am going to give you a short break
11 and bring you back in a few minutes.

12 (JURORS EXCUSED)

13 THE COURT: Mr. Bakkri, you can step down if you
14 would like. Don't go too far because you'll be back in a minute.

15 We are back on the record. The jury has been
16 excused. Mr. Shands seeks to offer into evidence a February 3,
17 2004 letter to Maynard Cross signed by Tariq Bakkri. Mr.
18 Shands.

19 MR. SHANDS: Your Honor, I am offering the letter
20 into evidence as a letter that was written by the witness. The
21 witness has testified that letter is true and correct as to what
22 he wrote down. He wrote this letter because he was offering
23 reward money. The letter was given to us by the state.

24 The letter, for one, we are offering it to show that in
25 fact the reward money was offered and who it was offered to.

1 Basically, I mean, the letter speaks for itself. It's our position
2 that it's not hearsay. The witness is here, the witness is here
3 to testify to it, and it's true and accurate for what it depicts.
4 And that's what we are offering it for.

5 MS. KEENA: Your Honor, the state objects to the
6 introduction of this letter because foundation has not been
7 completed yet. They still have to prove that Mr. Maynard Cross
8 actually received this letter, and it's at that time. I mean, this
9 is the first piece of foundation they have to lay, but they have
10 to prove that Maynard Cross actually got this letter.

11 This letter is being introduced for the purpose of
12 impeaching Maynard Cross if he testifies. So until that full
13 foundation is laid, the state objects to it in that regard. I don't
14 have any objection to it coming in if Maynard Cross gets up
15 and testifies and says he got it.

16 If the evidence does come in, the state would object
17 to portions of the letter because it refers to the facts of Mr.
18 Maynard Cross's underlying crime that he is currently serving
19 time for. The court has ruled that any of that alternative
20 perpetrator evidence, what he did, doesn't come in to evidence.
21 So if the court allows it, that portion of it should come out.

22 MR. SHANDS: Your Honor, we are not offering it to
23 impeach Mr. Cross's testimony. I am offering this letter for the
24 sole fact that this witness, Mr. Bakkri, actually wrote the letter
25 and sent the letter.

1 I have not commented on the fact that it got to Mr.
2 Cross. I am offering it solely to show that in fact Mr. Bakkri
3 wrote it and Mr. Bakkri sent it.

4 MS. KEENA: It's irrelevant. The whole letter is
5 about Maynard Cross and what Maynard Cross might get in
6 return for his testimony.

7 MR. SHANDS: That's not true, Your Honor. The
8 letter is very relevant in that he was offering reward money. He
9 is sending a letter out to potential witnesses, that I know of. I
10 have a question regarding who he sent it to. I have a question
11 in regards to if he gave it to the police officer, did they even
12 know about it? I am assuming they did, since the state in fact
13 gave us this letter. But for Ms. Keena to say that I am intro-
14 ducing it for bias and all that, I am introducing it to show that
15 he offered reward money, he offered that money in the form of a
16 letter. This is the letter that he wrote and sent.

17 MS. KEENA: Your Honor, I think -- go ahead.

18 THE COURT: Ms. Keena is right in one respect. If
19 you are going to argue that Maynard Cross was influenced by
20 an offer of a reward, he will have to testify, number one. And
21 he will have had to have received the letter. So foundation is
22 not complete, if that's the reason you are offering it, unless and
23 until Maynard Cross testifies.

24 You can certainly ask Mr. Bakkri if he offered a
25 reward and who he offered it to. But the letter addressed to

1 Maynard Cross, I mean, it's addressed to a specific purpose. I
2 didn't see an address on it. I don't know where he sent it. But
3 the letter can't go in unless and until Cross testifies, but you
4 can ask Mr. Bakkri who he offered rewards to.

5 MR. SHANDS: Okay. Subsequently if I ask him
6 did he offer a reward, did he offer it to a specific person, why
7 did he just send the reward to this person? There had to be a
8 reason for it, and then offer is this the letter you sent?

9 THE COURT: What would the relevance be?

10 MS. KEENA: It's not relevant unless Mr. Cross
11 gets up and testifies.

12 MR. SHANDS: She can object. I think it is
13 relevant. It's a piece of evidence that went in. He wrote it. The
14 relevance is it's a piece of evidence that he wrote and I under-
15 stand there is maybe facts that hurt the state's case, but that's
16 the nature of what we are doing here. There are facts that are
17 going to hurt their case. This is a letter that should get in, it's
18 been authenticated and Ms. Keena can make her objections
19 and I can ask questions --

20 THE COURT: Maybe there is some other reason for
21 your offering it, other than to show bias.

22 MR. SHANDS: It's not reverse Spreigl. We are
23 offering it as third party perpetrator.

24 MS. KEENA: Well, that's out on Maynard Cross.

25 MR. SHANDS: No, you said reverse Spreigl is out.

1 We can question him, the investigation went through and he
2 does exist. They talked to him.

3 MS. KEENA: Reverse Spreigl and alternative
4 perpetrator is the same thing. Reverse Spreigl is one type of
5 alternative perpetrator.

6 THE COURT: It is. But my ruling was not just
7 that the reverse Spreigl was inadmissible, but that alternative
8 perpetrator evidence was inadmissible with respect to Mr.
9 Cross.

10 MR. SHANDS: All I am saying is it's our position if
11 we don't bring in the substance, "Did you talk to this person?"
12 "Did you send him a reward or request for reward?" That's
13 fine. That's as far as I need to go.

14 MS. KEENA: You have done that.

15 THE COURT: Make me some kind of offer of proof.
16 I mean this letter is dated February 3rd. Had Mr. Cross already
17 spoken with the police about the conversation with Mr. Vance
18 on December 22nd or 23rd?

19 MS. SINGH: 2004. The letter is dated February of
20 2004.

21 THE COURT: So, Mr. Bakri, would you step out
22 of the courtroom, please?

23 THE WITNESS: Sure.

24 THE COURT: Thanks. So he is not writing Mr.
25 Cross because he thinks Cross did it, right? He is writing

Cross because he knows that Cross --

MS. KEENA: Has information about the case.

THE COURT: -- allegedly spoke to Vance on the
night in question and then communicated that information to
the police. So it's not an alternative perpetrator matter.

MS. KEENA: No, it's not. It's a letter that the
foundation hasn't been set for until Maynard Cross gets on the
stand and says --

THE COURT: But I can't receive it and put it into
evidence solely on the basis that he wrote it and put it in the
mail, but if Cross testifies, then you are right. I think it comes
in.

MR. SHANDS: Well, can I question other witnesses
about it? Here's the problem. If I question other witnesses
about it, or what not, the reason I want to get it in through the
witness, Mr. Bakri, is because he is the one who created it.
He is the one who can testify to "Yup, this is what I put in.
This is what's going on." He is the only one who can
authenticate it.

MS. KEENA: He just did.

THE COURT: You can ask him all that. You can
ask him about offering a reward and who he offered the reward
to. That's certainly fair game. And why, too.

MR. SHANDS: We got a record. Thank you.

THE COURT: But I will have to reserve receiving it

*Opposes
Conclusion
of law
to receive*

TARIQ BAKKRI - CROSS

1 until we see what happens with Cross.

2 MR. SHANDS: Okay. Nitu, make a note that he
3 reserved receiving this.

4 THE COURT: Can you bring the jury back in?
5 (Jurors seated in courtroom)

6 THE COURT: Mr. Shands.

7 BY MR. SHANDS:

8 Q Mr. Bakri, the letter that I am showing you, that's a letter that
9 you wrote and sent to a gentleman named Maynard Cross?

10 A Yes, I wrote. I don't think it got sent.

11 Q You don't think it got sent?

12 A No.

13 Q Why don't you think it got sent?

14 A Because I just gave it to the police. That's it.

15 Q In this letter you talk about --

16 MS. KEENA: Objection, Your Honor, on
17 foundation.

18 THE COURT: Yes. General questions.

19 BY MR. SHANDS:

20 Q Mr. Bakri, you wrote a letter offering Maynard Cross at least
21 \$3,000 for information concerning your brother's death. Isn't
22 that correct?

23 MS. KEENA: Your Honor, objection again.

24 THE COURT: Overruled. You can answer. Can
25 you answer that?

TARIQ BAKKRI - CROSS

1 THE WITNESS: Three thousand, yes.

2 BY MR. SHANDS:

3 Q At a minimum?

4 A Three thousand, that's what I offered, that was my intention.

5 Q The reason you sent the letter to Maynard Cross is because you
6 received --

7 A Again, I didn't send it, I gave it to the police.

8 Q The reason you wrote the letter to Maynard Cross was because
9 at some point you found out that that individual would have
10 some information concerning your brother's death, is that
11 correct?

12 A Yes.

13 THE COURT: Was the date mentioned, the date on
14 the letter?

15 MS. KEENA: No, it was not, Your Honor.

16 MR. SHANDS: You wrote this letter in February of
17 2004, is that right?

18 MS. KEENA: Objection, Your Honor, he already
19 indicated that he did not write the letter.

20 MR. SHANDS: No, he didn't, Your Honor. He
21 indicated he did not mail the letter.

22 THE COURT: He wrote it and gave it to the police.

23 THE WITNESS: No. You mean like write it or
24 type it?

25 THE COURT: Yes.

1 THE WITNESS: No, I didn't.
 2 THE COURT: Who typed it?
 3 THE WITNESS: Actually, I was supposed to come
 4 like two hours on that day, I remember, and I was late because
 5 of traffic. So I came real late, so I talked to the captain then
 6 and I told him why don't you just write it what he wants briefly
 7 because anyway I don't know how to write like, you know. So I
 8 just signed it.
 9 THE COURT: Okay. Understood.
 10 THE WITNESS: So I did not type it or write it, and
 11 I did not send it. I signed it, very much --
 12 MR. SHANDS: Objection, Your Honor. Non-
 13 responsive. There's really no question before the witness at
 14 this point.
 15 THE COURT: Okay. Go ahead.
 16 **BY MR. SHANDS:**
 17 Q Let's talk about the lottery tickets. You testified that at the
 18 store you sell lottery tickets, correct?
 19 A Yes.
 20 Q Do the lottery tickets have any sort of serial numbers or batch
 21 numbers so the state can identify these lottery tickets if they
 22 show up elsewhere?
 23 A Yes.
 24 Q Did the police officers ask you for the serial numbers or batch
 25 numbers for the lottery tickets so they could identify them?

1 A Not at the time, no.
 2 Q Did they ever ask you, I mean during the whole course of
 3 investigation?
 4 A Yes, they did afterwards, but I went to the state lottery and --
 5 very much they do six-month updating and they couldn't get
 6 that information for me. Unless if I have to go through my
 7 paper and, as I said again, it's definite, the money. We believe
 8 highly that there was lottery that was taken.
 9 MR. SHANDS: Objection.
 10 **BY MR. SHANDS:**
 11 Q You believe lottery tickets were taken?
 12 A Yes.
 13 Q Do you know exactly how many?
 14 A Lots. I mean, I am assuming at least -- you mean number of
 15 tickets?
 16 Q I don't want you to assume. If you don't know, you don't know.
 17 You don't know specifically how many tickets were taken?
 18 A Specifically, no. I cannot recall that.
 19 Q Now you testified that you believed some cigarettes were taken?
 20 A Yes.
 21 Q Now when you get the cigarettes, do you get a specific count or
 22 do they actually have any specific identification for each
 23 carton?
 24 A I don't understand the question, again state it.
 25 Q Are you able to identify, how are you able to identify how many

1 cigarettes you have in the store?
 2 A In the store, okay. First of all, a quick explanation.
 3 Q Please.
 4 A This business is operated by a family, so I do operate the
 5 business. Usually I would know if there's a cigarette missing.
 6 We do not count, you know, like we don't count exactly how
 7 many cartons because I don't have employees that will -- so,
 8 there's no reason to count the cigarettes, first of all.
 9 Second of all, by looking at the pictures or the scene,
 10 you could tell right away there are some cigarettes, at least a
 11 minimum of five cartons of Marlboro, I believe, that was taken.
 12 This is the only way that -- when I got in, I could tell that at
 13 least Marlboro was taken.
 14 Q So when you came in you looked at it and you said, "Cigarettes
 15 are missing." That was done by you just kind of eyeballing and
 16 looking at it?
 17 A Through my experience of five years in grocery business, five
 18 years before that, so ten years, yes, I can.
 19 Q So you did not have a running ledger of how many cigarettes
 20 you specifically had?
 21 A No. We could try it, but not specifically, as you say.
 22 Q Now I am showing you what's been marked as Exhibit 10. I
 23 believe you testified that's the hook where the plastic bags are?
 24 A Yes, sir.
 25 Q Now when you get your plastic bags, you testified that you get

1 them in a bundle?
 2 A In boxes, yes.
 3 Q Well, first, when you went back into the store, after your
 4 brother was killed, and you looked to see if there was anything
 5 missing, plastic bags, the police had already been there. Is
 6 that correct?
 7 A Yes.
 8 Q The crime scene had already been processed?
 9 A Yes, I couldn't get in until they let me in.
 10 Q How long did it take before they allowed you to get in?
 11 A I think they closed it -- again, I cannot recall the exact, but
 12 they closed it at least a few days. Nobody could get in a few
 13 days or three days.
 14 Q So about three or four days nobody could get in?
 15 A Yes.
 16 Q So when you testified here concerning what appeared to be
 17 missing, that is what you identified four or five days after the
 18 death of your brother, correct?
 19 A Yes, after I got into the store, there's no way I cannot -- I
 20 wouldn't be able to get into the store before that because it's a
 21 crime scene.
 22 Q Okay. Did you count your bags? Those plastic bags that you
 23 showed --
 24 A Do you think I am going to count the bags, honest?
 25 Q I am asking you, I don't know.

1 A No, I am not going to count the bags, but by bundles, by every
 2 day. When you go low, you got to fill up on bags.
 3 Q So when you testified that it appeared that some bags were
 4 missing, you don't have a specific number of bags that were
 5 missing, correct?
 6 A Estimated number, yes.
 7 Q Estimated number, so it's a guess?
 8 A It's a guess.
 9 Q Now the letter that you had written -- now the letter that I was
 10 showing you when I was up there next to you, I want to under-
 11 stand how that happened. Now you testified that you did not
 12 write the letter out.
 13 MS. KEENA: Objection, asked and answered.
 14 THE COURT: Yes, you didn't write it.
 15 THE WITNESS: No.
 16 **BY MR. SHANDS:**
 17 Q Did you type it?
 18 A No.
 19 Q Where was it typed?
 20 A It was typed in the police station because of my time.
 21 Q Did the police officers ask you -- did you ask them to draft the
 22 letter for you?
 23 A Yeah.
 24 Q You asked them to create it for you?
 25 A Well, just, you know, like this -- what's his name, I don't even

1 know.
 2 Q Maynard Cross.
 3 A You got it. He requested some. So he told me and if I approve,
 4 I said, "Okay, that's fine." So they asked me if I want to do this
 5 and it's obvious that I had rewards money for \$25,000. It's
 6 obvious thing, you know.
 7 Q Do you remember being shown a picture of Maynard Cross, a
 8 photograph from the newspaper?
 9 MS. KEENA: Objection, Your Honor. May we
 10 approach?
 11 THE COURT: Yes.
 12 (Off record discussion at bench)
 13 **BY MR. SHANDS:**
 14 Q Mr. Bakkri, do you know who Maynard Cross is?
 15 A At the time being now today?
 16 Q Yes.
 17 A Yes, I know.
 18 Q February 3, 2004, did you know who Maynard Cross was?
 19 A Not really, no.
 20 Q Mr. Bakkri, have you since looked for the telephone handset
 21 that was missing?
 22 A What's that again?
 23 Q Have you looked for the telephone handset that was missing?
 24 A Yes, we did look, but we couldn't find it.
 25 MR. SHANDS: No more questions, Your Honor.

1 MS. KEENA: Just a few followup questions, Your
 2 Honor.
 3 **REDIRECT EXAMINATION**
 4 **BY MS. KEENA:**
 5 Q Mr. Bakkri, there has been a lot of talk about reward money.
 6 Let's clarify. You set up a fund, a reward fund, is that correct?
 7 A At the beginning, yes. But if you ask me right now do I have
 8 the funds, I say no.
 9 MR. SHANDS: Objection, Your Honor, non-
 10 responsive.
 11 THE COURT: Overruled.
 12 **BY MS. KEENA:**
 13 Q You can continue.
 14 A Okay.
 15 Q Why did you put a reward fund together?
 16 A Friends and family suggested that, so I did it.
 17 Q And why? Why did you do that?
 18 A So if somebody has any information, they would come up and
 19 do it because there's a lot of -- my understanding of reward
 20 situation like there's people like --
 21 MR. SHANDS: Objection, Your Honor, non-
 22 responsive and irrelevant.
 23 THE COURT: Overruled.
 24 **BY MS. KEENA:**
 25 Q Go ahead.

1 A It's like, you know, the cops, what they told me about it, when I
 2 asked them about the \$25,000, they told me there's people like
 3 they needed money to move, they needed money to travel, they
 4 needed money to, you know, they lose a job because of that,
 5 because it would be dangerous for them. So that's why I put
 6 the \$25,000 up. Plus if there's somebody who has information.
 7 Don't worry, I don't have it now. It's gone.
 8 Q I want to talk about the lottery tickets. You get assigned lottery
 9 tickets from the state lottery office, correct?
 10 A Yes.
 11 Q The state lottery office keeps track of what they give you,
 12 correct?
 13 A Yes.
 14 Q And they give you a certain number how often? Do you get
 15 lottery tickets at the store anymore?
 16 A No, the reason why I closed it --
 17 MR. SHANDS: Objection, Your Honor, irrelevant.
 18 THE COURT: Overruled.
 19 THE WITNESS: I closed, I don't have no more
 20 lottery at my store. I don't carry it.
 21 **BY MS. KEENA:**
 22 Q At the time of around December 22nd of 2002, how often would
 23 you get batches of lottery tickets?
 24 A Every week, weekly.
 25 Q And if you're missing lottery tickets, do you have to pay the

1 state lottery office for the tickets you are missing?
 2 A Yes.
 3 MR. SHANDS: Objection, Your Honor. Leading.
 4 THE COURT: Overruled.
 5 THE WITNESS: Again, the question? He's
 6 disturbing me. I'm sorry.
 7 **BY MS. KEENA:**
 8 Q If you are missing tickets, the lottery office comes back and
 9 they get their tickets and there are some that are unaccounted
 10 for, do you have to pay for those lottery tickets?
 11 A Yes, no matter what, we have to pay for it. It's a weekly base
 12 report. We close daily the machine. And at the end of the
 13 week, Monday, beginning of the week, they withdraw the
 14 money from the bank electronically, so it doesn't matter. If we
 15 have them, don't have them, if we sold them, if we didn't sell
 16 them, they will take the money.
 17 Q All right. The last question has to do with the cordless phone
 18 that was missing. Did your brother have any special habits in
 19 regard to that phone?
 20 A Yup.
 21 Q What was that?
 22 A Usually he would put it in his right side.
 23 Q Like in his waistband?
 24 A Yeah, like there's a clip where he could put the cordless phone.
 25 Q Would he carry it around the store with him?

1 A Oh, absolutely, yeah, and he would have his cell on the left
 2 side.
 3 MS. KEENA: I have no further questions, Your
 4 Honor.
 5 MR. SHANDS: Just briefly.
 6 **RECROSS EXAMINATION**
 7 **BY MR. SHANDS:**
 8 Q Briefly. Did the State Lottery Commission charge you for the
 9 lottery tickets that were missing?
 10 A Yes.
 11 Q Again, the reward money was offered because you felt that this
 12 person had information that could help in finding who
 13 murdered your brother, correct?
 14 A I didn't even know what kind of information he had, but I
 15 would offer anybody for information.
 16 Q Was anyone else offered reward money?
 17 MS. KEENA: Your Honor, objection, that goes
 18 beyond the scope of redirect.
 19 THE COURT: It does.
 20 MR. SHANDS: Your Honor, in speaking he talked
 21 about what the reward money was written for, why he was
 22 there at the police office.
 23 THE COURT: Okay. Go ahead.
 24 MR. SHANDS: Did you write any letters offering
 25 reward money to any other people?

1 THE WITNESS: No.
 2 MR. SHANDS: No further questions.
 3 MS. KEENA: Nothing further, Your Honor.
 4 THE COURT: Thank you. We will break for lunch.
 5 See you at 1:30.
 6 (JURORS EXCUSED)
 7
 8 MR. SHANDS: Your Honor, I think we were on the
 9 record outside of the hearing of the jury. The only thing I really
 10 need to make a record of, I want to make the record clear, is
 11 that we were offering into evidence, I believe, Exhibit 12. It is
 12 our position that that letter should have been received. It
 13 should have been received in its entirety.
 14 THE COURT: Is that what I will be reversed on or
 15 my ruling on the alternative perpetrator matter?
 16 MR. SHANDS: I don't know. Maybe you won't get
 17 reversed.
 18 THE COURT: Ms. Keena, anything?
 19 MS. KEENA: Your Honor, I think we already made
 20 a record. That's when we excused the jury and the witness.
 21 And I think there was a sufficient record made at that time.
 22 THE COURT: Okay. Thanks. See you later.
 23 (Lunch break was taken)
 24
 25

SEPTEMBER 27, 2004 - AFTERNOON SESSION

1 THE COURT: Please proceed.
 2 MS. KEENA: Your Honor, the state would call
 3 Mark Sawyer as a witness.
 4 **MARK SAWYER,**
 5 being duly sworn, was examined and testified as follows:
 6 THE CLERK: For the record, please state your full
 7 name, spelling your last name.
 8 THE WITNESS: My name is Mark Sawyer,
 9 S-A-W-Y-E-R.
 10 THE CLERK: Thank you.
 11 **DIRECT EXAMINATION**
 12 **BY MS. KEENA:**
 13 Q Good afternoon.
 14 A Good afternoon.
 15 Q Officer, by whom are you employed?
 16 A City of South St. Paul.
 17 Q In what capacity?
 18 A I am a corporal with the police department.
 19 Q Are you a licensed peace officer in the state of Minnesota?
 20 A Yes, I am.
 21 Q How long?
 22 A Twenty years.
 23 Q How long have you been employed in your current position in
 24 South St. Paul?
 25

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1 A Fifteen years.
 2 Q Were you employed as a police officer elsewhere?
 3 A Yes, I was.
 4 Q Where was that?
 5 A City of Goodhue.
 6 Q That's in Minnesota?
 7 A Yes, it is.
 8 Q Were you employed in your current position on December 22nd
 9 of 2002?
 10 A Yes, I was.
 11 Q On that date were you dispatched to Sabreen's Supermarket?
 12 A I was.
 13 Q When you were dispatched to that location, what information
 14 did you have?
 15 A The original call was possible armed robbery in progress.
 16 While we were in route to the store, we received additional
 17 information that there was possibly somebody down behind the
 18 counter and that the cash drawer was open.
 19 Q What time did you get to Sabreen's?
 20 A It would have been approximately 9:43 p.m.
 21 Q Were there 911 calls that had been made reporting this
 22 information?
 23 A I believe so.
 24 Q What did you observe upon arriving at the scene?
 25 A I arrived approximately a few seconds after, and another officer

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1 who had a male person prone out in front of the store at
 2 gunpoint, and that person we later determined to be a witness,
 3 not a suspect.
 4 Q Do you recall the name of that person?
 5 A Mr. Marx.
 6 Q What did you do next?
 7 A I covered Mr. Marx while Officer Roehlen looked inside the front
 8 window of the store, and briefly went inside and then came
 9 back out.
 10 Q Did you enter the store?
 11 A Yes, we did. When other officers arrived, we three officers,
 12 including myself, went in and searched the building to make
 13 sure it was clear of any suspects.
 14 Q Did you find any suspects in the store?
 15 A We did not.
 16 Q Did you find any victims in the store?
 17 A Yes, we did.
 18 Q How many?
 19 A One.
 20 Q Where was that victim located?
 21 A Behind the counter on the floor in the front of the store.
 22 MS. KEENA: Permission to approach, Your Honor?
 23 THE COURT: You may.
 24 (Exhibit No. 13 was marked for
 25 identification)

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1 BY MS. KEENA:
 2 Q I am showing you what's been marked for identification as
 3 Exhibit Number 13. Can you tell me what that is?
 4 A It's a photograph of the victim laying on the floor.
 5 Q And is that behind the counter?
 6 A Yes, it is.
 7 Q Does that picture accurately reflect what you saw when you
 8 arrived at the store on December 22, 2002?
 9 A Yes, it does.
 10 Q Did you move the body at all?
 11 A No, I did not.
 12 Q Did you move anything behind the counter?
 13 A No.
 14 MS. KEENA: For the record, I am showing defense
 15 counsel Exhibit 13.
 16 Your Honor, the state would offer Exhibit 13.
 17 THE COURT: Any objection?
 18 MR. SHANDS: No objection, Your Honor.
 19 THE COURT: Exhibit 13 is received.
 20 (Exhibit No. 13 was received
 21 in evidence)
 22 BY MS. KEENA:
 23 Q Officer, I am going to blind you here with the light and show
 24 you picture on the screen behind you. Is that the picture I just
 25 showed you?

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1 A Yes.
 2 Q Again, you didn't touch anything behind the counter?
 3 A I did not.
 4 Q Did you bring in any medical personnel?
 5 A Yes, I did.
 6 Q And did they move the body at all?
 7 A They did not.
 8 Q Thank you. When you initially approached the victim, what did
 9 you notice?
 10 A The victim was face down on the floor. The cash register was
 11 opened, the cash drawer was laying in the area of the deceased.
 12 There appeared to be a bullet wound in the back of the victim's
 13 head and blood on the back of the head and neck.
 14 Q Did you approach the body to see if there was any indication of
 15 life yourself?
 16 A Yes, I did.
 17 Q What did you do?
 18 A I bent down and basically looked to see if I could see any
 19 respirations.
 20 Q Did you see any?
 21 A No, I did not.
 22 Q Did you notice anything about the victim's head in particular?
 23 A It appeared to have a gunshot wound in the back of the head.
 24 Q I am showing you what's been marked for identification as
 25 Exhibit 14. Can you tell me what that is?

MARK SAWYER

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1 A It appears to be a close-up of the victim's torso and back of his
2 head.
3 Q Does that picture accurately depict how you found him on the
4 evening of December 22, 2002?
5 A Yes, it does.
6 MS. KEENA: For the record, I am showing defense
7 counsel Exhibit 14. The state would offer Exhibit 14.
8 MR. SHANDS: No objection.
9 THE COURT: Received.
10 (Exhibit No. 14 was received
11 in evidence)
12 **BY MS. KEENA:**
13 Q Officer Sawyer, I am going to put a picture up behind you. Is
14 that the picture I just showed you?
15 A Yes, it is.
16 Q Could you kind of point out the wounds that you noticed that
17 you described in the head.
18 A Right here (indicating) is what appears to be a bullet hole.
19 Q And the cash register drawer, that's kind of under his arm,
20 right arm pit, that's how it was positioned when you got there?
21 A Yes, it is.
22 Q What's that laying on his back, that white item?
23 A I am not sure.
24 Q It doesn't come up very well. I'll show you the picture again.
25 Can you tell from that what that is?

MARK SAWYER

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1 A It appears to be a plastic bag.
2 Q And you didn't put that on the body or anything?
3 A No, I did not.
4 Q At that point did you identify the victim at all?
5 A No, I did not.
6 Q Did you secure the crime scene?
7 A Yes, I did.
8 Q How did you do that?
9 A Using crime scene tape by cording off the store, the street and
10 the alley behind the store, positioned officers and reserve
11 officers to keep everybody out.
12 MS. KEENA: I have no further questions, Your
13 Honor.
14 MR. SHANDS: May I approach the witness, Your
15 Honor?
16 THE COURT: You may.
17 **CROSS-EXAMINATION**
18 **BY MR. SHANDS:**
19 Q Officer Sawyer, I am showing you what's been marked as
20 Exhibit 13. You've identified it, correct?
21 A Correct.
22 Q Now there appears to be a bundle of cash right here. Did you
23 see that when you looked down?
24 A No, I did not.
25 Q Okay. But you did not go down -- you testified when you came

MARK SAWYER

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1 in you didn't open the door, this cabinet door -- it appears to be
2 a cabinet door. You didn't open any doors to expose it or
3 anything?
4 A I didn't touch anything by the counter.
5 Q Okay. So everything that appears in this picture sitting there
6 was just as it's shown in the picture?
7 A That's correct.
8 MR. SHANDS: No further questions, Your Honor.
9 MS. KEENA: I have no questions, Your Honor.
10 THE COURT: Thank you.
11 (Witness excused)
12 MS. KEENA: Your Honor, the state calls Kathleen
13 Johnson.
14 **KATHLEEN JOHNSON,**
15 being duly sworn, was examined and testified as follows:
16 THE CLERK: For the record, please state your full
17 name, spelling your first and last name.
18 THE WITNESS: My name is Kathleen Marie
19 Johnson, K-A-T-H-L-E-E-N J-O-H-N-S-O-N.
20 THE CLERK: Thank you.
21 **DIRECT EXAMINATION**
22 **BY MS. KEENA:**
23 Q Good afternoon. What city do you reside in, Ms. Johnson?
24 A South St. Paul.
25 Q Are you employed?

KATHLEEN JOHNSON

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1 A Yes.
2 Q Where do you work?
3 A U.S. Bank Corporation.
4 Q What do you do there?
5 A I verify home mortgages, loans.
6 Q I would like to draw your attention to December 22, 2002. Do
7 you recall that date?
8 A Yes, I do.
9 Q What did you do in the early evening hours of that day?
10 A I was visiting friends and having dinner.
11 Q And where did your friends live at the time?
12 A In the six hundred block of Second Avenue in South St. Paul.
13 Q Are you familiar with Sabreen's Market in South St. Paul?
14 A Yes, I am.
15 Q Did you go there often?
16 A Not too often.
17 Q On the evening of December 22, 2002, did you go to Sabreen's?
18 A Yes, I did.
19 Q How did you get there?
20 A I drove.
21 Q Why did you go to Sabreen's?
22 A To buy a pack of cigarettes.
23 Q Approximately how far is Sabreen's from your friend's
24 residence?
25 A It's about three blocks. Three of the long blocks, and then just

KATHLEEN JOHNSON

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1 two up, so relatively close.

2 Q Approximately what time did you arrive at Sabreen's that

3 night?

4 A I would guess it to be about 9:41.

5 Q How do you recall that time?

6 A Because when I got in my car, when I turned, I looked at the

7 clock and I just warmed my car up for a little bit and drove

8 over there. I recall thinking to myself I have 20 minutes before

9 they close.

10 Q When you arrived at Sabreen's where did you park?

11 A Directly in front of the store on the street.

12 MS. KEENA: Your Honor, may I approach?

13 THE COURT: Yes, you may.

14 BY MS. KEENA:

15 Q Ms. Johnson, I am going to put a picture up on the screen

16 behind you. Could you just stand up and show the jury where

17 you were parked?

18 A Exactly right here (indicating).

19 Q Which way was your car facing?

20 A This way, going north (indicating).

21 Q Okay.

22 THE COURT: Can we have the exhibit number?

23 MS. KEENA: It would be Exhibit 2, Your Honor.

24 BY MS. KEENA:

25 Q When you parked in front of the store, were you able to see

KATHLEEN JOHNSON

1 inside?

2 A No.

3 Q Why not?

4 A Well, from my car I didn't even really look, but even as I

5 approached the store, there was advertisements in the

6 windows.

7 Q Ms. Johnson, I am just going to show you Exhibit 1. Is that

8 how the store looked on December 22nd when you drove up

9 to it?

10 A Um-hum.

11 Q That's a yes?

12 A Yes, it is.

13 Q Okay. Did you enter Sabreen's?

14 A Yes.

15 Q What door did you use?

16 A The door on the right side.

17 Q Right in the front there?

18 A Right.

19 Q What did you observe when you entered the store?

20 A Initially I was digging in my purse, so I really didn't notice

21 anything right when I walked in the door, then the first thing I

22 noticed was money being removed from the till, really fast. And

23 I thought *they're closing already?* Then I looked up and noticed

24 that it wasn't the clerk, it was a masked man.

25 Q And what color was the mask?

KATHLEEN JOHNSON

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1 A Black.

2 Q Did it cover his entire face?

3 A Yes.

4 Q Did you see him do anything else at that point?

5 A Not initially, no.

6 Q What happened next?

7 A I think it was almost kind of simultaneous that we noticed each

8 other or I might have a second before he noticed me. Then he

9 made an alarming kind of -- I didn't understand what he said

10 other than "Hey" and some other words. I don't know if I was

11 in shock or if it was a different language or -- I just knew it

12 sounded like he was alerting somebody that I was there. Then

13 he made a motion like he was going to pull a gun out from his

14 pants, and I just screamed and turned around and ran out the

15 door.

16 Q So at that point you didn't see another person in the store?

17 A No.

18 MS. KEENA: If I may, Your Honor.

19 Q I am going to put Exhibit 4 up on the screen behind you, Ms.

20 Johnson. Could you just show the jury approximately -- do

21 you recognize what that is?

22 A Yes.

23 Q Could you show the jury approximately where you were

24 standing when you initially noticed the man behind the

25 counter?

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1 A Probably just in here (indicating). I had just entered in the

2 door, so not too far, two steps.

3 Q And where was the person located that you saw?

4 A This is the cash register side, right?

5 Q Yes.

6 A Farther up -- the cash register is up in this area, so he was

7 right at the cash register. He was in front of the cash register

8 taking the money from the till.

9 Q When you say in front of the cash register, was he behind the

10 counter?

11 A Yes. Kind of like an L shape.

12 Q Okay. At that point did you notice anything about the build of

13 the man that you saw behind the counter?

14 A That's not really when I noticed it because I was more

15 concerned about just leaving. I noticed the builds when they

16 came running out of the store.

17 Q You said, you indicated that it appeared to you that he was

18 reaching for a gun out of his waistband?

19 MR. SHANDS: Objection, Your Honor, asked and

20 answered.

21 MS. KEENA: I'm leading into the next question.

22 THE COURT: Okay. Go ahead.

23 BY MS. KEENA:

24 Q Did you actually see a gun?

25 A No.

KATHLEEN JOHNSON

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1 A Probably just in here (indicating). I had just entered in the
 2 door, so not too far, two steps.
 3 Q And where was the person located that you saw?
 4 A This is the cash register side, right?
 5 Q Yes.
 6 A Farther up -- the cash register is up in this area, so he was
 7 right at the cash register. He was in front of the cash register
 8 taking the money from the till.
 9 Q When you say in front of the cash register, was he behind the
 10 counter?
 11 A Yes. Kind of like an L shape.
 12 Q Okay. At that point did you notice anything about the build of
 13 the man that you saw behind the counter?
 14 A That's not really when I noticed it because I was more
 15 concerned about just leaving. I noticed the builds when they
 16 came running out of the store.
 17 Q You said, you indicated that it appeared to you that he was
 18 reaching for a gun out of his waistband?
 19 MR. SHANDS: Objection, Your Honor, asked and
 20 answered.
 21 MS. KEENA: I'm leading into the next question.
 22 THE COURT: Okay. Go ahead.
 23 BY MS. KEENA:
 24 Q Did you actually see a gun?
 25 A No.

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1 Q Were you able to see the floor behind the counter at all?
 2 A No.
 3 Q You indicated that you heard him yell something?
 4 A Yes.
 5 Q Did he turn his head or anything when he yelled?
 6 A The way he was facing, he would be facing on the first aisle and
 7 it was more as if someone was down that aisle. And I didn't
 8 know at that time if he was talking to the clerk or -- I didn't
 9 know there were two until they exited the building.
 10 Q So you ran out of the store, you said. What did you do then?
 11 A Went right to my car, turned on the key, and as I was starting
 12 to put my car into park, they were coming out the front door.
 13 Q How many people came out the front door?
 14 A Two.
 15 Q And were they running, walking?
 16 A They were running very fast.
 17 Q What did you observe about them as they were running out?
 18 A I observed that one person was several inches taller than the
 19 other one. That they appeared to both be slender. They were
 20 not too tall. I assumed young, because they had very big,
 21 baggy pants on, hooded sweatshirts.
 22 Q Do you recall any of the color of the clothing?
 23 A The person behind the cash register had on a blue hooded
 24 sweatshirt and the person that was following him as they were
 25 exiting the store had either red or maroonish color.

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1 Q When you say maroonish or red, like a darker --
 2 A Darker, yeah, but it wasn't blue.
 3 Q And the blue that the other man had on, how would you
 4 describe that type of blue?
 5 A (No response)
 6 Q Let's say a baby blue compared to a dark blue.
 7 A In between, middle, somewhat like that denim shirt, but a little
 8 darker, but not navy blue.
 9 Q You indicated that the person in the store had a mask that
 10 covered that person's entire face?
 11 A Yes.
 12 Q How about the second person that you saw?
 13 A Well, I saw him for less than a second, but they both had
 14 masks on and it appeared to be the same type and style. There
 15 was only a short area from the door, and then they went up the
 16 side of the building, and it was dark. Once they went around
 17 the corner you couldn't see them any more.
 18 Q So you never saw their faces?
 19 A No.
 20 Q When they came running out of the store, where did you see
 21 them run to?
 22 A Right next to the building and around. That's all you could
 23 see. It was dark.
 24 Q So into like the parking lot?
 25 A Yup. In the parking lot and they were like right close to the

KATHLEEN JOHNSON

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1 building. There was a car parked there and that's all you could
 2 -- well, by that time I am driving away, too.
 3 Q What did you do then when you drove away?
 4 A I didn't have a cell phone, so I went right back to my friend's
 5 house and told her. The first thing she asked me was "Where
 6 was the clerk?". I said, "I didn't see him." So she actually
 7 made the 911 call because I couldn't.
 8 MS. KEENA: I have no further questions, Your
 9 Honor.
 10 **CROSS-EXAMINATION**
 11 **BY MR. SINGH:**
 12 Q Ms. Johnson, you stated that when you walked in the store the
 13 first thing you noticed was hands taking money out of the till,
 14 is that correct?
 15 A Correct.
 16 Q Now those hands that you noticed, were they wearing any
 17 gloves?
 18 A That I did not notice.
 19 Q So you couldn't tell the race of the person that you saw behind
 20 the counter?
 21 A No, I could not.
 22 Q Ms. Johnson, throughout your testimony here you used the
 23 pronoun *he*.
 24 A Yes.
 25 Q Now these individuals were wearing baggy clothing and hooded

KATHLEEN JOHNSON

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1 sweatshirts, you stated, correct?
2 A Yes.
3 Q And they had masks on, correct?
4 A Yes.
5 Q But you have been using the pronoun *he*. What led you to that
6 belief?
7 A I believe it would be his voice, his tone of voice, very deep or
8 you could tell it was a male.
9 Q Ms. Johnson, you stated that you saw one person inside of the
10 store.
11 A Yes.
12 Q But two people running outside of the store?
13 A Yes.
14 Q The two people were -- one was taller than the other, correct?
15 A Yes.
16 Q And they ran past you, correct?
17 A I was in my car. They ran right out of the door and right
18 around the building. So they didn't run by me, because I am
19 driving down the street as they are running out.
20 Q Ms. Johnson, you didn't see them carry anything as they ran
21 around the corner, did you?
22 A No, I didn't.
23 Q Did you see the person doing anything else inside of the store
24 besides taking money out?
25 A No.

KATHLEEN JOHNSON

1 MS. SINGH: No further questions, Your Honor.
2 MS. KEENA: Just a couple followup. Ms.
3 Johnson, what was going through your mind as you were
4 leaving the store getting into your car?
5 MR. SHANDS: Objection, Your Honor. Irrelevant.
6 THE COURT: Overruled.
7 THE WITNESS: I thought if I see an arm come up,
8 I am ducking and driving.
9 MS. KEENA: So would it be fair to say that you
10 were feeling kind of frantic?
11 MR. SHANDS: Objection, Your Honor. Leading.
12 THE COURT: Sustained.
13 **BY MS. KEENA:**
14 Q How would you describe your emotions at that point?
15 A I guess I would say I was in shock. I mean, I wasn't even sure
16 even after I had been telling my friend, "Wow, this weird thing
17 I just walked in on.". I didn't really set in my mind anything
18 until after.
19 Q You were asked a question, and the way it was worded to you
20 is "You didn't see them carrying anything?" Do you recall that
21 question?
22 A Yes.
23 Q Was it because you actually didn't see anything in their hands
24 or you didn't notice anything in their hands?
25 A I did not notice anything. I didn't pay attention. I was more

MATTHEW RENVILLE

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1 concerned with getting out of there.
2 MS. KEENA: I have nothing further, Your Honor.
3 MR. SHANDS: Ms. Johnson, just one question.
4 The description you gave of what was happening after you had
5 run out of the store and gotten in your car --
6 MS. KEENA: Your Honor, can we approach? I
7 have an objection.
8 THE COURT: Yes.
9 (OFF RECORD DISCUSSION)
10 **BY MR. SHANDS:**
11 Q Ms. Johnson, is it fair to say that a lot of description of what
12 was happening as you were leaving the store, you observed it
13 through your rearview mirror.
14 A Incorrect, no.
15 Q Or, were you turning around looking?
16 A When they came out of the store, my car was still in park. And
17 as I pulled down my shifter, I looked out my window. So it
18 wasn't through my rearview mirror, it was through my window.
19 MR. SHANDS: Okay, I have no further questions,
20 Your Honor.
21 MS. KEENA: Nothing further.
22 (Witness excused)
23 MS. KEENA: The state calls Matthew Renville.
24 MATTHEW RENVILLE
25 being duly sworn, was examined and testified as follows:

MATTHEW RENVILLE

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1 THE CLERK: For the record, please state your full
2 name, spelling your first and last name.
3 THE WITNESS: Matthew Richard Renville,
4 M-A-T-T-H-E-W R-I-C-H-A-R-D R-E-N-V-I-L-L-E.
5 THE CLERK: Thank you.
6 DIRECT EXAMINATION
7 **BY MS. KEENA:**
8 Q Good afternoon.
9 A Good afternoon.
10 Q Mr. Renville, what grade are you in this year?
11 A Eleventh.
12 Q I am going to ask you to speak up a little bit, okay?
13 A Eleventh.
14 Q What city do you live?
15 A South St. Paul.
16 Q Are you familiar with Sabreen's Market?
17 A Yes, very much.
18 Q Did you go there often?
19 A Yeah, a lot.
20 Q How often would you go there?
21 A Like four times a day.
22 Q How far is Sabreen's from your house?
23 A A block.
24 Q So did you know the owner?
25 A Yes.

1 Q And did you know Khaled?
 2 A Yes.
 3 Q I would like to draw your attention to the evening of December
 4 22nd of 2002. Do you recall that date?
 5 A Yes.
 6 Q On that particular night did you go to Sabreen's?
 7 A Yeah.
 8 Q How did you get there?
 9 A We walked.
 10 Q Who was with you?
 11 A My sister and a friend.
 12 Q Which friend?
 13 A Dale.
 14 Q What's his last name?
 15 A Marx.
 16 Q What's your sister's name?
 17 A Samantha Renville.
 18 Q Was there anybody else with you?
 19 A My little Godbrother, Jacob.
 20 Q How old is he?
 21 A I am saying fourteen.
 22 Q And were you at home at the time that you decided to go to
 23 Sabreen's?
 24 A Yes.
 25 Q What time did you leave home to go?

1 A Around nine-thirty.
 2 Q How do you recall that time?
 3 A Because we were trying to make it there before it closed.
 4 Q What time does it close?
 5 A Ten.
 6 Q What route did you take to go to Sabreen's that night?
 7 A Well, I live across the street, and I go down the one-way and
 8 down the alley.
 9 MS. KEENA: Could I have permission to approach,
 10 Your Honor?
 11 THE COURT: You may.
 12 BY MS. KEENA:
 13 Q I am going to put a picture up on the screen behind you,
 14 Exhibit 3, for the record. Do you recognize that?
 15 A Yes.
 16 Q And so where would you have been coming from as you were
 17 walking to Sabreen's?
 18 A Over here (indicating).
 19 Q So that would be north of Sabreen's?
 20 A (Nodding)
 21 Q That's a yes?
 22 A Yes.
 23 Q And you were walking, and that's the alley?
 24 A Yeah.
 25 Q How is the lighting in the alley?

1 A Very bad.
 2 Q Are there any street lights or anything in the alley?
 3 A I think there is only like one light around this area here by the
 4 trees.
 5 Q So the night that you were walking up to Sabreen's, what was
 6 the lighting like that night?
 7 A I couldn't see anything really.
 8 Q So it was dark?
 9 A Yeah.
 10 Q As you were approaching Sabreen's, did you notice anything in
 11 the alley?
 12 A Yes, a car parked in the middle of the alley.
 13 Q Where do you recall the car being parked?
 14 A Right here (indicating).
 15 Q Was it like parked in the middle of the alley, off to the side?
 16 A In the middle.
 17 Q Is that paved?
 18 A Yes.
 19 Q What did the car look like?
 20 A Regular sized car, gray.
 21 Q What kind of gray?
 22 A Shiny.
 23 Q Shiny --
 24 A Shiny, tinted gray.
 25 Q I am not quite sure what that looks like. A light color, dark

1 color?
 2 A Darkish.
 3 Q Darkish?
 4 A Yeah.
 5 Q Did you notice how many doors the car had?
 6 A Four.
 7 Q What part of the car was facing you?
 8 A The back end.
 9 Q When you saw the car, did you notice if there were any -- were
 10 there any lights on inside of the car?
 11 A No, there wasn't.
 12 Q Did you notice any lights on the outside, like the headlights or
 13 the tail lights, if they were on?
 14 A The tail lights, they're oval.
 15 Q Do you know if the car was running?
 16 A No, I didn't hear it.
 17 Q What did you see next?
 18 A Couple guys ran out, jumped in and then took off.
 19 Q And could you just show up on the picture where you saw
 20 them running from?
 21 A When we were over here (indicating).
 22 Q Where did they run out from?
 23 A Right here (indicating).
 24 Q So between the store and that garage?
 25 A Yes.

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1 Q Did you hear either one of them say anything?
 2 A Yeah, I heard them say, "Hurry up, let's go and get out of here."
 3 Q Did they get into the car?
 4 A Yes.
 5 Q I'm sorry, I don't remember if I asked you this, but did you
 6 notice how many car doors there were?
 7 A Four.
 8 Q Do you recall which doors they got into?
 9 A Both on the passenger side.
 10 Q So, one --
 11 A The back passenger and the front passenger side.
 12 Q Did you notice if there was anybody else in the car?
 13 A No.
 14 Q No, you didn't notice?
 15 A No.
 16 Q Did you notice what the men were wearing?
 17 A No, I didn't, it was too dark.
 18 Q Did you notice anything about the clothing at all?
 19 A Just baggy.
 20 Q You talk about *baggy*. What kind of clothing were they
 21 wearing?
 22 A Black, I don't know, jeans, maybe a sweatshirt.
 23 Q Were you able to see the men's faces at all?
 24 A No, I wasn't.
 25 Q Did you notice anything about their physical builds?

MATTHEW RENVILLE

1 A No.
 2 Q Did you notice if either one of them were carrying anything?
 3 A No, I couldn't. I was too far down the street to.
 4 Q Did the car drive off?
 5 A Yes.
 6 Q And did it drive off slowly, quickly?
 7 A It took off pretty fast.
 8 Q When the car drove off, did the car have its headlights on?
 9 A Once it turned the corner, they turned them on.
 10 Q When you say turned the corner, where did the car drive off to?
 11 A That way (indicating), and it took a left, and then turned the
 12 lights on.
 13 Q Were you able to see the license plate at all?
 14 A No, I wasn't.
 15 Q What did you do next?
 16 A I didn't know what to do next.
 17 Q Did you think anything of what you had just seen?
 18 A No, I didn't.
 19 Q So did you go into the store then?
 20 A Yes.
 21 Q And what door did you use to go inside of the store?
 22 A The right door in the front.
 23 Q So did you walk through the parking lot?
 24 A Yeah.
 25 Q To get to the front doors?

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1 A Yes.
 2 Q What did you do once you went into the store?
 3 A We went and got the things that we were going to get and we
 4 brought them up to the counter, and my friend Dale was
 5 looking all around for the guy and he couldn't find him.
 6 Q So when you got in there, did you see anybody?
 7 A No.
 8 Q And you said Dale went and looked around the store?
 9 A Yes.
 10 Q Did you go walk around the store?
 11 A No, I didn't.
 12 Q What did you do?
 13 A I just went with my sister to get her stuff and went up to the
 14 counter and just sat there.
 15 Q So you didn't walk around looking for him, but you walked to a
 16 location and got some groceries?
 17 A Yeah, right in the front there.
 18 Q What happened next?
 19 A My friend Dale looked over the counter and there he was, and
 20 we all like ran out.
 21 Q Where did you run to?
 22 A Across the street.
 23 Q When you were in the store did you notice anything unusual
 24 about the cash register?
 25 A Huh-uh.

MATTHEW RENVILLE

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1 Q Did you notice anything out of place in front of the counter at
 2 all?
 3 A No, I didn't.
 4 Q Did you ever go behind the counter?
 5 A No.
 6 Q Did you see any of your friends go behind the counter?
 7 A No.
 8 Q They didn't go behind there?
 9 A No.
 10 Q Then where did you run to?
 11 A Across the street to my friend's house.
 12 Q Which friend was that?
 13 A Dale.
 14 Q Dale Marx?
 15 A Yes.
 16 Q What did you do there?
 17 A We called the police.
 18 Q Did you do that by 911?
 19 A Yes.

MS. KEENA: I have no further questions.

MS. SINGH: No questions, Your Honor.

THE COURT: Thank you.

(Witness excused)

MS. KEENA: The state would call Samantha

Renville.

SAMANTHA RENVILLE,

being duly sworn, was examined and testified as follows:

THE CLERK: For the record, please state your full name, spelling your first and last name.

THE WITNESS: Samantha, S-A-M-A-N-T-H-A, Renville, R-E-N-V-I-L-L-E.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. KEENA:

Q Miss Renville, how old are you?

A Sixteen.

Q What grade are you in this year?

A Tenth.

Q What city do you live in?

A South St. Paul.

Q Are you familiar with Sabreen's Market?

A Yes.

Q Do you go there often?

A Yes.

Q How often?

A Like every day.

Q How far away is Sabreen's from your house?

A Two blocks.

Q I would like to draw your attention to the evening of December 22nd of 2002. Do you recall that date?

SAMANTHA RENVILLE,

being duly sworn, was examined and testified as follows:

THE CLERK: For the record, please state your full name, spelling your first and last name.

THE WITNESS: Samantha, S-A-M-A-N-T-H-A, Renville, R-E-N-V-I-L-L-E.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. KEENA:

Q Miss Renville, how old are you?

A Sixteen.

Q What grade are you in this year?

A Tenth.

Q What city do you live in?

A South St. Paul.

Q Are you familiar with Sabreen's Market?

A Yes.

Q Do you go there often?

A Yes.

Q How often?

A Like every day.

Q How far away is Sabreen's from your house?

A Two blocks.

Q I would like to draw your attention to the evening of December 22nd of 2002. Do you recall that date?

A Yes.

Q On that particular night did you go to Sabreen's Supermarket?

A Yes.

Q What were you doing before you went to Sabreen's?

A Sitting at my house.

Q And who ended up going to Sabreen's that night?

A Me, my brother, my brother's friend Dale, and our little Godbrother.

Q How did you get there that night?

A Walked through the alley.

Q I am just going to put up a picture behind you. For the record, it's Exhibit 3. Can you just turn around and look at that? Do you recognize that?

A Yes.

Q I will point out this is where Sabreen's is.

A Yeah.

Q Okay. So how did you get there from your house?

A Walked.

Q And which route did you use?

A The alley.

Q Does that run right from your house or how did you --

A We had to go through the one-way, then turn in the alley.

Q Do you recall what time you left the house to go to Sabreen's?

A I can't remember. Around, like, nine.

Q Was there a special reason why you were going to Sabreen's

that night?

A To get candy.

Q So it was dark out?

A Yeah.

Q Were you worried about getting there before it closed or anything?

A No.

Q As you were approaching the store, did you notice anything in the alley?

A A car.

Q And where did you see the car?

A Parked right here (indicating).

Q That was in the alley?

A Yup.

Q When you saw the car, what part of the car was facing you?

A The back.

Q What did the car look like?

A It was dark, four-door.

Q It was a dark four-door, was it a bigger car, smaller car?

A Bigger.

Q At one point you had indicated, I think in one of your statements, that you thought it was the size of a Cadillac.

A Yeah.

MR. SHANDS: Objection, Your Honor, leading.

THE COURT: Sustained.

SAMANTHA RENVILLE

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1 BY MS. KEENA:
 2 Q Do you think the car that you saw was -- there's many different
 3 sizes of cars. Do your mom and dad have a car?
 4 A Yeah.
 5 Q What type of car is that?
 6 A Small Ford.
 7 Q Was this car that you saw --
 8 A Bigger.
 9 Q Was it a lot bigger or a little bit bigger?
 10 A Lot bigger.
 11 Q How many doors did it have?
 12 A Four.
 13 Q And I'm sorry, what did you say the color was?
 14 A Like grayish-black.
 15 Q Darker?
 16 A Yeah.
 17 Q How is the lighting in the alley back there?
 18 A It's bright, but dark. Some spots have light and then some
 19 spots don't.
 20 Q How about on that night, do you recall what it was like?
 21 A It was -- like once we get by the store, there's lights, so we
 22 could see, but we couldn't.
 23 Q Where were you at when you first noticed the car?
 24 A Right here (indicating).
 25 Q And how is the lighting right behind the store?

SAMANTHA RENVILLE

1 A Dark.
 2 Q When you saw the car were there any lights on the inside?
 3 A No.
 4 Q Did you notice that the car was running at all?
 5 A No.
 6 Q It wasn't running or you didn't notice?
 7 A Didn't notice.
 8 Q What, if anything, did you see next?
 9 A I saw two dudes run out.
 10 Q Where did you see them run out from?
 11 A Right here (indicating).
 12 Q So from between Sabreen's and that garage?
 13 A Yup.
 14 Q Where did they run to?
 15 A The car.
 16 Q Did you see them get inside of the car?
 17 A Yeah.
 18 Q Did you hear either one of them say anything?
 19 A "Go, hurry, hurry."
 20 Q When they opened the car doors, do you recall if any of the
 21 interior lights came on?
 22 A None.
 23 Q Could you see if they were holding anything?
 24 A No.
 25 Q Why weren't you able to see?

SAMANTHA RENVILLE

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1 A It was dark.
 2 Q Did you notice anything about what the two men were wearing?
 3 A Like sweatshirts, pants. Maybe a hood.
 4 Q What type of pants?
 5 A Jeans.
 6 Q And did you notice anything in particular about the jeans?
 7 A No.
 8 Q As far as color?
 9 A Probably black.
 10 Q So they were darker?
 11 A Yeah.
 12 Q Did you notice anything about the fit of the jeans?
 13 A No.
 14 Q Did you notice, like, for example, if they were tight?
 15 A Probably loose.
 16 Q Probably or they were loose?
 17 A Loose, yeah.
 18 Q What makes you say that?
 19 A I don't know. Just how I saw it.
 20 Q Okay. That's what you recall seeing?
 21 A Yeah.
 22 Q Then you talk about sweatshirts. Do you recall what color?
 23 A No, too dark.
 24 Q And you said something about hoods. What was that?
 25 A Couldn't see their face, it happened too fast.

SAMANTHA RENVILLE

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1 Q I am not following you. Did they have the hoods up that you
 2 couldn't see their face?
 3 A Yeah.
 4 Q Okay. Did you notice anything about their physical builds?
 5 A No.
 6 Q Did you see the car drive off?
 7 A Yes.
 8 Q How did the car leave?
 9 A Just went out the alley.
 10 Q When it left, did it drive away slow or how would you describe
 11 the speed?
 12 A Medium.
 13 Q Were you able to see the license plate at all?
 14 A No.
 15 Q What did you do next?
 16 A We went to the store because we didn't suspect anything of it.
 17 Q So that didn't -- what you just saw didn't really hit you that
 18 anything happened?
 19 A No.
 20 Q What did you do inside of the store?
 21 A We went and got some food and put it on the counter. And
 22 usually the guy is standing right behind the counter, so we
 23 knew something was wrong. My brother and his friend Dale
 24 looked around the store, and Dale looked behind the counter
 25 and saw him. And we ran to his house across the street and

called the police.

MS. KEENA: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MS. SINGH:

Q Ms. Renville, it's your testimony here today that you couldn't see the faces of the individuals in the back alley?

A Right.

Q So you weren't able to identify what race they were, if they were black, white, Spanish or Asian?

A They were black, though, because they had hoodies on, but I noticed that they were black because, if they turned, you could see all dark.

Q But they had hoodies on, you said?

A Yeah.

Q But you couldn't see their faces?

A Yeah.

Q How could you identify their race if you couldn't see their face?

A I don't know.

Q It's your testimony that you couldn't identify their race.

MS. KEENA: Your Honor, she asked and answered that question.

THE COURT: Overruled.

MS. SINGH: No further questions.

MS. KEENA: I just want to clear that up.

BY MS. KEENA:

Q You said that they turned their faces?

A No, I said if they turned their faces.

Q I am not following. You said that they turned their heads. Did they turn their heads?

A (No response)

Q Miss Renville?

A No.

Q That's all right, we are just asking you what you remember.

Okay? So you saw the hoodies up over their heads?

A Yeah.

Q And you can't identify the physical features of the face, right?

A Right.

Q Okay. But you indicated that you thought or you said that they were black?

A Yeah.

MR. SHANDS: Objection, Your Honor. Leading. I move to strike the response.

THE COURT: Overruled.

MS. KEENA: So you saw black?

THE WITNESS: Yeah.

MS. KEENA: Okay, I have no further questions.

MS. SINGH: No questions, Your Honor.

THE COURT: Thank you. That's it.

(Witness excused)

MS. KEENA: The state calls Dale Marx.

DALE MARX,

being duly sworn, was examined and testified as follows:

THE CLERK: For the record, please state your full name, spelling your first and last name.

THE WITNESS: Dale Duane Marx, D-A-L-E

M-A-R-X.

THE CLERK: Thank you.

THE COURT: Can you speak up, please, Dale?

Thanks.

DIRECT EXAMINATION

BY MS. KEENA:

Q Mr. Marx, how old are you?

A Eighteen.

Q Are you still in high school or did you graduate?

A I am still in high school.

Q What school do you go to?

A South St. Paul High School.

Q Where do you live?

A South St. Paul, across the street from the store.

Q From Sabreen's?

A Yeah.

Q I would like to draw your attention to the evening of December 22, 2002. Do you recall that date?

A Yes.

Q What were you doing that night?

A Sleeping over at a friend's house.

Q Whose friend's house was that?

A Matt Renville's.

Q On that particular night did you go to Sabreen's?

A Yeah.

Q Why did you go there?

A To get some snacks.

Q Did you go to Sabreen's often?

A All the time.

Q How often?

A About three times a day.

Q Did you ever work there?

A I helped, I would stock the shelves and stuff.

Q So you know the owner?

A Yeah.

Q Did you know Khaled?

A Yeah.

Q How did you get to Sabreen's on December 22nd?

A We walked.

Q Do you recall what time you left Renvilles to go to Sabreen's?

A It was towards closing time, it was almost closing time, and we were trying to hurry up to get there.

Q What did you think closing time was?

A I think it was like ten, but I don't remember.

DALE MARK

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1 Q Who went to Sabreen's with you that night?
2 A Me, my friend Matt, his sister Sam, and Jacob.
3 Q And what route did you take to go to Sabreen's?
4 A We went down a one-way, and then down an alley.
5 Q And does that alley run behind Sabreen's?
6 A Yeah.
7 Q As you were walking up the alley towards Sabreen's, did you
8 notice anything?
9 A A car speed off.
10 Q Prior to seeing the car speed off, did you happen to see it just --
11 did you see it parked or?
12 A Well, I saw it there for a second, but I didn't really pay
13 attention to it.
14 Q What were you doing as you were going up the alley?
15 A Sliding on the ice.
16 Q Did you notice anything about the car?
17 A No.
18 Q Did you notice anything about the size of the car?
19 A I don't remember.
20 Q How about the color?
21 A It was pretty dark out. It was a darker color though.
22 Q While you were walking up to the store, did you see anyone
23 else?
24 A We saw a couple people run out to the car.
25 Q Where did they come running from?

DALE MARK

1 A From the entrance leading to Sabreen's, the back way.
2 Q So like from the parking lot?
3 A Yeah.
4 Q Did you hear these men say anything?
5 A No.
6 Q And you didn't see their faces at all, is that fair?
7 A Yeah, we didn't see them.
8 Q Did you notice what car doors they got into?
9 A I believe the passenger door opened. Yeah, I think I saw the
10 passenger door open, that was about it, I think.
11 Q What part of the car was facing you?
12 A The back.
13 Q Did you see either one of them get into the driver's door?
14 A No.
15 Q And you indicated that the car sped off?
16 A Yeah.
17 Q Did you see where it went to?
18 A I just remember seeing a car speed off and then I turned my
19 head.
20 Q So at this point did you think there was anything out of the
21 ordinary?
22 A No.
23 Q What did you do next?
24 A Walked to Sabreen's.
25 Q And did you go into Sabreen's?

DALE MARK

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1 A Yeah.
2 Q And what doors did you use to enter?
3 A The front doors.
4 Q When you entered the store, did you see anybody?
5 A No.
6 Q What did you do when you got inside?
7 A I started to look for him. I knew him pretty well, so I started to
8 walk around looking for him, and stuff.
9 Q When you say *him*, who are you referring to? The owner or
10 Khaled?
11 A Khaled.
12 Q Where did you look?
13 A I walked towards the back of the store and I walked in the back
14 and then I walked back up to the front looking for him. And
15 then I just -- I saw the cash register open and I just looked over
16 the counter.
17 Q And when you looked over the counter, where were you
18 standing?
19 A On the farther side of the desk piece.
20 Q So near the cash register or?
21 A Um.
22 Q I will show you an exhibit. I show you Exhibit 5. Does that
23 show where you were standing?
24 A Over here (indicating).
25 Q So as you were facing the counter, you were to the left of the

DALE MARK

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1 cash register?
2 A Yeah.
3 Q How did you look over the counter? Did you just stand on your
4 tippy toes and peer over?
5 A I just leaned just a little bit over.
6 Q What did you see?
7 A Him laying there.
8 Q Who is *him*?
9 A Khaled.
10 Q How did he appear to you?
11 A Not moving, some blood.
12 Q Where did you see blood?
13 A On the ground and stuff.
14 Q Did you think he was dead?
15 A Yeah, I just -- when I glanced over there, I just quick glanced at
16 everything, I just kind of just ran out of the store, across the
17 street to my house.
18 Q Did you go behind the counter at all?
19 A No.
20 Q And did any of the others that were with you go behind the
21 counter that night?
22 A No.
23 Q You said you ran home?
24 A Yes.
25 Q What did you do when you ran home?

DALE MARX, SR.

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1 A I woke up my dad and then he started going across the street
 2 to Sabreen's, and then I called 911.
 3 MS. KEENA: I have no further questions, Your
 4 Honor.
 5 MR. SHANDS: Your Honor, we have no questions
 6 for this witness.
 7 THE COURT: Thanks.
 8 (Witness excused)
 9 MS. KEENA: Could we approach briefly?
 10 THE COURT: Is it a good time for a break?
 11 MS. KEENA: No, I just want to talk to you.
 12 (OFF RECORD DISCUSSION)
 13 MS. KEENA: Your Honor, the state would call Dale
 14 Marx.
 15 DALE MARX, SR.
 16 being duly sworn, was examined and testified as follows:
 17 THE CLERK: For the record, please state your full
 18 name, spelling your first and last name.
 19 THE WITNESS: Dale Duane Marx, M-A-R-X.
 20 THE CLERK: Thank you.
 21 DIRECT EXAMINATION
 22 BY MS. KEENA:
 23 Q Good afternoon, Mr. Marx. Where do you live?
 24 A 334 Fourth Avenue South.
 25 Q What city?

DALE MARX, SR.

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1 A South St. Paul.
 2 Q Are you familiar with Sabreen's Market?
 3 A Yes, I am.
 4 Q Where is your house located in relation to Sabreen's?
 5 A Almost right across the street and one house over.
 6 Q I would like to draw your attention to the evening of December
 7 22, 2002. Do you recall that date?
 8 A Yeah.
 9 Q Are you the father of Dale Marx, Jr.
 10 A Yes, I am.
 11 Q Does he go by Junior?
 12 A Yeah.
 13 Q At some point on that evening, did your son come and report
 14 something to you?
 15 A Yeah, he came while I was sleeping, he woke me up out of bed,
 16 and he told me that the guy over at the store was laying down
 17 behind the counter. And they were yelling and screaming.
 18 Q What did you do?
 19 A Jumped out of bed, put my pants on, and ran across the street.
 20 I thought maybe he had a heart attack, or something, and I
 21 thought maybe I could help him.
 22 Q So when the kids came over, they didn't tell you the circum-
 23 stances or what he looked like or --
 24 A No.
 25 Q I'm sorry, why did you go to the store?

DALE MARX, SR.

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1 A Because the boys were yelling and screaming that the guy at
 2 the store was laying behind the counter.
 3 Q So were you going to go try to help him?
 4 A Yeah.
 5 Q Did you know Khaled Al-Bakri?
 6 A I am bad with names.
 7 Q The people that own the store.
 8 A Yeah.
 9 Q Did you go into Sabreen's often?
 10 A Lot, yeah. That's where I get my milk and stuff.
 11 Q What did you do when you got inside of the store?
 12 A I just looked over the counter and turned around and walked
 13 back out. I knew I couldn't help him.
 14 Q What did you see when you looked over the counter?
 15 A You could tell he was dead.
 16 Q How could you tell that?
 17 A Well, he already had went in his pants and stuff. From my
 18 schooling I know, what I was taught, you know, that they're
 19 gone.
 20 Q What kind of schooling do you have that you knew that?
 21 A I got three years of college as a forester and some of it's law
 22 enforcement and stuff.
 23 Q Did you have, like, first aid training as part of that?
 24 A Yes, I'm a first responder, I also have that.
 25 Q Do you recall how the body was positioned?

DALE MARX, SR.

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1 A He was on his side.
 2 Q I am going to show you a picture. I am going to put Exhibit 13
 3 up on the screen behind you. Do you recognize that?
 4 A Yeah.
 5 Q Is that an accurate depiction of what you saw that night?
 6 A Yeah, because I was over here (indicating), just kind of looked
 7 over the counter, and that's all I did.
 8 Q Oh, so you were at the end of the counter and you looked over?
 9 A Right. I just looked over, you know.
 10 Q So you didn't look over the counter?
 11 A No.
 12 Q Okay. Mr. Marx, did you ever go behind the counter for any
 13 reason?
 14 A No, I did not.
 15 Q So you didn't touch anything behind the counter?
 16 A No.
 17 Q Did you touch the body at all?
 18 A No.
 19 Q What did you do after you saw this?
 20 A Turned around and walked outside the door there and standed
 21 there for a couple seconds and that's when the squads came
 22 up.
 23 Q So the police arrived?
 24 A Yeah.
 25 MS. KEENA: I have no further questions, Your

1 Honor.
 2 MR. SHANDS: I have no questions, Your Honor.
 3 THE COURT: Thank you. That's it.
 4 (Witness excused)
 5 MS. KEENA: Your Honor, may we approach?
 6 THE COURT: Yes.
 7 (OFF RECORD DISCUSSION)
 8 THE COURT: We are actually a little ahead of
 9 schedule. We are out of witnesses for today. We are going to
 10 let you go. Be back at 9:00, ready to go at 9:00.
 11 Remember, don't talk to anyone about the case.
 12 Thanks, and see you tomorrow.
 13
 14 (Adjourned)

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1
 2 SEPTEMBER 28, 2004
 3 THE COURT: Have a seat. I apologize for the
 4 delay. I had a case on at 8:30 that went longer than they told
 5 me it would. Ms. Keena.
 6 MS. KEENA: Thank you, Your Honor. The state
 7 calls Dr. Mohamed Sedqi.
 8 DR. MOHAMED SEDQI
 9 being duly sworn, was examined and testified as follows:
 10 THE CLERK: For the record, please state your full
 11 name, spelling your first and last name.
 12 THE WITNESS: My name is Dr. Mohamed Sedqi,
 13 M-O-H-A-M-E-D S-E-D-Q-I.
 14 THE CLERK: Thank you.

15 DIRECT EXAMINATION
 16 BY MS. KEENA:
 17 Q Good morning, Dr. Sedqi.
 18 A Good morning.
 19 Q By whom are you employed?
 20 A With the Department of Public Safety, Bureau of Criminal
 21 Apprehension in St. Paul.
 22 Q What is the Bureau of Criminal Apprehension?
 23 A It's a state agency that has three divisions in it. We have the
 24 investigative division, with all special agents, and we have the
 25 forensic science laboratory that conducts, like, evidence testing
 and analyses. And we have the Criminal Justice Information

1 System that tracks basically the criminal background.
 2 Q What do you do at the BCA?
 3 A I am a lead forensic scientist and also a crime scene team
 4 leader.
 5 Q What are your duties in your position?
 6 A Which one?
 7 Q Well, let's start with the crime scene team leader.
 8 A I am in charge of a crime scene team that has like three
 9 scientists and two agents. And we only respond to major
 10 crimes like homicides, attempted homicides, kidnappings, and
 11 police involved shooting.
 12 Q What are your responsibilities in your other position?
 13 A I am a lead forensic scientist. Receiving evidence, examining
 14 evidence for DNA, and to testify in court when it's necessary.
 15 Q How long have you been employed with the BCA?
 16 A Since 1997.
 17 Q Did you hold any other positions prior to that?
 18 A At the BCA?
 19 Q Well, anywhere.
 20 A Yes. I was a post-doctoral associate in medical school,
 21 University of Minnesota.
 22 Q What's your educational background?
 23 A I have a master's and a Ph.D degree in biochemistry from the
 24 University of Paris, France. Then I have four years of post-
 25 doctoral experience at the University of Minnesota Medical

1 School, Department of Pharmacology.
 2 Q Do you belong to any professional organizations?
 3 A Yes.
 4 Q What are those?
 5 A The Midwestern Association of Forensic Scientists, the
 6 International Association of Identification, the International
 7 Association of Blood Spatter Analysts. I think that's it.
 8 Q Do you hold any special certifications at all?
 9 A No.
 10 Q Were you employed by the BCA on December 22nd of 2002?
 11 A Yes.
 12 Q On that date were you called to Sabreen's Supermarket in
 13 South St. Paul on a robbery/homicide?
 14 A Yes.
 15 Q And for what purpose were you called to that location?
 16 A For that investigation.
 17 Q In what capacity were you going out there in?
 18 A As a crime scene team leader.
 19 Q And who or how many people made up your crime scene team
 20 on that occasion?
 21 A We have three forensic scientists, myself, then we have a team
 22 member, and we have special operation division forensic. Then
 23 we were about three -- I had also three special agents on the
 24 team.
 25 Q When you arrive at a crime scene, what typical steps do you

1 undertake?

2 A Well, the first thing we do is get briefed by the case agent about

3 what they think had happened. Then we basically have a walk-

4 through of the crime scene.

5 Q What did you do in this case?

6 A Once we were briefed by the case agent, I asked to not have the

7 walk-through in the crime scene.

8 Q Why was that?

9 A Because we basically had a non-suspect case, and I wanted to

10 preserve the floor of the store, preserve any kind of footprint

11 impressions. That's why I did not allow anybody to enter that

12 store.

13 Q And so did you go in and process the floor first?

14 A Yes. The floor was processed first.

15 Q After the floor was processed, did you take a video of the crime

16 scene?

17 A Yes, our agents took a video of the scene.

18 Q And you have that video -- you've seen the video?

19 A Yes, I did.

20 Q At the time that the video was taken, had anything else been

21 processed in the store?

22 A Only the floor.

23 Q So the body remained where it was?

24 A Yes, behind the counter was not touched yet.

25 MS. KEENA: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MS. KEENA:

3 Q Doctor, I am showing you what's been marked for identification

4 as Exhibit 15. Do you know what that is?

5 A That's the video we are talking about.

6 Q So that's a video of the crime scene at Sabrecn's?

7 A Yes, taken at 345 Fourth Avenue, South St. Paul.

8 Q Is this the original tape or a copy of the tape?

9 A I believe it's the copy.

10 Q And you have seen this copy before?

11 A Yes.

12 Q Is it an accurate reproduction of the original?

13 A Yes.

14 MS. KEENA: Your Honor, the state is going to offer

15 Exhibit 15. For the record, I am showing it to defense counsel.

16 MR. SHANDS: Your Honor, could I make an

17 objection? May we approach?

18 THE COURT: Yes.

19 (OFF RECORD DISCUSSION)

20 THE COURT: Back on the record. What was the

21 number?

22 MS. KEENA: Number 15.

23 THE COURT: 15 is received.

24 (Exhibit 15 was received in evidence)

25 MS. KEENA: Your Honor, at this time we are going

1 to play Exhibit 15. Dr. Sedqi, I'd ask you to come off down the

2 stand.

3 THE WITNESS: Okay.

4 (Video being played)

5 BY MS. KEENA:

6 Q Dr. Sedqi, this doesn't have any audio on it, correct?

7 A That's correct.

8 Q Dr. Sedqi, as we are watching the video, I may have questions

9 for you and just kind of ask you to walk us through the scene.

10 Now right here what are we seeing?

11 A That's the main entrance to the store located on the west side.

12 Q What are we seeing here?

13 A The inside of the store, that's the counter to the right, and the

14 other side is where the body is laying down.

15 Q That's the body laying behind the counter?

16 A That's correct.

17 Q At this point nothing has been moved?

18 A Nothing has been moved in the area of the store.

19 Q What are we focusing in here?

20 A It's a cartridge casing.

21 Q What's that on his back?

22 A The white stuff?

23 Q Yes.

24 A It's a white plastic grocery bag.

25 Q There's a white hook right there.

1 A Yup.

2 Q Is that how the hook appeared when you were processing the

3 scene?

4 A Yes.

5 Q What are we focusing in on there?

6 A This is a wound to the back of his head.

7 Q What are we looking at here?

8 A We are looking east to the back of the store, where the back

9 door is.

10 Q Would that be the first aisle?

11 A Yes.

12 Q Those little yellow placards that we're seeing on the floor, what

13 are those?

14 A They're indicating where footprint impressions were found on

15 the floor. And we found fourteen inside of the store.

16 Q Is this the back wall of the store?

17 A Yes.

18 Q Where is this?

19 A It's the back of the store, this is the back door right here

20 (indicating).

21 Q Like the storage area?

22 A Yes.

23 Q Where does that door go to?

24 A It goes to the back of the store to the east alley.

25 Q Was that door open or closed when you processed the scene?

1 A When we arrived at the scene, the door was barred up, it was
 2 locked. And we did not see any kind of forced entry.
 3 Q So it actually had a bar across it?
 4 A That's correct.
 5 Q Is this the third aisle of the store?
 6 A Yes.
 7 Q So now we are back outside of the store. When was this
 8 footage shot?
 9 A The next day. We responded at night, then the next day.
 10 Q So is this the north side of the building?
 11 A That's correct, north parking lot.
 12 Q What are we seeing here?
 13 A Now we are looking west. Now we are looking at the east of the
 14 east alley. That's where some tire track impressions were
 15 found.
 16 Q Is that where the back door comes out, what we just saw
 17 there?
 18 A Yes.
 19 Q Thank you, Dr. Sedqi. You may have a seat.
 20 (Video tape completed)
 21 **BY MS. KEENA:**
 22 Q Dr. Sedqi, I would like to focus on the crime scene investigation
 23 behind the counter. You indicated, as we were looking at the
 24 video, we noticed the one cartridge casing. Were there any
 25 other casings found behind the counter?

1 A Yes.
 2 Q How many?
 3 A We found four cartridges.
 4 Q Could you explain what a cartridge casing is?
 5 A Basically when you fire a handgun, the bullet will go out and
 6 then the cartridge casing will be ejected.
 7 Q So the bullet comes out of the barrel and the casing gets
 8 ejected?
 9 A That's correct.
 10 MS. KEENA: Permission to approach, Your Honor?
 11 THE COURT: You may.
 12 (Exhibit No. 16 through 25 were
 13 marked for identification)
 14 **BY MS. KEENA:**
 15 Q Dr. Sedqi, I am showing you what's been marked for
 16 identification as Exhibit 25. Could you please describe what's
 17 contained in that exhibit?
 18 A They're item 21 through item 24, and they are basically all the
 19 four cartridge casings that we collected from the store from
 20 behind the counter.
 21 Q And Items 21 through 24, those are numbers that you assigned
 22 to each casing?
 23 A That's correct.
 24 Q Are those in the same or similar condition as when you found
 25 them on December 22, 2002?

1 A Yes.
 2 MS. KEENA: For the record, I am showing Exhibit
 3 Number 25 to counsel. Your Honor, at this time the state
 4 would offer Exhibit 25.
 5 MS. SINGH: No objection.
 6 THE COURT: Exhibit 25 is received.
 7 (Exhibit No. 25 was received
 8 in evidence.)
 9 MS. KEENA: Your Honor, if I may publish it to the
 10 jury?
 11 THE COURT: You may.
 12 **BY MS. KEENA:**
 13 Q Dr. Sedqi, I would next like to walk through where you found
 14 each of the casings. So first focusing on Item 21, I show you
 15 two pictures here. The first one has been marked for
 16 identification as Exhibit 16. The second one has been marked
 17 for identification as Exhibit 17. Could you please tell me what
 18 those are pictures of?
 19 A They are pictures of a cartridge casing, which I collected as
 20 Item 21.
 21 Q Do these pictures accurately depict what the scene looked like
 22 at the time you collected that evidence on December 22nd -or,
 23 was it actually December 23rd when you were there collecting
 24 it?
 25 A I believe it's December 23rd, the next day.

1 Q Are those accurate depictions of what you saw that day?
 2 A Yes. In this case we had to remove a cash register before we
 3 could see it.
 4 Q So the tray that we saw in the video, that was lying next to the
 5 body?
 6 A Yes.
 7 Q You had to move that?
 8 A In order for us to take a photograph of this one.
 9 MS. KEENA: For the record, I am showing Exhibit
 10 Number 16 and 17 to counsel.
 11 Your Honor, the state would offer Exhibits 16
 12 and 17.
 13 MS. SINGH: No objection.
 14 THE COURT: Received.
 15 (Exhibits 16 and 17 were received
 16 in evidence.)
 17 **BY MS. KEENA:**
 18 Q Dr. Sedqi, on Exhibit 17, could you place a circle around the
 19 casing that's present in that picture?
 20 A (Witness complies)
 21 Q Just put your initials by it.
 22 A (Witness complies)
 23 Q Dr. Sedqi, I am going to put up a picture on the screen behind
 24 you. Is that Exhibit 16 that I just showed you?
 25 A Yes, it is.

1 Q It's kind of hard to see on there, but could you point out to the
2 jury where the casing is?
3 A It's right here (indicating).
4 Q And I am now going to put Exhibit 17 up on the screen. Again,
5 could you point out where the casing is?
6 A (Indicating).
7 Q Thank you.
8 Q Dr. Sedqi, I am now showing you two pictures that have been
9 marked for identification. The first one is Exhibit 18. The
10 second one is Exhibit 19. Do you recognize those pictures?
11 A Yes.
12 Q What are those pictures of?
13 A They are photographs of the cartridge casing that was collected
14 as Item 22 from behind the counter.
15 Q And where was this casing located in relation to the body?
16 A That's the one that was underneath the body basically and/or
17 the victim's left shoulder.
18 Q So you had to move the body before you could see this casing?
19 A That's correct.
20 Q Do these pictures accurately depict what the scene looked like
21 at the time you collected that evidence on December 23, 2002?
22 A Yes.
23 MS. KEENA: For the record, I am showing
24 Exhibits 18 and 19 to defense counsel.
25 Your Honor, the state would offer Exhibits

1 Numbers 18 and 19.
2 MS. SINGH: No objection.
3 THE COURT: Received.
4 (Exhibits 18 and 19 were
5 received in evidence.)
6 BY MS. KEENA:
7 Q Again, Dr. Sedqi, I am going to put a picture up on the screen
8 behind you. Is this the picture that I just showed you, Exhibit
9 18?
10 A Yes.
11 Q And that's the casing that we're seeing?
12 A That's correct.
13 Q And I am now putting Exhibit 19 on the screen. Again, that's a
14 picture of the casing?
15 A Yes.
16 Q I am sorry, what part of the body did you say it was located
17 under?
18 A Under the victim's left shoulder.
19 Q Dr. Sedqi, I am now showing you a series of three pictures that
20 have been marked for identification as Exhibits 20, 21 and 22.
21 Do you recognize those photographs?
22 A Yes.
23 Q What is depicted in those photographs?
24 A Two cartridge casings found behind the counter.
25 Q And what item numbers are these two casings?

1 A We labeled them as 23 and 24.
2 Q And what's depicted in Exhibit 22?
3 A It shows the two cartridge casings along with several sheet of
4 papers on the floor.
5 Q Do these pictures accurately depict what the scene looked like
6 at the time you collected this evidence?
7 A Yes.
8 MS. KEENA: For the record, I am showing
9 Exhibits 20, 21 and 22 to defense counsel.
10 Your Honor, the state would offer Exhibits 20,
11 21 and 22.
12 MS. SINGH: No objection.
13 THE COURT: Received.
14 (Exhibit Nos. 20, 21 and 22 were
15 received in evidence.)
16 BY MS. KEENA:
17 Q Dr. Sedqi, I am going to hand you Exhibit 22. Would you just
18 take this black pen and circle the casings on the picture, and
19 initial them?
20 A (Witness complies)
21 Q Dr. Sedqi, I am going to put a picture up on the screen behind
22 you again. That's Exhibit 20 that I just showed you. Could
23 you just please tell the jury again what that is?
24 A That's the cartridge casing collected as item 23 from behind the
25 counter.

1 Q Now I am putting Exhibit 21 up on the screen, and could you
2 please tell the jury what that is?
3 A It's a photograph of the cartridge casing that was collected as
4 item 24, from behind the counter.
5 Q Finally, I'm bringing the last exhibit up, Number 22. Could
6 you please point out to the jury what we are seeing in this
7 picture?
8 A We have a cartridge casing right here (indicating), and another
9 cartridge casing by the cabinet. Then we have this sheet of
10 papers that we found scattered at the scene when we arrived.
11 Q So the cartridge casing that is to your right, is that item 23?
12 A Yes.
13 Q And the one closer to the base of the cabinet is item 24?
14 A Correct.
15 Q Where was the body located in relation to those casings?
16 A This way (indicating). This is farther in in the counter.
17 Q Thank you. Did you find any bullets at the scene?
18 A We found one bullet.
19 Q Now with four cartridge casings, there should be four bullets,
20 correct?
21 A That's correct.
22 Q How many were you able to account for?
23 A Three.
24 Q So there was one in the flashlight. Where were the other two
25 that you found?

1 A In the victim's body.
 2 Q And you were unable to locate the fourth one?
 3 A That's correct.
 4 MS. KEENA: May I have permission to approach,
 5 Your Honor?
 6 THE COURT: You may.
 7 (Exhibit Nos. 26 was marked
 8 for identification.)
 9 BY MS. KEENA:
 10 Q Dr. Sedqi, I am showing you what's been marked for
 11 identification as Exhibit 26. Would you please identify for the
 12 record what that item is?
 13 A It's a bullet that was collected as Item 27.
 14 Q Where was that bullet collected from?
 15 A From a flashlight.
 16 Q In Sabreen's?
 17 A In Sabreen's.
 18 Q And is it in the same or similar condition as when you found it?
 19 A Yes.
 20 MS. KEENA: For the record, I am showing Exhibit
 21 Number 26 to defense counsel.
 22 Your Honor, the state would offer Exhibit 26.
 23 MS. SINGH: No objection.
 24 THE COURT: Received.
 25 (Exhibit No. 26 was received in

1 evidence.)
 2 BY MS. KEENA:
 3 Q Dr. Sedqi, I am going to show you Exhibit 13. Do you
 4 recognize that picture?
 5 A Yes.
 6 Q And is the flashlight that you collected that bullet from
 7 contained in that picture?
 8 A Yes.
 9 Q Where was the flashlight located?
 10 A By the head of the victim.
 11 Q Was it located on a shelf?
 12 A Yes, the bottom shelf.
 13 Q Dr. Sedqi, I am going to put Exhibit 13 up on the screen
 14 behind you. Could you just point out to the jury where that
 15 flashlight was located?
 16 A (Witness indicates)
 17 MS. KEENA: Permission to approach, Your Honor?
 18 THE COURT: You may.
 19 (Exhibit Nos. 27 and 28 were
 20 marked for identification)
 21 BY MS. KEENA:
 22 Q Dr. Sedqi, I am showing you what's been marked for
 23 identification as Exhibit 27. Could you please identify what
 24 that item is?
 25 A It's the flashlight that was collected from Sabreen's as Item -

1 Q Let's do it this way instead.
 2 A As Item 44.
 3 Q I am going to show you what's been marked for identification
 4 as Exhibit 28. Could you please describe what that item is?
 5 A That's a battery.
 6 Q And when you found the bullet, where was it in the flashlight?
 7 A It was in the battery.
 8 Q So did you have to tear the battery apart to get the bullet out?
 9 A Yes.
 10 Q So that's what Item 28 is?
 11 A That's correct.
 12 Q And I'm seeing a hole in Exhibit 27 up on the top of the flash-
 13 light. What is that?
 14 A That's where the bullet entered the flashlight.
 15 Q And except for having to take this battery apart, are these in
 16 the same or similar condition as when they were collected?
 17 A Yes, they are.
 18 MS. KEENA: For the record, I am showing defense
 19 counsel Exhibits 27 and 28.
 20 Your Honor, the state would offer Exhibits 27
 21 and 28.
 22 MS. SINGH: No objection.
 23 THE COURT: Received.
 24 (Exhibit Nos. 27 and 28 were
 25 received in evidence.)

1 MS. KEENA: Your Honor, if I may, I would like to
 2 publish Exhibit 27.
 3 THE COURT: Go ahead.
 4 (Exhibit 27 was published to the jury)
 5 BY MS. KEENA:
 6 Q Dr. Sedqi, you testified earlier that you were only able to
 7 recover -- or totally there were only three bullets recovered?
 8 A That's correct.
 9 Q So, presumably, the missing fourth bullet is in the store
 10 somewhere?
 11 A That's correct.
 12 Q What type of search did you undertake to attempt to locate that
 13 fourth bullet?
 14 A We conducted basically visual search, and we did also some
 15 chemical testing on every single hole that we saw in the store.
 16 That's what we call lead testing.
 17 Q What type of ceiling was in the store, do you recall?
 18 A I don't know.
 19 Q Did you check the ceiling at all?
 20 A Yes, we did.
 21 Q And you were unable to locate the fourth bullet?
 22 A We could not locate the fourth bullet.
 23 Q Dr. Sedqi, I am now showing you two photographs that have
 24 been marked for identification as Exhibits 23 and 24. Do you
 25 recognize those photographs?

1 A Yes.

2 Q What is depicted in each of those?

3 A A bullet hole on one of the shelves of the cabinet.

4 Q And is this the cabinet where the flashlight was located?

5 A That's correct.

6 Q So this is the bullet hole -- so did the bullet travel through that

7 shelving into the flashlight?

8 A That's correct.

9 Q Do these pictures accurately depict the scene as it existed on

10 December 23, 2002?

11 A Yes.

12 MS. KEENA: For the record, I am showing

13 Exhibits 23 and 24 to defense counsel.

14 Your Honor, the state would offer Exhibit Numbers

15 23 and 24.

16 MS. SINGH: No objection, Your Honor.

17 THE COURT: Received.

18 (Exhibit Nos. 23 and 24 were

19 received in evidence.)

20 BY MS. KEENA:

21 Q Dr. Sedqi, on the screen behind you I am going to put Exhibit

22 Number 23. Is that the picture that I just showed you?

23 A Yes.

24 Q Could you just please describe to the jury what it is that we are

25 seeing here?

1 A Well, we are seeing a bullet hole on this shelf right there

2 (indicating).

3 Q And the flashlight is obviously removed from this picture?

4 A Yes, the flashlight was removed. That's where it was

5 (indicating) when we arrived at the scene.

6 Q Now I am going to put Exhibit 24 up. Could you please

7 describe to the jury what we're seeing in this picture?

8 A It's the same bullet hole with a probe or a flag going through it.

9 Q And what's the purpose of putting a probe through there?

10 A We were trying to establish the bullet trajectory.

11 Q And what did you establish?

12 A That the bullet was going downward.

13 Q Given the location where you found the body, the casings, the

14 bullets, were you able to form any opinion as to where the

15 shooter was standing at the time?

16 A We can say that they were behind the counter.

17 Q And what do you base that opinion on?

18 A Based on the bullet hole. You have to be either -- I mean, the

19 perpetrator has to be either behind the counter or leaning

20 downward firing his article downward.

21 Q But in this case you are of the opinion that the shooter was

22 behind the counter?

23 A Either the shooter or the weapon.

24 Q Okay. Did you submit the casings and the bullet that you

25 recovered from the scene for analysis to the BCA Lab?

1 A Yes.

2 MS. KEENA: Your Honor, I have no further

3 questions.

4 THE COURT: Your witness.

5 MS. SINGH: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. SINGH:

8 Q Dr. Sedqi, you said you have been BCA forensic scientist since

9 1997, is that correct?

10 A That's correct.

11 Q So you've worked on many cases like this, is that correct?

12 A Yes.

13 Q You found four shell casings behind the counter, correct?

14 A That's correct.

15 Q Two of them were close to the body, correct?

16 A They were all close to the body.

17 Q One was actually underneath the body?

18 A That's correct.

19 Q And one was underneath a shelf or close to the shelf behind

20 the counter, correct?

21 A That's correct.

22 Q Two were in a non-carpeted area, as was depicted in the

23 picture, is that correct?

24 A That's correct.

25 Q The body was mostly on the carpet, is that correct?

1 A That's correct.

2 MS. SINGH: May I approach the witness, Your

3 Honor?

4 THE COURT: You may.

5 BY MS. SINGH:

6 Q Dr. Sedqi, I am showing you Exhibit 13 again. You stated in

7 your testimony this is the depiction of the scene at Sabreen's

8 the morning when you arrived, correct?

9 A That's correct.

10 Q There's some shelves that are here (indicating). Now you didn't

11 do anything to manipulate those shelves or move anything,

12 correct?

13 A That's correct.

14 Q So there was no doors on these shelves, correct?

15 A That's correct.

16 MS. SINGH: May I approach the witness again,

17 Your Honor?

18 THE COURT: Yes, you may.

19 BY MS. SINGH:

20 Q Dr. Sedqi, I am bringing you back Exhibit 13 here. Now in this

21 picture there's a stack of money on the shelf. Do you recognize

22 that?

23 A Yes.

24 Q Now was that money setting out there when you arrived at that

25 scene and processed it?

1 A That's correct.

2 Q That is the same shelf where the flashlight is, correct?

3 A That's correct, the top shelf.

4 Q Yes. Now, Dr. Sedqi, you stated that when you processed the

5 floor of Sabreen's you found fourteen footprint impressions,

6 correct?

7 A Inside of the store, that's correct.

8 Q Did you find any footprint impressions outside of the store?

9 A Yes, we did.

10 Q Did you process those?

11 A Yes, we did.

12 Q Did you find any other items outside of the store that you

13 processed?

14 A Yes, we did.

15 Q What were those?

16 A We found a cigarette butt in the north parking lot that was

17 collected as Item 31. We found a pop can in the east alley that

18 was collected as Item 18. We found also some skid marks or

19 tire track impressions on the east alley that were lifted and

20 photographed as Items 16 and 17. And we also found some

21 footprint impressions in the snow, dusting of snow, by the

22 fence, that were lifted and photographed as Item 15, I believe.

23 Q Dr. Sedqi, did you process any of those items that you lifted

24 from the premises?

25 A Which one are you talking about?

1 Q Did you do any testing on any of the items?

2 A You mean back in the lab?

3 Q Yes.

4 A No.

5 Q Now, Dr. Sedqi, you testified that when you were searching for

6 the fourth bullet to associate to the fourth shell casing, you

7 conducted a visual test?

8 A Visual search, yes.

9 Q So you looked at the walls of the counter area in the super-

10 market, correct?

11 A That's correct.

12 Q And you looked at the ceiling?

13 A Yes.

14 Q Did you look at any insulation of the walls?

15 A We did, yes.

16 Q You also conducted a test of -- you stated it was a lead test?

17 A Yes, that's correct.

18 Q That test would detect any type of lead that would be in there,

19 is that correct?

20 A That's correct. If we are dealing with like a bullet hole.

21 Q Is it the hole that would have the lead in it or the bullet itself

22 that would have the lead in it?

23 A It's the hole itself, the surrounding of the hole itself. But,

24 again, when it's positive for lead, yes, it's an apparent bullet

25 hole. But when it's negative for lead, it does not mean that it is

1 not a bullet hole.. So we still have to dig it anyway.

2 Q Now, Dr. Sedqi, when you arrived at Sabreen's, and you

3 showed the video to the jury earlier today, the video was taken

4 down the three separate aisles, correct?

5 A That's correct.

6 Q Now this is a small grocery store. Are there any windows on

7 any sides of the walls at all?

8 A I don't think there is.

9 Q There is a back fire exit that you had in your video, is that

10 correct?

11 A That's correct.

12 Q You stated in your testimony that that door was barred shut,

13 so there wasn't any entry in and out of that?

14 A That's correct.

15 Q In your video, the door was in a fenced-in area as well, correct?

16 A Yes. It leads to a fenced area on the south side of the store.

17 MS. SINGH: I have no more questions, Your

18 Honor.

19 MS. KEENA: I have nothing further, Your Honor.

20 THE COURT: Thank you.

21 (Witness excused)

22 THE COURT: Let's take a morning break.

23 (Morning break was taken)

24

25

1 MS. KEENA: The state calls Dr. Lindsey Thomas.

2 DR. LINDSEY THOMAS,

3 being duly sworn, was examined and testified as follows:

4 THE CLERK: For the record, please state your full

5 name, spelling your first and last name.

6 THE WITNESS: Lindsey Thomas, L-I-N-D-S-E-Y

7 T-H-O-M-A-S.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. KEENA:

11 Q Dr. Thomas, what is your occupation?

12 A I am a forensic pathologist and coroner.

13 Q Are you licensed to practice medicine in the state of Minnesota?

14 A Yes.

15 Q Since when?

16 A 1984.

17 Q What is your educational background as it relates to your

18 current position?

19 A I got my bachelor's degree from Oberlin College in Ohio. I got

20 my medical degree from University of Minnesota in Ann Arbor.

21 Then I did my residency in anatomic and clinical pathology also

22 at the University of Michigan and I became board certified in

23 anatomical and clinical pathology.

24 Then I did a one-year fellowship in forensic pathology at

25 the Hennepin County Medical Examiner's Office in Minnea-

1 polis. I got board certified in forensic pathology in 1988. Then
 2 I worked for many years at the Hennepin County Medical
 3 Examiner's Office as assistant medical examiner. Since 1997,
 4 I have been with the coroner's office here.
 5 Q How long were you in Hennepin County?
 6 A Well, I started there, I think, in '85 and left in about 2000, I
 7 think.
 8 Q Are you a member of any medical societies or professional
 9 groups?
 10 A Yes. The Minnesota Medical Association; American Medical
 11 Association; American Association of Forensic Science; National
 12 Association of Medical Examiners; Minnesota Society of
 13 Pathology, probably some others.
 14 Q You mentioned that you serve as a coroner?
 15 A Yes.
 16 Q Is that an appointed position?
 17 A Yes.
 18 Q And who appointed you or what body appointed you to that
 19 position?
 20 A Each County Board of Commissioners appoints the coroner.
 21 Q And are you coroner for more than one county?
 22 A Yes.
 23 Q How many counties?
 24 A I am coroner for seven counties. I cover Carver, Chisago,
 25 Dakota, Fillmore, Goodhue, Houston and Scott Counties.

1 Q You indicated that you are a forensic pathologist?
 2 A Yes.
 3 Q What is a forensic pathologist?
 4 A Well, forensic pathology is the area in medicine where medical
 5 issues and legal issues kind of overlap. So, for example, sexual
 6 assaults, toxicology involving alcohol or drugs, injury
 7 interpretation, those are all things that come under the
 8 education and experience of a forensic pathologist.
 9 Primarily what I do is death investigation, so I
 10 investigate deaths that occur either unnaturally or un-
 11 expectedly in the counties that I am the coroner for. So
 12 forensic pathology also involves doing autopsies in death
 13 investigation.
 14 Q You mentioned you perform autopsies?
 15 A Right.
 16 Q Any idea how many you've performed over the years?
 17 A Oh, probably about two thousand, something like that.
 18 Q Have you testified at legal proceedings before?
 19 A Yes.
 20 Q What types of proceedings have you testified?
 21 A Grand juries, criminal cases, civil cases.
 22 Q Approximately how many times have you testified in legal
 23 proceedings?
 24 A Oh, one hundred, one hundred fifty, something like that.
 25 Q I would like to draw your attention to the time period of

1 December 22nd and 23rd of 2002. During that timeframe were
 2 you employed in your current position?
 3 A Yes.
 4 Q During that timeframe were you called to a crime scene at
 5 Sabreen's Market in South St. Paul?
 6 A Yes, I was.
 7 Q When did you go to the scene?
 8 A On December 23, 2002, I got to the scene at 4:35 a.m. X
 9 Q What did you observe upon arriving?
 10 A It was a small grocery store and Mr. Khaled Al-Bakri's body
 11 was lying on the floor behind the counter.
 12 THE COURT: Doctor, you are referring to a
 13 written document?
 14 THE WITNESS: Yes.
 15 THE COURT: Can you just tell us what that is?
 16 THE WITNESS: It's a copy of my autopsy report.
 17 THE COURT: Thank you.
 18 BY MS. KEENA:
 19 Q I am going to show you a picture. I will put it up on the screen
 20 behind you. For the record, that's Exhibit 13. Does that
 21 picture accurately depict what you saw when you arrived?
 22 A Yes.
 23 Q So everything is the same?
 24 A Yes.
 25 Q What did you do when you arrived there?

1 A I just did a brief examination of the body at the scene. And
 2 then we took Mr. Al-Bakri back to the Regina Medical Center,
 3 where the coroner's office is, and then later that day we did the
 4 autopsy.
 5 MS. KEENA: Permission to approach, Your Honor?
 6 THE COURT: Yes, you may.
 7 (Exhibit No. 29 was marked for identification)
 8 BY MS. KEENA:
 9 Q Dr. Thomas, you just testified that you examined the body at
 10 the scene. When you did that, did you notice any apparent
 11 wounds?
 12 A Yes.
 13 Q Where were those wounds located?
 14 A There appeared to be gunshot wounds to his head.
 15 Q Showing you what's been marked for identification as Exhibit
 16 29, it's a photograph. Could you please describe what that
 17 depicts?
 18 A Sure. This is a close-up photograph of the back and side of Mr.
 19 Al-Bakri's head at the scene. And it shows two gunshot
 20 wounds, although they are hard to see because of the blood,
 21 but there is one on his head and one on his neck.
 22 Q Does that picture accurately depict what the body looked like
 23 the day that you were there on the 23rd?
 24 A Yes.
 25 MS. KEENA: For the record, I am showing Exhibit

1 Number 29 to counsel.
 2 Your Honor, the state would offer Exhibit 29.
 3 MS. SINGH: No objection, Your Honor.
 4 THE COURT: Received.
 5 (Exhibit No. 29 was received
 6 in evidence.)
 7 **BY MS. KEENA:**
 8 Q Dr. Thomas, I am going to put Exhibit 29 on the screen behind
 9 you. Is that the picture I just showed you?
 10 A Yes.
 11 Q Could you point out to the jury the wounds that you were just
 12 describing?
 13 A There's a wound here on his head, then a wound on his --
 14 somewhere in here (indicating). It's not very clear here in this
 15 photograph, on his neck.
 16 Q When you were examining the scene, was there any blood
 17 anywhere?
 18 A There was some blood under his head.
 19 Q And where was the blood primarily located, was it pooling or
 20 how would you describe it?
 21 A I would describe it as pooling, primarily just under where his
 22 head was.
 23 Q Did you notice any other bodily fluids at the scene?
 24 A Yes, it appeared that he had vomited and so there was some
 25 vomit on the floor also.

1 Q And why would that happen?
 2 A It's a fairly common, almost a reflex that happens at the time of
 3 death. There's a couple of reasons why it happens. One is that
 4 at the time of death all of the muscles relax, so the muscle that
 5 holds the contents of the stomach in the stomach also relaxes,
 6 and so the food, or whatever, that is in the stomach can just
 7 come out.
 8 Also, it can sometimes be a reflex reaction to traumatic
 9 head injury or other types of injuries that cause death. So it's
 10 fairly common that we see vomit that's occurred at about the
 11 time of death.
 12 Q Now you indicated Mr. Al-Bakri's name. You did identify him?
 13 A Yes, he was visually compared to a photograph that was
 14 provided.
 15 Q And you also indicated that you performed an autopsy on him?
 16 A Yes.
 17 Q On what date did you perform the autopsy?
 18 A That was on December 23, 2002.
 19 Q Generally speaking, what are you trying to determine when you
 20 perform an autopsy?
 21 A Well, the goal when I do an autopsy is to determine the cause
 22 of death and the manner of death. With manner of death, we
 23 only have five options: accident, natural, suicide, homicide or
 24 undetermined.
 25 Then the cause of death is the disease process or the

1 injury process that actually caused the death. So that's the
 2 primary information that I am trying to get when I do an
 3 autopsy.
 4 Part of the autopsy involves documenting any diseased
 5 processes or injuries that will help me come to a conclusion
 6 about the cause and manner of death.
 7 Q Before you actually perform the autopsy and -- in this case did
 8 you have to remove any personal items from Mr. Al-Bakri?
 9 A Yes.
 10 Q And in removing his personal items, what did you find?
 11 A He had a cell phone that was clipped to his belt and then there
 12 were a few coins and papers in his pockets. Then his clothing
 13 was a pair of shoes, pair of socks, pair of jeans, underpants, a
 14 belt, T-shirt and a sweater.
 15 Q Did you find a cordless phone?
 16 A No.
 17 Q Based on your examination of Mr. Al-Bakri during the autopsy,
 18 did you reach a conclusion on the cause of death?
 19 A Yes.
 20 Q What did you determine that to be?
 21 A Gunshot wounds to the head.
 22 Q Did you extract bullets from Mr. Al-Bakri's head?
 23 A Yes.
 24 Q How many?
 25 A Two.

1 Q So there were no exit wounds?
 2 A Right.
 3 MS. KEENA: Permission to approach, Your Honor?
 4 THE COURT: Yes, you may.
 5 (Exhibits 30 and 31 were marked)
 6 **BY MS. KEENA:**
 7 Q Dr. Thomas, I am showing you what's been marked for
 8 identification as Exhibit 30 and also Exhibit 31. Would you
 9 please describe for the record what those items are?
 10 A Exhibits 30 and 31 are both small pieces of gray metal that are
 11 consistent with bullets that have been fired. And these are the
 12 two that I retrieved from Mr. Al-Bakri's body.
 13 Q Are they in the same or similar condition as when you
 14 extracted them?
 15 A Yes.
 16 MS. KEENA: For the record, I am showing the
 17 exhibits to counsel. Your Honor, the state would offer Exhibit
 18 30 and Exhibit 31.
 19 THE COURT: Any objection?
 20 MS. SINGH: No objection, Your Honor.
 21 THE COURT: Received.
 22 (Exhibit Nos. 30 and 31 were
 23 received in evidence.)
 24 MS. KEENA: If I may, I would like to publish them
 25 to the jury

THE COURT: Sure.

(Exhibits 30 and 31 published to the jury.)

BY MS. KEENA:

Q Dr. Thomas, I am now showing you what's been marked for identification as Exhibit 32. Do you recognize that?

A Yes.

Q What is that?

A This is a photograph that was taken at the time of the autopsy of Mr. Al-Bakri. And it shows the two gunshot wounds, one to the left side of his neck and one to the left side of the back of his head.

Q Does that picture accurately depict what they looked like at the time you performed the autopsy?

A Yes.

MS. KEENA: For the record, I am showing Exhibit Number 32 to counsel.

MR. SHANDS: Your Honor, I am going to make an objection. May we approach?

THE COURT: Sure.

(OFF RECORD DISCUSSION)

THE COURT: Exhibit 32 is received.

(Exhibit No. 32 was received

in evidence)

MS. KEENA: Your Honor, may I publish this picture to the jury?

THE COURT: You may.

BY MS. KEENA:

Q I don't have this on power point, so we have to do this old-fashionedly. I am going to put 29 up, just so we can talk about which wounds that we are relating to in the exhibit that you have in front of you. Could you describe each of the injuries?

A Sure. There are two gunshot entrance wounds. One is this (indicating), to the left side of -- to the back of his head. And then the other is in this area (indicating) to the left side of his neck.

The gunshot wound to the left side of his head went through the left side of his brain, from back to front, and injured the brain tissue on the left side of his brain and also fractured his skull on that side.

The other gunshot wound to the left side of the neck went from back to front and from the left side to the right side, so that one went through the cerebellum, which is a part of the brain that's in the back of the head, and then also went through the brain stem, which is the part of the brain that connects the brain to the spinal cord. And then ended up in the right side of his brain. That one was also associated with injuries to his brain and skull fractures.

Q Would either wound, taken separately, have been fatal?

A Yes.

Q Did you notice, was there any powder or soot around the

wounds?

A I didn't see any powder or soot around either of the wounds. So there are a couple of reasons for that. When a gun is fired not only does the bullet come out of the end of the gun, but there's also soot and powder that comes out. And depending how close the end of the muzzle of the gun is to the person who is being shot, there will be possibly soot or powder around the wound.

However, when I don't see that, it could be one of two things: either that the gun is further back, in which case the soot and powder hasn't traveled; or, in both of these wounds, the one on the back of his head there was hair around it, and hair can filter out soot and powder so that I wouldn't be able to see it.

And the one on his neck, he's got this sweater that had a hole in it, so the bullet went through the sweater. So it's possible that if there was soot and powder, it would be on the sweater. Therefore, I wouldn't see it on his skin.

So for both of those, I would consider them to be indeterminate range, meaning that I can't tell how far away the gun was.

Q Did you see any signs of stippling?

A No.

Q Just briefly explain what that is.

A Stippling is when powder, unburned powder, comes out from

the end of the gun it hits the skin, if it's close enough, and causes little red marks. That's called powder stippling or powder tattooing. Again, it's one of the things that we use when we're trying to make a determination about how far away the gun was from the body, but because of the hair and the sweater, I wouldn't see it on the skin. So I can't really say whether, you know, it would have been there, but for the hair and the sweater.

Q Now you talked about the bullets and the angle of the bullets. Could you just kind of explain how they went through? Were they straight, were they angled?

A Sure. The bullet that entered in the left side of his head went from the back to the front, very slightly to the right. It started on the left side of his head and ended on the left side of his head, but where it ended was closer to the midline. So it was slightly left to right. And then also it very slightly went up, so that it entered in the head a little bit lower than where it ended up. But basically that one went pretty much straight through, back to front.

The other one that went in on the left side of his neck went from the left side of his neck to the right side of his head, so -- and also went from the back to the front, so that one went from left to right, back to front. And that one where the bullet ended up was slightly above where it went in. So again slightly up, left to right, back to front and slightly up on that one.