

1 Q During your autopsy did you find any bruising or scrapes on  
2 the victim's face or body?  
3 A No.  
4 Q Given the trajectory of the bullets and the condition of the  
5 body, are you able to give an opinion on how the body was  
6 positioned at the time or how Mr. Al-Bakri was positioned at  
7 the time that he was shot?  
8 A Well, there's a few things that I can say. I can, you know, I can  
9 tell the direction that the bullet went once it entered his body.  
10 I can't say exactly, you know, what the relationship between  
11 the gun and his body was because it would depend on how the  
12 gun was being held.  
13 But based on the fact that he didn't really have any  
14 injuries, if someone were shot and they were standing up and  
15 then fell full body weight down, I might expect to see some  
16 scrapes or bruises, or something like that, so that would make  
17 me think that he probably wasn't standing full upright when he  
18 was shot.  
19 Then the other thing that I would look at is the evidence  
20 from the scene of where the other bullets, if there were other  
21 bullets found -- in this case there was one other bullet found  
22 and where the casings were found. And then put that together  
23 with the information that I have from the autopsy.  
24 And those, put together, would make me think that his  
25 body was low down. He was sitting or kneeling, or lying down,

1 when he was shot.  
2 Q Through your investigation, did you reach a conclusion as to  
3 the manner of death?  
4 A Yes.  
5 Q What conclusion did you reach?  
6 A That it was a homicide.  
7 Q What did you base your opinion on in reaching that  
8 conclusion?  
9 A Well, as I mentioned, with manner of death we only have five  
10 choices. Obviously gunshot wounds to the head aren't natural  
11 deaths. There's no way that someone could do this to  
12 themselves because each of the wounds independently were  
13 fatal, so it wouldn't be a suicide. And then based on the scene  
14 and investigation, I concluded that it was a homicide.  
15 Q The bullets that you recovered from the body, did you give  
16 those to the BCA?  
17 A Yes, I gave them to, I believe, the Dakota County Sheriff's Office  
18 and then they gave them to the BCA.  
19 MS. KEENA: I have no further questions, Your  
20 Honor.  
21 **CROSS-EXAMINATION**  
22 **BY MS. SINGH:**  
23 Q Dr. Thomas, you stated that you performed an autopsy on  
24 December 23, 2002?  
25 A Yes.

1 Q When you performed that autopsy -- excuse me. Let me  
2 backtrack a little bit. When you arrived at the scene at  
3 Sabreen's, you made a visual determination of what you saw,  
4 correct?  
5 A Right.  
6 Q That determination was that there was gunshot wounds?  
7 A Right.  
8 Q But at that time you were not able to determine how many?  
9 A Right.  
10 Q You had to do that when the body was taken back to the  
11 medical center?  
12 A Right.  
13 Q At that time you determined there were two gunshot wounds?  
14 A Yes.  
15 Q One to the head and one to the neck?  
16 A Yes.  
17 Q You stated that some of the property that you recovered from  
18 Mr. Al-Bakri was clothing, various items in his pocket, and a  
19 cell phone attached to his belt, correct?  
20 A Yes.  
21 Q Now, Dr. Thomas, when you arrived at the scene and you saw  
22 the body, was there a lot of blood?  
23 A Not a huge amount.  
24 Q Most of the blood was below the body, correct?  
25 A Right.

1 Q Is that because of gravity, it just goes down and pools at the  
2 bottom?  
3 A Yes.  
4 Q And there were only two entrance wounds that you found,  
5 correct?  
6 A Yes.  
7 Q You weren't able to determine where the gun might have been,  
8 because there was no stippling or no gun powder residue or  
9 anything like that, correct?  
10 A Right.  
11 Q And you also weren't able to determine if Mr. Al-Bakri was  
12 kneeling or standing or laying down?  
13 A Right.  
14 Q Dr. Thomas, one of the things you were able to determine was  
15 that the gun wasn't pressed up against the body and caused  
16 the wounds, correct?  
17 A Right. It did not appear to be a contact gunshot wound.  
18 Q And nothing in the investigation that you did would connect  
19 Mr. Vance to this, correct?  
20 A No, that wouldn't be my job.  
21 MS. SINGH: No further questions, Your Honor.  
22 MS. KEENA: Your Honor, may I approach?  
23 THE COURT: Yes, you may.  
24 (Exhibit No. 33 was marked for identification)  
25

**REDIRECT EXAMINATION**

**BY MS. KEENA:**

Q Doctor, I am showing you what's been marked for identification as Exhibit 33. Do you recognize that?

A Well, it's my handwriting that's on the envelope here.

Q Do you recall what was placed in that envelope?

A No. My guess would be that it's the property that was removed from him.

Q I am going to have to open this one up. Just for the record, I've just opened the main envelope contained in Exhibit 33. Could you just tell me what's inside of there?

A This is a cell phone with a clip on it, two pennies, some papers and then envelopes from our office that are probably fingernail clippings and hair, pulled hair.

Q Just for the record, I am going to pull the cell phone out. Is that the cell phone you recovered from Mr. Al-Bakri?

A Yes.

Q And there were no -- again, no cordless phones?

A No.

MS. KEENA: Your Honor, for the record, I am showing the exhibit to counsel.

MS. SINGH: Your Honor, may we approach?

THE COURT: Yes.

(OFF RECORD DISCUSSION)

THE COURT: We are going to remove some of the

items from Exhibit 33, nail clippings, and other things, collected by Dr. Thomas. But the personal effects that were removed from Mr. Al-Bakri will be received in Exhibit 33.

(Exhibit No. 33 was received in evidence.)

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

THE COURT: Anything else from the defense?

MS. SINGH: No further questions.

THE COURT: Thank you, Doctor.

(Witness excused)

MS. KEENA: Your Honor, the state calls John

Martin.

**JOHN MARTIN,**

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: John Edward Martin, M-A-R-T-I-N.

THE CLERK: Thank you.

**DIRECT EXAMINATION**

**BY MS. KEENA:**

Q Good morning, Mr. Martin.

A Good morning.

Q As a preliminary matter, I would like to briefly review your criminal history. You have a prior conviction for burglary in

the third degree dated October 16, 2003, is that correct?

A Yes.

Q And are you receiving anything in exchange for your testimony here today?

A No.

Q Do you know Philip Vance?

A Yes.

Q And did you know him more commonly by a nickname?

A Yeah, Florida.

Q Is the person that you know as Philip Vance present in the courtroom today?

A Yes.

Q Where is he at?

A Right there (indicating).

MS. KEENA: May the record reflect that the witness has identified Philip Vance?

THE COURT: It may.

**BY MS. KEENA:**

Q How long have you known Mr. Vance?

A Like two to three years now.

Q How would you describe your relationship?

A As a friend pretty much.

Q How often would you guys get together?

A Not very often, but on certain occasions pretty much.

Q How often would the two of you get together?

A Well, it all depends. Like, I work, so when I see him downtown going to work, I say "Hello, what's up?" Then when I get off work, we'd like go out, but not very often. It all depends, the days vary, what I am doing for the day. But not too often though.

Q When you say *downtown*, what downtown are you referring to?

A Downtown St. Paul, because I use the bus, so I see him downtown on my way going to work and I say, "Hello," see what he's doing. When I get off work, he'll be downtown as well, so it all depends. If I'm tired, then I just go home. If not, then we'll just hang downtown for a minute and have a conversation. That's about it.

Q Do you know Dominic Johnson?

A Yeah.

Q Do you know him more commonly by a nickname?

A Common name is *Stacks*.

Q How long have you known Mr. Johnson?

A About the same time.

Q That was two to three years?

A Yeah, two to three years.

Q Did you ever see Mr. Vance and Mr. Johnson together?

A Yeah.

Q How would you describe their relationship?

A Pretty --

MR. SHANDS: Objection, Your Honor, calls for

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JOHN MARTIN - DIR.

1 speculation.

2 THE COURT: Overruled.

3 THE WITNESS: Pretty much the same. Most

4 likely, they'd be together. They had a good relationship.

5 BY MS. KEENA:

6 Q I would like to draw your attention to December 22, 2002. Did

7 you meet up with Mr. Vance and Mr. Johnson that evening?

8 A Yes.

9 Q Where did you meet them?

10 A I met them on Sixth and Minnesota Street.

11 Q Where did you go from there?

12 A We went to the Radisson Bar.

13 Q And where is that located?

14 A Downtown St. Paul in the skyway area.

15 Q What time did you get to the bar?

16 A I would say around, like, 7:00, maybe 8:00.

17 Q And did the three of you sit together?

18 A Yes.

19 Q Where did you sit?

20 A We sat at the table towards the front at the Radisson Bar.

21 Q What did you talk about while you were sitting together?

22 A It was around Christmas time, so we was talking about the

23 Christmas occasions, what we all going to get our kids for

24 Christmas, our girl friends, and et cetera, like that.

25 Q Did the defendant have children at that time?

1 A Yes.

2 Q Do you know how many?

3 A No.

4 Q What did the defendant say about Christmas presents for his

5 kids?

6 A They was talking about how they was going to arrange to get

7 their kids something for Christmas.

8 Q Was that the words he used or did he use other words?

9 A No, they was just basically saying they was going to try to

10 figure out how they going to make money arrangements to get

11 their kids something for Christmas.

12 Q Did they discuss how they planned on doing that?

13 A No, not really. They just said they was going to ask around

14 and see what they going to get; with the money they already

15 had, they was going to make arrangements to get their kids

16 something for Christmas.

17 Q And did they talk about a robbery that night with you?

18 A No.

19 Q Did either one of them say anything about South St. Paul that

20 evening?

21 A Not at the very first beginning. When I was ready to depart

22 they made a phone call.

23 Q Why don't you tell me what happened with that?

24 A They made a phone call to go to South St. Paul on our

25 departure time, on our way to leave. That was around, like,

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1 8:30.

2 Q You said they called. What did they call on?

3 A A cell phone.

4 Q Whose cell phone was it?

5 A I think it was Mr. Vance right there, his cell phone.

6 Q And who made the phone call?

7 A Stacks made the phone call.

8 Q And who did he call?

9 MR. SHANDS: Objection, Your Honor, lack of

10 foundation for this witness to testify to who he called.

11 THE COURT: Do you know who he called?

12 THE WITNESS: He called Yvonne and Nicole, to be

13 exact.

14 MR. SHANDS: Same objection, Your Honor.

15 THE COURT: How do you know that?

16 THE WITNESS: Because I was there. I was there

17 when they called.

18 THE COURT: Okay.

19 BY MS. KEENA:

20 Q Did they tell you who they were calling?

21 A Yeah, they said they was calling Yvonne and Nicole.

22 Q Do you know who Yvonne and Nicole are?

23 A I don't know 'em, like, to be exact, like know 'em --

24 know them, but I seen Nicole and Yvonne like twice.

25 Q Do you know what their relationship is to Mr. Vance and Mr.

1 Johnson?

2 A Just friends.

3 MR. SHANDS: Objection, Your Honor, non-

4 responsive and lack of foundation.

5 THE COURT: Overruled.

6 BY MS. KEENA:

7 Q Did Mr. Vance and Mr. Johnson talk about Yvonne and Nicole?

8 A Not really. They just said they was calling Yvonne and Nicole.

9 MR. SHANDS: Objection, Your Honor. I move to

10 strike everything from *not really* as non-responsive.

11 THE COURT: Okay.

12 MR. SHANDS: I would ask for an instruction for

13 the jury to -- I would ask for a jury instruction on that also.

14 THE COURT: Well, I am not going to prohibit the

15 state from asking additional questions. I suppose there is no

16 point in striking it without instructing -- disregard what he

17 said after *not really*, but I will allow both parties to continue

18 questioning.

19 Thanks.

20 BY MS. KEENA:

21 Q Did Mr. Vance and Mr. Johnson refer to Yvonne and Nicole by

22 a nickname at all?

23 A Well, Stacks called 'em the South St. Paul girls, to my

24 knowledge.

25 Q Is that how they were introduced to you?

1 A Yes.  
 2 Q Now you indicated that -- discussions about South St. Paul.  
 3 Could you just repeat again what you said?  
 4 MR. SHANDS: Objection, Your Honor, asked and  
 5 answered.  
 6 MS. KEENA: We had so many objections I can't  
 7 keep it straight, Your Honor.  
 8 MR. SHANDS: May we approach, Your Honor?  
 9 THE COURT: No. Overruled. Go ahead.  
 10 THE WITNESS: Can you repeat the question?  
 11 BY MS. KEENA:  
 12 Q What was said about South St. Paul that night?  
 13 A That they was just going to South St. Paul.  
 14 Q Did they tell you for what purpose they were calling the girls?  
 15 A No.  
 16 Q Did they invite you along?  
 17 A Yes.  
 18 Q What time did you leave the bar?  
 19 A Around 8:30. Prior to that time, like, 8:30 -- before 9:00.  
 20 Q Did the three of you leave at the same time?  
 21 A Yes.  
 22 Q Where did you go to?  
 23 A I went towards Fifth and Minnesota because I was getting on  
 24 the sixty-four.  
 25 Q Is that a bus stop?

1 A Yes.  
 2 Q Where were you headed to?  
 3 A I was going to my girl house.  
 4 Q Did you in fact go there?  
 5 A Yes.  
 6 Q Where was she living at the time?  
 7 A 1265 Hazlewood, Apartment 205, St. Paul, Minnesota.  
 8 Q Did you see Mr. Vance and Mr. Johnson after you left the bar?  
 9 A Yes.  
 10 Q Where did you see them?  
 11 A On Fifth and Minnesota.  
 12 Q Did you see them leave from that location?  
 13 A Yeah, they walked over to the other bus stop.  
 14 Q What did you see next?  
 15 A Before I got on the bus, I seen Yvonne and Nicole car comes  
 16 around the block before I got on the bus.  
 17 Q What did you see next?  
 18 A That's pretty much it, I got on the bus.  
 19 Q Did you see Mr. Vance and Mr. Johnson get into the car?  
 20 MR. SHANDS: Objection, Your Honor, leading.  
 21 THE COURT: Overruled. I'm sorry?  
 22 THE WITNESS: No, I didn't see them get in  
 23 the car.  
 24 BY MS. KEENA:  
 25 Q Did you see them in the car at all?

1 A No. Prior to -- before the bus came, I seen just Yvonne and  
 2 Nicole in the car. But before the bus left Fifth and Minnesota,  
 3 I seen other people in the car.  
 4 Q What type of car was it?  
 5 A I believe it was a blue Corsica, I believe.  
 6 Q What color?  
 7 A Blue.  
 8 Q I'm sorry, what type of blue?  
 9 A Dark blue, I believe.  
 10 Q How many doors does this car have?  
 11 A I believe four.  
 12 Q Who was driving the car?  
 13 A Yvonne.  
 14 Q I'm sorry, you said Yvonne was driving?  
 15 A Yeah.  
 16 Q What does Yvonne look like?  
 17 A Kind of like heavysset, long hair.  
 18 Q Is she white?  
 19 A Yeah, she's white.  
 20 MS. KEENA: Your Honor, may we approach?  
 21 THE COURT: Yes.  
 22 MS. KEENA: Never mine, I just need a moment.  
 23 BY MS. KEENA:  
 24 Q Mr. Martin, you were interviewed by the police in this case,  
 25 correct?

1 A Right.  
 2 Q And they talked to you about this car, right?  
 3 A Yeah.  
 4 Q Did they show you any pictures when they were talking about  
 5 Yvonne and Nicole?  
 6 A Yes.  
 7 MS. KEENA: Permission to approach, Your Honor.  
 8 THE COURT: Granted.  
 9 BY MS. KEENA:  
 10 Q I am just going to show you a picture here. Do you recognize  
 11 that picture?  
 12 A Yeah.  
 13 Q Who do you know that person to be?  
 14 A Yvonne or Nicole. Rephrase, because I only seen 'em twice,  
 15 so I get 'em mixed up.  
 16 Q Was she the one --  
 17 A She was the passenger.  
 18 Q I am going to show you, are those your initials on this piece of  
 19 paper?  
 20 A Yes.  
 21 Q Who does it identify that person as being?  
 22 MR. SHANDS: Objection, Your Honor, hearsay.  
 23 THE COURT: Overruled.  
 24 THE WITNESS: Yvonne.  
 25 THE COURT: Go ahead.

1 **BY MS. KEENA:**  
 2 Q So the person that you know as Yvonne was actually the  
 3 passenger that night?  
 4 A Right.  
 5 MS. KEENA: I have no further questions, Your  
 6 Honor.  
 7 **CROSS-EXAMINATION**  
 8 **BY MR. SHANDS:**  
 9 Q Mr. Martin, you testified that you remembered the person that  
 10 was driving the vehicle as being Yvonne?  
 11 A Right.  
 12 Q Is that your testimony?  
 13 A Yeah.  
 14 Q That's what you remember?  
 15 A I mean I get 'em mixed up, so I have to see a picture to realize  
 16 which one is which, because I only met 'em twice, so I really  
 17 don't know, you know, I got to see they picture because I really  
 18 don't know 'em by their name. I got to see a picture.  
 19 Q That's because this happened two years ago?  
 20 A Right.  
 21 Q That's a long time ago. Now, let's go back to the bar. You  
 22 testified that you know Mr. Vance and Mr. Johnson by just  
 23 kind of meeting downtown in the bar, correct?  
 24 A Right.  
 25 Q And you have gone to the Radisson Bar before to drink?

1 A What?  
 2 Q You have been to the Radisson Bar before and had cocktails, is  
 3 that correct?  
 4 A Yes.  
 5 Q This was something you guys do when you hook up downtown?  
 6 A Sometimes, yes.  
 7 Q Sometimes you don't?  
 8 A Right. Sometimes we don't.  
 9 Q You are familiar with the bartender down at the Radisson Bar?  
 10 A Yes.  
 11 Q What's her name, do you remember?  
 12 A Her name is, I believe, Melissa. To be exact -- it's been a while,  
 13 so I'm not commonly familiar with names, but pretty much I  
 14 think it was Melissa, I believe it was.  
 15 Q You don't know her last name?  
 16 A No.  
 17 Q Now isn't it true that one of the reasons you go to that bar is  
 18 because Melissa lets you guys write checks?  
 19 A Right.  
 20 MS. KEENA: Objection, Your Honor, irrelevant.  
 21 THE COURT: Overruled.  
 22 MS. KEENA: May we approach, Your Honor?  
 23 THE COURT: No.  
 24 **BY MR. SHANDS:**  
 25 Q Another reason why you go to that bar is because Melissa lets

1 Mr. Johnson drink, although she knows he is not twenty-one  
 2 years old, is that correct?  
 3 A Right.  
 4 Q Now you testified that you guys met on the 22<sup>nd</sup>. Is that  
 5 correct? And you sat down at a table and you guys were just  
 6 talking about what you were going to do for Christmas. The  
 7 fact that, you know, what are you guys going to get your kids,  
 8 your girlfriends, that sort of thing, is that correct?  
 9 A Right.  
 10 Q This wasn't a hush-hush conversation, is that correct?  
 11 A No. No, it was not a hush-hush conversation.  
 12 Q In fact, you guys were just kind of sitting there talking?  
 13 A Right. We sat there, we had a couple of drinks and we ordered  
 14 pizza that night. So we just sat there, ate pizza, had a couple  
 15 drinks, and we talked.  
 16 Q You indicated Mr. Vance talked about he had to put two and  
 17 two together or make some moves?  
 18 A Right. We was all saying the same thing. We was all saying  
 19 that we was trying to get our girls something for Christmas,  
 20 because I don't have no kids, so I was talking about my girl,  
 21 and they was talking about their kids.  
 22 Q You also participated in this conversation talking about you've  
 23 got to make some moves or put some stuff together so you can  
 24 get something nice for your girl?  
 25 A Right.

1 Q At no time did Mr. Vance ever say that he intended on doing a  
 2 robbery or anything to get any money?  
 3 A No, there was no robbery discussed at that table at all that  
 4 night.  
 5 Q Okay. Mr. Vance indicated when he said he had to *put two and*  
 6 *two together*, that kind of meant that he had some money.  
 7 MS. KEENA: Objection, Your Honor, calls for an  
 8 opinion on what he meant.  
 9 THE COURT: Maybe you could rephrase it.  
 10 **BY MR. SHANDS:**  
 11 Q Isn't it true that Mr. Vance already had some money together  
 12 and he just needed to put some more money together to get  
 13 some toys?  
 14 A Right. We all had money. We wasn't broke. We all had money  
 15 at the time.  
 16 MR. SHANDS: Thank you, Mr. Martin. I have no  
 17 further questions, Your Honor.  
 18 **REDIRECT EXAMINATION**  
 19 **BY MS. KEENA:**  
 20 Q Mr. Martin, just to clarify again, the picture that I showed you  
 21 earlier, that's the person you know as who?  
 22 A Yvonne. That's the passenger in the car.  
 23 Q She was the passenger?  
 24 A Yes.  
 25 Q Again to clarify, where did the two men indicate they were



1 going that night?  
 2 A South St. Paul.  
 3 Q But they didn't say why?  
 4 A They didn't say why.  
 5 MS. KEENA: I have no further questions.  
 6 MR. SHANDS: Just a few questions.  
 7 **RECROSS EXAMINATION**  
 8 **BY MR. SHANDS:**  
 9 Q Mr. Martin, isn't it true that you were paid some money by the  
 10 South St. Paul Police to write a letter to Mr. Johnson to get him  
 11 to possibly talk about the robbery that took place in South St.  
 12 Paul?  
 13 MS. KEENA: Your Honor, I am going to object to  
 14 this question. It goes beyond the scope of the state's redirect.  
 15 THE COURT: Overruled.  
 16 THE WITNESS: No, I was not paid.  
 17 **BY MR. SHANDS:**  
 18 Q You received no money from the state at all?  
 19 A No.  
 20 Q So it's your testimony that the South St. Paul Police Depart-  
 21 ment did not pay you one hundred sixty-nine dollars and fifty  
 22 cents to act as an informant in this case?  
 23 A Nope. I didn't get no hundred and sixty-nine dollars. The only  
 24 money that I received was for coming down here and testifying.  
 25 That's it. And that comes in a Dakota check. That's the only

1 money I ever seen in being a witness for any of this.  
 2 MR. SHANDS: Thank you. I appreciate your  
 3 honesty. Thank you.  
 4 THE WITNESS: You are welcome.  
 5 MS. KEENA: I have no further questions.  
 6 THE COURT: Thank you, Mr. Martin. You can go.  
 7 (Witness excused)  
 8 THE COURT: Lunch time. We will start again at  
 9 1:15.  
 10 (JURORS EXCUSED)  
 11  
 12 THE COURT: We need to make a record about  
 13 something now that the jury has left. I just want to note for  
 14 the record that at a side bar there was an objection to Exhibit  
 15 32, the photo taken during the autopsy of the back of Mr.  
 16 Bakri's head. Objection by Mr. Shands was overruled.  
 17 MR. SHANDS: Yes, and the basis for that objection  
 18 was that it's cumulative and we have multiple pictures of the  
 19 bullet wounds in the back of the head.  
 20 I would like the record to also reflect that there was  
 21 an objection made and Ms. Keena had argued the objection  
 22 from the table. The reason I wanted to approach is because I  
 23 wanted the judge to instruct Ms. Keena, as I've raised as an  
 24 objection, that if there's an objection it needs to be made at the  
 25 table. And if there's any argument of it, it needs to be done at

1 a side bar and not in front of the jury. And that had taken  
 2 place, so that's what I wanted to approach for. The court  
 3 denied the approach.  
 4 THE COURT: For the first time. I have allowed all  
 5 of you to come up every other time you asked, and it's going to  
 6 happen less often.  
 7 MR. SHANDS: That's fine, Your Honor. I just want  
 8 the record to reflect that was my purpose for wanting to come  
 9 up to the bench.  
 10 THE COURT: I apologize. I don't recall Ms. Keena  
 11 arguing at the counsel table.  
 12 MR. SHANDS: That's fine, Your Honor. I feel un-  
 13 comfortable because it puts me in a position where I don't want  
 14 to say, "Your Honor, Ms. Keena is arguing from the table,"  
 15 to draw more attention to it, so I will figure out a way to deal  
 16 with that if I need to.  
 17 THE COURT: Make the objection and we will  
 18 always make a record of it as soon as we can.  
 19 MS. KEENA: Your Honor, I would just like to note  
 20 on the photographs, I think the state has been very discreet in  
 21 what it has introduced as pictures in this case. The state has  
 22 only introduced one autopsy photo which was pretty benign  
 23 compared to what the other autopsy photos look like.  
 24 THE COURT: I agree, that's why I let it in. It's the  
 25 only photo that shows the neck wound. Okay, anything else?

1 MR. SHANDS: No.  
 2 THE COURT: It was beyond the scope, but I let  
 3 you ask it any way. See you at 1:15.  
 4 (Lunch break was taken)  
 5  
 6  
 7 **SEPTEMBER 28, 2004 - AFTERNOON SESSION**  
 8 THE COURT: Have a seat. It's impressive how you  
 9 all come in in order. Go ahead, Ms. Keena.  
 10 MS. KEENA: The state calls Ms. Melissa Stites.  
 11 **MELISSA STITES,**  
 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: Melissa Stites, M-E-L-I-S-S-A  
 16 S-T-I-T-E-S.  
 17 THE CLERK: Thank you.  
 18 **DIRECT EXAMINATION**  
 19 **BY MS. KEENA:**  
 20 Q Good afternoon, Ms. Stites. As a preliminary matter, I would  
 21 like to briefly review your criminal history. You have a  
 22 conviction for offering a forged check dated November 20,  
 23 1996?  
 24 A Yes.

1 Q I would like to draw your attention to December 22, 2002.  
 2 Were you employed on that date?  
 3 A Yes, I was.  
 4 Q Where at?  
 5 A The Radisson in St. Paul.  
 6 Q And was there somewhere particular in the Radisson that you  
 7 worked?  
 8 A I was the head bartender.  
 9 Q What was the name of the bar?  
 10 A Capitol City Market Caf .  
 11 Q Is it also known as the Radisson Bar?  
 12 A Yeah, it's connected to the skyway system. There's two  
 13 Radissons. I worked at the one in the City Centre, in St. Paul.  
 14 Q And you indicated you were the head bartender?  
 15 A Yeah.  
 16 Q How long had you been employed there up until December 22,  
 17 2002?  
 18 A Probably a year and-a-half.  
 19 Q Were you working the night of December 22<sup>nd</sup>?  
 20 A Yes, ma'am.  
 21 Q What hours did you work?  
 22 A Usually I'd start at 4:30 to 10:00, whenever it was like slow,  
 23 then we'd close usually at 10:00.  
 24 Q At that time did you know two men by the street names of  
 25 Florida and Stacks?

1 A Yes, ma'am.  
 2 MS. SINGH: Objection, Your Honor. May we  
 3 approach?  
 4 THE COURT: No nicknames.  
 5 MS. KEENA: Did I say it again? Sorry.  
 6 Permission to approach, Your Honor?  
 7 THE COURT: Yes.  
 8 (Exhibits 34 and 35 marked)  
 9 BY MS. KEENA:  
 10 Q Ms. Stites, at some point did you come to learn the real names  
 11 of who Florida and Stacks were?  
 12 A Yes, ma'am.  
 13 Q How was that done?  
 14 A By introduction.  
 15 Q Were you shown a photo lineup?  
 16 A Yes, I was.  
 17 Q Ms. Stites, I am first going to show you Exhibit 34. Do you  
 18 recognize that?  
 19 A Yes, ma'am.  
 20 Q What is that?  
 21 A That's a picture of Florida, right there (indicating).  
 22 Q And there are six photographs on there, correct?  
 23 A Yes, ma'am.  
 24 Q Did a police officer show this to you?  
 25 A Yes.

1 Q There are some initials, M.S. Then there is a date. What's the  
 2 date?  
 3 A 12/27/02.  
 4 Q And the initials are what?  
 5 A My initials, M.S.  
 6 Q You did that?  
 7 A Yes, ma'am.  
 8 Q That's the person that you identified as Florida?  
 9 A Florida.  
 10 Q I am now showing you Exhibit Number 35. Do you recognize  
 11 that?  
 12 A Yes.  
 13 Q What's that?  
 14 A Stacks, Dominic Johnson.  
 15 Q Is that another photo lineup?  
 16 A Yes.  
 17 Q And a police officer showed that to you?  
 18 A Yes.  
 19 Q Did you put your initials and date by the photo of the person  
 20 that you were referring to as who?  
 21 A Stacks.  
 22 MS. KEENA: For the record, I am showing counsel  
 23 Exhibits 34 and 35.  
 24 MR. SHANDS: No objection, Your Honor.  
 25 THE COURT: Exhibits 34 and 35 are received.

1 (Exhibit Nos. 34 and 35 were  
 2 received in evidence)  
 3 BY MS. KEENA:  
 4 Q Ms. Stites, is the person that you know as Florida present in  
 5 the courtroom today?  
 6 A Yes.  
 7 Q Where is he?  
 8 A He is sitting right there (indicating).  
 9 MS. KEENA: May the record reflect she has  
 10 identified Phillip Vance?  
 11 THE COURT: It may.  
 12 BY MS. KEENA:  
 13 Q Going back to December 22<sup>nd</sup> of 2002 -- I am going to refer to  
 14 Stacks as Mr. Johnson. Okay?  
 15 A Okay.  
 16 Q Did Mr. Vance and Mr. Johnson come into the Radisson Bar  
 17 that night?  
 18 A On December 22<sup>nd</sup>?  
 19 Q Yes.  
 20 A Yes.  
 21 Q Did you know them prior to December 22<sup>nd</sup>?  
 22 A Yes.  
 23 Q From where?  
 24 A From them coming into the Radisson. They had been in there  
 25 a few other times.

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1 Q What time did they arrive at the bar on the evening of  
2 December 22<sup>nd</sup>?  
3 A Approximately 7:30.  
4 Q Was there anyone else with them that night?  
5 A There was another gentleman.  
6 Q And did you know the third man?  
7 A No.  
8 Q What did he look like?  
9 A He was about as tall as Mr. Vance, and lighter skinned, like he  
10 had a big nose and like puffed Eddy Sunglasses and one of  
11 those big leather parka things.  
12 Q Was he an African-American male?  
13 A Yes, ma'am.  
14 Q While they were in the bar did you have an opportunity to  
15 observe them?  
16 A Yes.  
17 Q Were they seated inside of the bar?  
18 A Yes, there's like four or five tables in the bar. They sat at the  
19 table closest to the bar. The bar is real small.  
20 Q Did you wait on them?  
21 A Yes.  
22 Q During your contact with them, did you notice anything in  
23 particular about the way they were acting?  
24 A Just that they weren't like as friendly as they usually were, like  
25 more secretive, like, they weren't -- usually when they're in

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1 there they're, like, "Yoa, Melissa, what's up, girl?" You know,  
2 "When are we going to go out?" or whatever. They were just  
3 real secretive to themselves. I asked them, too, "What's going  
4 on?" Florida said, "Oh, we're just --"  
5 MR. SHANDS: Objection, Your Honor, non-  
6 responsive.  
7 THE COURT: Sustained.  
8 BY MS. KEENA:  
9 Q Did you ask them something?  
10 A I asked them "What's going on?" And he just said that they  
11 were getting their plan on.  
12 MR. SHANDS: Objection, Your Honor, vague as to  
13 who is speaking.  
14 THE WITNESS: Mr. Vance said that they were  
15 getting their plan on.  
16 THE COURT: Overruled.  
17 BY MS. KEENA:  
18 Q Did they eventually leave the bar?  
19 A Yes, ma'am.  
20 Q Do you recall what time?  
21 A Maybe 20, 30 minutes later. They weren't there too long, like,  
22 if they were there at 7:15, 7:45, probably there for about a half  
23 an hour.  
24 Q As they were leaving, did Mr. Vance make any -- or, did you  
25 make any comments to Mr. Vance?

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1 A Yes, I did.  
2 Q And what did you say?  
3 A Well, I told him, I said that *tips are real low that night*, because  
4 they generally never tipped, and it was like two days before  
5 Christmas. And Mr. Vance said, "Don't worry, Baby, when I get  
6 back there's going to be plenty of money."  
7 Q Did you report that to anybody?  
8 A Yes, ma'am. I called Officer McManus the next day.  
9 Q Why did you call Officer McManus?  
10 A Just because I knew something was going on. They were real  
11 secretive and *plan on* usually means like a robbery or  
12 something.  
13 MR. SHANDS: Objection, Your Honor, non-  
14 responsive.  
15 THE COURT: No. Why don't you approach?  
16 (OFF RECORD DISCUSSION)  
17 BY MS. KEENA:  
18 Q This Officer McManus, what department does he work for?  
19 A The Minnesota Gang Strike Force.  
20 Q So had you provided information to him in the past? I mean,  
21 you had a relationship with him?  
22 A Yes.  
23 Q Okay. I would like to now draw your attention to January 3,  
24 2003. On that date were you involved in an undercover  
25 operation involving Mr. Vance?

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1 A Yes.  
2 Q Could you just -- well, were you wired?  
3 A Yes, I was wired.  
4 Q So were you being monitored by police officers?  
5 A Yes.  
6 Q Did you meet Mr. Vance that night?  
7 A Yes. We met at the Buttery on Sixth and Robert in St. Paul.  
8 Q And after you met him at the Buttery, what happened?  
9 A Well, Florida or Mr. Vance didn't want to be at the Buttery for  
10 some reason, so he wanted to go to The Lab, which is in St.  
11 Paul.  
12 Q Is that another bar?  
13 A It's another bar in St. Paul. And the police had given me a  
14 Cyota (ph) telephone because they said that I couldn't do  
15 anything without their permission.  
16 MR. SHANDS: Your Honor, I am going to object at  
17 this time. I would ask that questions be asked of the witness  
18 and she be not allowed to give a narrative.  
19 THE COURT: Well, as to this particular response,  
20 overruled.  
21 BY MS. KEENA:  
22 Q So the police officers gave you a --  
23 A Cyota (ph) telephone. So I went in the bathroom and I called, I  
24 think it was Andy Shoemaker, and he is on the Minnesota  
25 Gang Strike Force, and I got permission to go from the Buttery



1 to The Lab, because there were cars outside, like twelve full of  
 2 undercover police officers. So I had to get permission to go,  
 3 so they would follow me over there with Mr. Vance.  
 4 Q Did you get permission to go?  
 5 A Yes, I got permission to go.  
 6 Q Did you go over to The Lab?  
 7 A Yes, we went to The Lab, me and Mr. Vance.  
 8 Q How did you get there?  
 9 A We drove in my car.  
 10 Q While you were with Mr. Vance that night, was there any  
 11 conversation regarding guns?  
 12 A Yes.  
 13 Q Where did this conversation occur?  
 14 A In The Lab.  
 15 Q What did Mr. Vance say or what was your conversation in  
 16 regard to guns?  
 17 A Well, we were -- when the gun conversation came up, he said  
 18 that he had four guns. And I said, "Oh, cool." Then I asked  
 19 him if he ever shot anybody.  
 20 He said that he had "shot a guy two weeks ago over  
 21 south side five times in the back."  
 22 And then I said, "Did you check to see if he was  
 23 dead?"  
 24 MR. SHANDS: Objection, Your Honor.  
 25 THE COURT: Overruled.

1 **BY MS. KEENA:**  
 2 Q I am sorry, what did you just say?  
 3 A I asked him, I said, "Oh, did you check and see if he was  
 4 dead?" and he's like "No, Girl, I just kept going." Or something  
 5 like that.  
 6 MS. KEENA: I have no further questions.  
 7 THE COURT: Mr. Shands.  
 8 **CROSS-EXAMINATION**  
 9 **BY MR. SHANDS:**  
 10 Q Is it Stites?  
 11 A Yes, sir.  
 12 Q Now you asked Mr. Vance if he had shot anyone before,  
 13 correct?  
 14 A Yes, sir.  
 15 Q Now the reason you were asking this question is because you  
 16 were trying to elicit a confession from Mr. Vance for the police  
 17 that were listening, correct?  
 18 A Yes.  
 19 Q They had instructed you to inquire of Mr. Vance about if he's  
 20 ever shot anyone, correct?  
 21 A Yes.  
 22 Q Now Mr. Vance never said he shot anybody in South St. Paul,  
 23 is that correct?  
 24 A He said South Side.  
 25 Q The question, he never said he shot anybody in South St. Paul,

1 did he?  
 2 A Never said St. Paul.  
 3 Q He never said that he shot the store clerk at Sabreen's, did he?  
 4 A No, sir.  
 5 Q Now with your relationship, you knew Mr. Vance for a while,  
 6 correct?  
 7 A For about a month prior to December 22<sup>nd</sup>.  
 8 Q You had known him for about a month prior to December 22<sup>nd</sup>?  
 9 A Just from coming into my work.  
 10 Q Now he would come into your work and he would have  
 11 conversations with you, correct?  
 12 A Yes.  
 13 Q Mr. Johnson would have conversations with you, correct?  
 14 A Yup.  
 15 Q You know Mr. Johnson also?  
 16 A Yes, sir.  
 17 Q You know Mr. Johnson is not 21 years old, don't you?  
 18 A No.  
 19 Q Melissa, isn't it true that the reason why they come to your bar  
 20 is because you will serve Mr. Johnson even though he is under  
 21 age?  
 22 A No. I didn't know that. If I knew that, I wouldn't have served  
 23 him.  
 24 Q Do you know a John Martin?  
 25 A Um -- no.

1 Q Let's back up. On December 22<sup>nd</sup> isn't it true that John Martin  
 2 was sitting with Mr. Vance and Mr. Johnson at the bar?  
 3 **MS. KEENA:** Your Honor, objection. Foundation.  
 4 She already indicated she didn't know John Martin.  
 5 **THE COURT:** Well, he can get at it another way.  
 6 **THE WITNESS:** I never identified a third person.  
 7 **BY MR. SHANDS:**  
 8 Q Isn't it true that, as they sat there, they ordered some pizza?  
 9 A They ordered pizza.  
 10 Q They ordered some drinks?  
 11 A I think they had a drink a piece.  
 12 Q Okay. Now you testified that in your opinion -- you asked Mr.  
 13 Vance what was going on?  
 14 A At the Radisson on the 22<sup>nd</sup>?  
 15 Q Correct.  
 16 A Did I ask Mr. Vance what was going --  
 17 Q You asked Mr. Vance what was going on?  
 18 A Yes.  
 19 Q At this point you have only known Mr. Vance for about a  
 20 month?  
 21 A About a month.  
 22 Q And it's your testimony that this behavior was out of the  
 23 ordinary from their normal behavior?  
 24 A Yes.  
 25 Q Okay. So how many times had they been in previously within

1 that month?  
 2 A Five or six times.  
 3 Q Five or six?  
 4 A Um-hum.  
 5 Q Two maybe?  
 6 A Five or six times. They frequented quite a bit more.  
 7 Q Five or six times, is that how many times they had been in?  
 8 A Yes.  
 9 Q Now your testimony is Mr. Vance told you "Don't worry, they  
 10 got a plan. When they come back they'll have some money,"  
 11 correct?  
 12 A They're getting their plan on.  
 13 MS. KEENA: Your Honor, objection, that isn't  
 14 what her testimony was.  
 15 MR. SHANDS: Objection, Your Honor. Can we not  
 16 argue objections from the bench, Your Honor?  
 17 THE COURT: You both have just within the last  
 18 15 minutes. But that's not what she testified to. If you can  
 19 use the words that she used, go right ahead.  
 20 MR. SHANDS: Well, let me make sure.  
 21 BY MR. SHANDS:  
 22 Q Mr. Vance and Mr. Johnson get up to leave after being at the  
 23 Radisson Bar for about 20 minutes, is that correct?  
 24 A Twenty or thirty minutes, yes, sir.  
 25 Q Is it twenty or is it thirty?

1 A Twenty minutes.  
 2 Q Okay. After being there for twenty minutes, they get up to  
 3 leave?  
 4 A (Nodding)  
 5 Q As they are leaving, you engage them, correct? You asked  
 6 them something?  
 7 A Yes.  
 8 Q You asked them, you say, "Hey, guys," you remind them about  
 9 tipping, correct?  
 10 A I said, "Tips are low tonight."  
 11 Q And you say, "Tips are low" because you want them to give you  
 12 some money?  
 13 A Yeah, because they never did hardly.  
 14 Q Mr. Vance says to you, "Don't worry, when we get back, I'll  
 15 have some money."  
 16 A "There's going to be plenty of money."  
 17 Q Plenty of money? X  
 18 A Yeah.  
 19 Q Mr. Vance never came back, did he?  
 20 A No. I got off work at ten.  
 21 Q So he never came back and gave you any money?  
 22 A No.  
 23 Q Mr. Vance never said he was going to do anything illegal?  
 24 A No, not directly.  
 25 Q So it's your testimony that Mr. Vance said he had a plan. Is

1 that correct?  
 2 A Yeah. He was getting a plan on.  
 3 Q Getting his plan on. Okay, he said nothing about his plan  
 4 being going to rob someone, did he?  
 5 A No.  
 6 Q As a matter of fact, he didn't indicate -- that's all he said,  
 7 correct?  
 8 A That he was getting his plan on.  
 9 Q Yes. So when you testified that, to you, that plan meant to do  
 10 a robbery, you were just speculating, isn't that correct?  
 11 A Did I ever testify that he was doing a robbery?  
 12 Q Is that what you said? That's what I heard you say when you  
 13 were sitting on the stand.  
 14 A Well, that's what *plan on* usually means, doesn't it?  
 15 Q No.  
 16 MS. KEENA: Objection, Your Honor.  
 17 THE COURT: Sustained.  
 18 BY MR. SHANDS:  
 19 Q So is it your testimony here today that if someone says they're  
 20 going to get their plan on, that means to you to do a robbery?  
 21 A Yes.  
 22 Q Now have you had that experience in the past?  
 23 A A robbery?  
 24 Q Or someone saying get their plan on, and then they committed a  
 25 robbery?

1 A Well, that's how people talk, you know.  
 2 Q What people?  
 3 A In general.  
 4 Q Has anyone ever told you, "I am going to get my plan on," and  
 5 you found out that they committed a robbery?  
 6 A Yes.  
 7 Q Okay. Who said that? X  
 8 A Who said what?  
 9 MS. KEENA: Objection, irrelevant, Your Honor.  
 10 MR. SHANDS: Who said --  
 11 THE COURT: Overruled.  
 12 BY MR. SHANDS:  
 13 Q Who told you that they're going to get their plan on and then  
 14 went out and committed a robbery?  
 15 A Mr. Vance.  
 16 Q So you know he committed a robbery?  
 17 A Yes, I believe he did.  
 18 Q You believe he did?  
 19 A Yes.  
 20 Q But you don't have any firsthand knowledge of that? X  
 21 A I wouldn't be here if I didn't believe he didn't.  
 22 Q You don't have any firsthand knowledge of it, do you?  
 23 A Well, on January 3<sup>rd</sup> I got a confession that's exactly what he  
 24 did.  
 25 Q Let's go to January 3<sup>rd</sup>. Now on January 3<sup>rd</sup> you testified, as

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1 you were questioning, he said he shot someone?  
 2 A Um-hum. He said he shot plenty of people.  
 3 Q And he said he put five to the back of the head?  
 4 A Um-hum.  
 5 Q At no point did he ever say "I did a robbery," did he?  
 6 A Well, no.  
 7 Q Okay. Now you are coming up with this story after you talked  
 8 to Officer McManus, isn't that correct?  
 9 A No, that's the way it was on January 3<sup>rd</sup>. That's what he said.  
 10 Q He never said anything about a robbery?  
 11 A No, he said he shot a guy five times in the back.  
 12 Q Okay. Now you testified that you called Officer McManus?  
 13 A Yes, sir.  
 14 Q How do you know Officer McManus?  
 15 A Well, I know Officer McManus and Andy Shoemaker from the  
 16 Minnesota Gang Strike Force.  
 17 Q How do you know them?  
 18 A Because I provided information for them before.  
 19 Q When you provide information for them, isn't it true that they  
 20 give you money for being an informant?  
 21 A Sometimes.  
 22 Q Now at the time that you called them -- this was around  
 23 Christmas time, correct?  
 24 A Yes, sir, it was the day before Christmas. \*  
 25 Q You are working hard, you're trying to get some money to get

*Day before XMAS is 24th  
see page 205*

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1 presents -- Christmas money, correct?  
 2 A Yes.  
 3 Q You testified at the grand jury, is that correct?  
 4 A For the indictment?  
 5 Q At the grand jury, yes.  
 6 A Yes, sir.  
 7 Q Have you had an opportunity to discuss your testimony, to talk  
 8 to anyone from the county attorney's office about your  
 9 testimony?  
 10 A No.  
 11 Q You haven't talked to Ms. Keena at all?  
 12 A No.  
 13 Q Have you had an opportunity to review your grand jury  
 14 testimony?  
 15 A No.  
 16 Q When you asked Mr. Vance about the gun he was very -- you're  
 17 sure he told you that he shot the person five times?  
 18 A Over South Side, yes. It's all on the recorder.  
 19 Q I am asking you, do you remember?  
 20 A Yes.  
 21 Q He said, "Five times on the South Side"?  
 22 A Yes.  
 23 Q And he was very specific about that number?  
 24 A Yes.  
 25 Q Ms. Stites, now the police set up a sting operation. Basically

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1 they got you to ask Mr. Vance for a gun, correct?  
 2 A I bought a gun from him.  
 3 Q That was set up by the police?  
 4 A Yeah.  
 5 Q You didn't go out and buy the gun on your own without the  
 6 police knowing about it?  
 7 A No.  
 8 Q You had a wire on?  
 9 A Yes.  
 10 Q In fact, Mr. Vance sold you a gun?  
 11 A Yes.  
 12 Q You took that gun and you gave it right to the police, correct?  
 13 A Yes.  
 14 Q You have relocated since this event, correct?  
 15 A Yes.  
 16 Q In fact, the police have given you money to help you defer the  
 17 cost of your relocation?  
 18 A Little bit to move, for the general move.  
 19 Q They gave you money for it?  
 20 A Little bit.  
 21 Q Do you know exactly how much they have given you?  
 22 A I think it was for the U-Haul truck, like fifteen hundred.  
 23 MR. SHANDS: Objection, Your Honor.  
 24 A It was fifteen hundred. The U-Haul truck was \$999, plus  
 25 expenses for gas.

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1 Q Did they reimburse your expenses for being here today?  
 2 A Twenty dollars and forty for loss of my wages because of my  
 3 job, because I had to take a week off of work to come here.  
 4 MR. SHANDS: I have no further questions, Your  
 5 Honor.  
 6 MS. KEENA: A few follow-up questions, Your  
 7 Honor.  
 8 **REDIRECT EXAMINATION**  
 9 **BY MS. KEENA:**  
 10 Q Ms. Stites, as far as the money that you received, those were  
 11 purely for relocation costs?  
 12 A Purely.  
 13 Q And did you move out of state?  
 14 A Yes, ma'am.  
 15 Q Why did you move out of state?  
 16 A Because I felt in fear, fear for myself, fear for my family.  
 17 Q So your life was put in an upheaval?  
 18 A It's been for two years.  
 19 MR. SHANDS: Objection, Your Honor.  
 20 THE COURT: Overruled.  
 21 **BY MS. KEENA:**  
 22 Q Is the reason why you went and told Officer McManus about  
 23 what you heard or what Mr. Vance told you at the bar on  
 24 December 22<sup>nd</sup> -- did you go tell Officer McManus that to get  
 25 money?

1 A No.

2 MR. SHANDS: Objection, Your Honor, leading.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 BY MS. KEENA:

6 Q You indicated on cross-examination that Mr. Vance never told

7 you exactly *South St. Paul*?

8 A Yes.

9 Q And the words he used, you said, were *South Side*.

10 A Yes.

11 Q Does the term *South Side* have any meaning for you?

12 A Well, because we both lived in St. Paul, I thought it meant

13 South St. Paul, that's what I thought it meant.

14 MS. KEENA: I have no further questions.

15 MR. SHANDS: Mr. Vance never threatened you,

16 did he?

17 THE WITNESS: No, he is very aggressive, though.

18 MR. SHANDS: Mr. Vance has never threatened

19 you, has he?

20 THE WITNESS: No.

21 MR. SHANDS: No further questions, Your Honor.

22 MS. KEENA: Nothing further, Your Honor.

23 THE COURT: Thank you, Ms. Stites.

24 (Witness excused)

25 MS. KEENA: The state calls Colleen McManus.

1 COLLEEN M. McMANUS,

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

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

4 name, spelling your first and last name.

5 THE WITNESS: Colleen Mary McManus,

6 C-O-L-L-E-E-N M-A-R-Y M-c M-A-N-U-S.

7 THE CLERK: Thank you.

8 THE COURT: Thanks for saying *hello* to me. You

9 didn't do that because I am at a bar every night, did you

10 [laughter]?

11 THE WITNESS: No, sir.

12 DIRECT EXAMINATION

13 BY MS. KEENA:

14 Q Ms. McManus, I would like to draw your attention to December

15 22, 2002. Were you employed at that time?

16 A Yes, ma'am.

17 Q Where were you employed?

18 A At the Buttery Bar.

19 Q Where is that located?

20 A 395 North Robert Street, St. Paul.

21 Q How long had you been employed there up until December

22 22<sup>nd</sup>?

23 A Two years.

24 Q What was your position there?

25 A I was the night manager.

1 Q What hours did you typically work?

2 A 7:00 p.m. to 2:00 a.m.

3 Q And in your position at the Buttery Bar, did you come to know

4 two individuals referred to as Florida and Stacks?

5 A Yes, I did.

6 Q Initially did you know them by their formal names?

7 A Mr. Vance I knew by his name because I had ID'd him and he

8 had a current valid ID.

9 Q The person that you know as Mr. Vance, is he present in the

10 courtroom today?

11 A Yes, he is. He is sitting at that table.

12 MS. KEENA: I would like the record to reflect she

13 has identified the defendant, Philip Vance.

14 THE COURT: Okay.

15 BY MS. KEENA:

16 Q I am going to refer to Stacks as Mr. Johnson. You know him as

17 that now?

18 A Yes.

19 Q How did you come to know Mr. Vance and Mr. Johnson?

20 A They used to come into the bar.

21 Q How often would they come into the bar?

22 A Three or four times a week. Florida, Mr. Vance, was there more

23 than Mr. Johnson.

24 Q Did you work the night of December 22, 2002?

25 A Yes, I did.

1 Q And what hours did you work that night?

2 A I was there at 7:00 p.m. to 8:15, and I had left to go home.

3 And I came back between 10:15 and 10:30 that night until

4 2:00 a.m.

5 Q When you initially arrived at the bar at 7:00, did you see either

6 Mr. Vance or Mr. Johnson at the Buttery Bar?

7 A No, I did not.

8 Q And you indicated -- what time did you leave the bar?

9 A 8:15.

10 Q And you indicated you went where?

11 A Home.

12 Q And at that time, before you left, did you see either Mr. Vance

13 or Mr. Johnson at the Buttery Bar?

14 A No, I did not.

15 Q And when you returned to the bar the second time, did you

16 drive back? Did you drive to the bar?

17 A Yes, I did.

18 Q Would you just please describe what you observed when you

19 were driving back up to the bar?

20 A Mr. Johnson and Mr. Vance were getting out of a car that was

21 on 6<sup>th</sup> Street, between Robert and Minnesota.

22 Q And do you recall what the car looked like?

23 A It was a newer model, four-door car. The street lights down-

24 town are really that orange-yellow, so it kind of distorts some of

25 the colors.

1 MR. SHANDS: Objection, non-responsive.  
 2 THE COURT: Sustained.  
 3 BY MS. KEENA:  
 4 Q Could you describe the color of the car to the best of your  
 5 recollection?  
 6 A Silver, light green.  
 7 Q How is the lighting down by the bar?  
 8 A I cannot give a more definitive answer than what I just gave.  
 9 Q What was the size of the car?  
 10 A It was a midsize car.  
 11 Q And so you saw the two men get out of the car?  
 12 A Correct.  
 13 Q Did you notice anybody else in the car?  
 14 A Just the driver. That was the only other occupant.  
 15 Q And were you able to provide a description at all of the driver?  
 16 A No, I was not.  
 17 Q Do you recall what doors Mr. Vance and Mr. Johnson got out  
 18 of?  
 19 A It was the -- it would be the driver's side. Mr. Johnson was  
 20 getting out of the back and Mr. Vance was already outside of  
 21 the car when I pulled up.  
 22 Q Okay. Did you see where they went, Mr. Vance and Mr.  
 23 Johnson, after you saw them?  
 24 A After I drove away?  
 25 Q Yes.

1 A No.  
 2 Q What did you do next?  
 3 A I went and parked my car and walked along the side of the  
 4 building and looked in the window to see who was there. Then  
 5 I saw Mr. Vance and Mr. Johnson in the bar.  
 6 Q Did you enter the bar?  
 7 A Yes, I did.  
 8 Q What did you do upon entering the bar?  
 9 A I looked around to see who was there. Mr. Vance said, "Don't  
 10 throw me out." And I said, "Well, just a minute, let me go put  
 11 my coat away." And I went to the back, to the office, and put  
 12 away my coat and got ready to start work.  
 13 Q I'm sorry, who said that to you?  
 14 A Mr. Vance.  
 15 Q Was Mr. Vance not to be in the bar?  
 16 A No, he was not.  
 17 Q Why?  
 18 A Previous, a couple weeks before that, he had punched  
 19 somebody.  
 20 Q So you kicked him out?  
 21 A So he was asked to leave.  
 22 Q Did you talk to either Mr. Vance or Mr. Johnson at this point  
 23 when you're coming into the bar?  
 24 A No, I just told them that I would be back and we would talk  
 25 then.

1 Q Do you recall what the two men were wearing that night?  
 2 A Yes, I do.  
 3 Q What were they wearing?  
 4 A Mr. Johnson had a white Doorag (ph) hooded sweatshirt and a  
 5 light blue starter jacket, dark jeans and white tennis shoes.  
 6 Q How about Mr. Vance?  
 7 A Mr. Vance had like a -- looks like a letter jacket, with leather  
 8 sleeves, dark blue, dark pants, he had a dark hooded sweat-  
 9 shirt on. The hood wasn't on. And some new tennis shoes.  
 10 Q Did you eventually come back out and talk to the two men?  
 11 A Yes, I did.  
 12 Q Describe what their demeanor was?  
 13 A They were both very nervous. Mr. Johnson was hanging onto  
 14 Mr. Vance's arm and they were very uncomfortable. They were  
 15 not -- they were real skittery, jittery.  
 16 Q Did you talk to Mr. Vance?  
 17 A Yes, I did.  
 18 Q Where did this conversation take place?  
 19 A It took place in the bar. The way the bar is divided, there is a  
 20 lower bar where the actual bar itself is, there's tables. It was  
 21 up on the partition.  
 22 Q Did you go and talk to Mr. Vance or did he approach you?  
 23 A I went and talked to Mr. Vance.  
 24 Q Why did you go and talk to him?  
 25 A Because I wanted to know what he was doing there when he

1 wasn't supposed to be.  
 2 Q What was the substance of your conversation with Mr. Vance?  
 3 A I asked him what he was doing. He said to me, "Don't throw  
 4 me out. You know, I'm going to be leaving here, and I just  
 5 wanted to come in and talk to the other guys that were sitting  
 6 at the bar."  
 7 Q And did you respond to that?  
 8 A I said -- but he was very, his voice was quaking, he was upset.  
 9 I said, I asked him, "What was wrong?"  
 10 He goes, then, he just said, "I really fucked up this time."  
 11 And I said, you know, "It couldn't have been that bad."  
 12 He said, "Oh, yeah, it was. I really did it this time. I did it this  
 13 time."  
 14 Then someone interrupted our conversation to say something  
 15 to Mr. Vance.  
 16 Q And then did you continue the conversation with Mr. Vance?  
 17 A No, someone had called my attention to another area of the  
 18 bar, and so our conversation was interrupted.  
 19 Q At some point did you have further conversation with Mr.  
 20 Vance?  
 21 A Later on that night.  
 22 Q And what happened in the mean time from the time that you  
 23 were interrupted up until you had another conversation with  
 24 Mr. Vance?  
 25 A There was a gentleman there who was yelling at Mr. Vance,



1 Maynard Cross, he was yelling at him.

2 Q Okay. At this point what was Mr. Vance's demeanor like when

3 he told you that he really fucked up?

4 A He was very upset. I mean at one point I told him he looked

5 like he was going to cry.

6 Q Was he crying?

7 A Not at that time. After I said, "You look like you are going to

8 cry," then he cried.

9 Q Did that seem unusual to you?

10 A Oh, incredibly unusual.

11 Q So did you then engage him in other conversation after seeing

12 that?

13 A Yes. I said, "You know, what could you possibly have done

14 that you had --

15 I said, "You are not yourself."

16 He told me that "he had just really screwed up and he had to

17 get out of here. He had to get out of here. I really fucked up

18 this time."

19 I said, "What could you possibly have done that would have

20 been that bad?" And he goes, you know, he was just bouncing.

21 He couldn't stand in one place. You know, shifting feet and

22 moving around. I said, "What could you have done that was

23 that bad?"

24 He goes, "Well, I didn't mean for it to happen, it wasn't

25 supposed to happen that way."

1 And he put his hand down his coat and came out like this ,

2 (indicating), and went like that a couple times. And I said,

3 "You shot somebody?"

4 He said, "It wasn't supposed to happen like that. It wasn't

5 supposed to happen like that."

6 Q So did you specifically ask him if he shot somebody?

7 A Pardon?

8 Q Did you ask him or --

9 A I said it as a comment. I didn't ask him.

10 I said, "You shot somebody?" and he didn't deny it.

11 Q Did you ask him any details about what had happened?

12 A No.

13 Q Did you give Mr. Vance any free drinks after he told you this?

14 A No.

15 Q Did Mr. Vance and Mr. Johnson leave the bar at some point?

16 A Yes, they did.

17 Q Do you recall what time?

18 A I'd say between 11:00 and 11:30.

19 Q Did you see them again that night?

20 A Yes, they came in sometime after midnight, about, I would say,

21 between 12:15 and 12:30.

22 Q Did you have contact with the two men again when they came

23 back?

24 A Yes.

25 Q What was their demeanor like at that time?

1 A They came in through the skyway door, and Mr. Vance came to

2 the bar and Mr. Johnson went into the bathroom.

3 Q What was Mr. Vance's demeanor?

4 A Well, he was a little more -- he was still very nervous, and he

5 had had -- he smelled of alcohol. He had been drinking,

6 wherever he went after that. And he said he just came in for

7 one more drink, "Could he have one drink before they were

8 going to leave?"

9 Q Did you give him a drink?

10 A No.

11 Q Did you sell him a drink?

12 A No, I did not.

13 Q So was there any further conversation between you and Mr.

14 Vance the second time he came back to the bar?

15 A Yes, I asked him about his plans, you know, how he was going

16 to get out of town the next day. And he gave me an airline and

17 a flight number and told me where he was going.

18 Q Did the two men leave the bar, then, at closing time?

19 A Yes.

20 Q Did you report this conversation to anybody?

21 A Yes, I did.

22 Q Who did you report it to?

23 A To my brother, John McManus.

24 Q And who is John McManus?

25 A John McManus is a St. Paul Police Officer with the Minnesota

1 Gang Task Force.

2 Q When did you call him?

3 A After my first encounter with Mr. Vance when he pulled out his

4 hand, I called my brother.

5 Q Did you see Mr. Vance with a cell phone that evening?

6 A Yes.

7 Q Had you seen him with a cell phone in the past?

8 A Well, he had just gotten a new one a few days before that.

9 Q How did you know that?

10 A Because he brought it up to me and showed it to me.

11 Q Did you ever call him on his cell phone?

12 A Yes, I did.

13 Q When did you call him?

14 A On or about the 23<sup>rd</sup> of December.

15 Q How did that come about?

16 A Detective David Sjogren from the Dakota County Sheriff's Office

17 came to -- met me downtown and we looked at a surveillance

18 tape from the bank across the street because I didn't know who

19 Mr. Johnson's real -- his last name I knew, just by his street

20 name. They took a statement from me and he had asked me to

21 call Florida, And he had that conversation taped.

22 Q Had Mr. Vance given you his cell phone number at some point?

23 A Yes. I would say on or about the 20<sup>th</sup> or 21<sup>st</sup> of December, just

24 a couple days before this happened.

25 Q So were you calling to check on his welfare or why did you?

1 A That was the pretense, yes. And I really was concerned about  
2 him, you know.  
3 Q I would like to draw your attention to later in the week, after  
4 Christmas. After Christmas, but before New Years Eve. Did  
5 you see Mr. Vance in the Buttery during that timeframe?  
6 A No, I did not.  
7 Q Did you see him again after your encounter on the 22<sup>nd</sup>,  
8 or your conversations on the 22<sup>nd</sup>?  
9 A Not until a time that -- I believe it was the 29<sup>th</sup>. It was after  
10 Christmas, but before New Years.  
11 Q On that occasion he came into the bar?  
12 A Yes, he did.  
13 Q What conversation, if any, did you have with him on that  
14 occasion?  
15 A I asked him how his Christmas was and, you know, how his  
16 kids were. And, you know, if he had a nice Christmas. He  
17 said, "Yes, he did." Then he told me what he had gotten his  
18 children for Christmas.  
19 Q And did he tell you how much he had spent on Christmas  
20 presents?  
21 A About four hundred, four hundred fifty dollars.  
22 Q And at that point were you aware of the robbery and homicide  
23 at Sabreen's?  
24 A Yes, I was.  
25 Q And at that point did you engage Mr. Vance in any

1 conversation about the comments he made to you on December  
2 22<sup>nd</sup>?  
3 A No, I did not.  
4 Q Why not?  
5 A Because the police were already investigating it, and he and I  
6 would talk. I didn't want to shut any of that out.  
7 MS. KEENA: I have no further questions, Your  
8 Honor.  
9 THE COURT: Mr. Shands.  
10 MR. SHANDS: Thank you, Your Honor.  
11 **CROSS EXAMINATION**  
12 **BY MR. SHANDS:**  
13 Q Ms. McManus, first you indicated that you saw Mr. Vance sub-  
14 sequent to Christmas in the bar, correct?  
15 A Correct.  
16 Q He came in and he talked to you, correct?  
17 A Yes.  
18 Q But you didn't engage him in any conversation about the  
19 robbery at Sabreen's because you were somebody who he talks  
20 to, correct?  
21 A That is correct.  
22 Q You didn't want to shut that down, correct?  
23 A That is correct.  
24 Q Basically if he told you something about -- if he made an  
25 admission to you about the Sabreen's robbery, you would have

1 told your brother, correct?  
2 A No, sir.  
3 Q You would not have told your brother?  
4 A They had their own investigation. I do like Mr. Vance. I always  
5 have.  
6 Q So if he would have told you something specific about the  
7 robbery, you would have told your brother?  
8 A No, sir.  
9 Q In fact, he never did tell you anything specific about the  
10 Sabreen's robber, correct?  
11 A That's correct.  
12 Q Now you indicated he told you he spent about -- well, after he  
13 comes back into Sabreen's, after Christmas, he told you he  
14 spent four to four hundred fifty dollars on Christmas presents,  
15 is that correct?  
16 MS. KEENA: Objection, Your Honor, that wasn't  
17 the testimony. It's four hundred.  
18 THE COURT: She said four to four fifty, as I recall,  
19 but go ahead. The jury will rely on their own memories.  
20 **BY MR. SHANDS:**  
21 Q He never indicated that was money that he had come about  
22 from robbing Sabreen's Store, did he?  
23 A No, sir.  
24 Q Now you indicated when you were talking to Mr. Vance --  
25 specifically you were engaging about what he had done that

1 was so wrong. And you indicated that he just put his hands in  
2 his pants and kind of raised like this (indicating), and did kind  
3 of a motion. And you said, "You shot someone?" and he didn't  
4 deny it, is that correct?  
5 A No, sir. I said he pulled his hand out of his jacket.  
6 Q Sorry, out of his jacket. Then you said, "You shot someone?"  
7 and is it correct he didn't deny it?  
8 A That is true.  
9 Q But he didn't affirm it either.  
10 A Well, at that point he was crying. I mean, he couldn't--  
11 he was not able to have a conversation.  
12 Q He did not?  
13 A He did not confirm or deny, that is correct.  
14 Q Now you indicated that you were engaged in a conversation  
15 with Mr. Vance and someone interrupted you?  
16 A Correct.  
17 Q Did you know who that person was?  
18 A Yes, I did.  
19 Q Who was that?  
20 A That was Maynard Cross.  
21 Q And you know Mr. Cross?  
22 A Yes, I do.  
23 Q How did he interrupt you?  
24 A He shouted from across the bar to Mr. Vance.  
25 Q Did you make out what he was saying?

1 A Yes, sir.  
 2 Q What did he say?  
 3 A "Quit acting like a crazy motherfucker. Shut your mouth."  
 4 Q Have you known Mr. Vance for a while?  
 5 A Yes, sir.  
 6 Q Isn't it true that Mr. Vance often exaggerates his toughness?  
 7 MS. KEENA: Objection, Your Honor.  
 8 THE COURT: Overruled. Does he exaggerate his  
 9 toughness?  
 10 THE WITNESS: No, sir.  
 11 **BY MR. SHANDS:**  
 12 Q Now you testified on the 23<sup>rd</sup> -- well, you saw Mr. Vance, you  
 13 engaged in a conversation with him, and him and Mr. Johnson  
 14 eventually left the bar, correct?  
 15 A Correct.  
 16 Q At that point you got on the telephone and you called your  
 17 brother, correct?  
 18 A Correct.  
 19 Q Now the following day you called Mr. Vance on his cell phone?  
 20 A Yes.  
 21 Q And was that at the direction of law enforcement?  
 22 A Yes, sir.  
 23 Q Who was at this -- what law enforcement asked you to call Mr.  
 24 Vance?  
 25 A Dakota County.

1 Q Do you remember who it was specifically?  
 2 A Detective Sjogren.  
 3 Q And you indicated that this conversation was tape-recorded?  
 4 A I believe it was.  
 5 Q What would make you believe that it was tape-recorded?  
 6 A The detective had some little device that he was trying to hook  
 7 up, but he'd also taped a conversation with myself.  
 8 Q I'm sorry?  
 9 A He also taped my statement.  
 10 Q Your statement when?  
 11 A The 23<sup>rd</sup>.  
 12 Q When you contacted Mr. Vance -- when you called him on the  
 13 23<sup>rd</sup>, did you get in contact with him?  
 14 A Yes, sir.  
 15 Q So was he in town or did you -- I should ask you, did you ask  
 16 him if he was in town?  
 17 A Yes, I did.  
 18 Q Was he?  
 19 A Yes, he was.  
 20 Q But he had indicated to you the night before that he was going  
 21 to be leaving town, correct?  
 22 A Leaving town.  
 23 Q As a matter of fact, he gave you flight numbers?  
 24 A He told me an airline.  
 25 Q Ms. McManus, do you remember Mr. Johnson during the night

1 of the 22<sup>nd</sup> -- the 22<sup>nd</sup> when at the Buttery, do you remember  
 2 Mr. Johnson seeking money for reimbursement from other  
 3 people for a pack of cigarettes?  
 4 A That was at the end of the night and it was just Mr. Vance and  
 5 Mr. Johnson left in the bar.  
 6 Q Then Mr. Johnson got a pack of cigarettes and he was seeking  
 7 reimbursement for them?  
 8 A They haggled over who was going to pay for them.  
 9 Q Did they also haggle over who was going to pay for drinks?  
 10 A They weren't offered any drinks and they were told they weren't  
 11 going to be able to get any.  
 12 Q Do you know Mr. Vance to smoke cigarettes?  
 13 A I don't recall, no.  
 14 Q Okay.  
 15 MR. SHANDS: I have no further questions, Your  
 16 Honor.  
 17 MS. KEENA: Just a few follow-up, Your Honor.  
 18 **REDIRECT EXAMINATION**  
 19 **BY MS. KEENA:**  
 20 Q You talked about giving a statement to Dave Sjogren. Did he  
 21 take your statement and then you placed the phone call?  
 22 A Yes.  
 23 Q And did he have, like, a little mini-recorder that he was  
 24 recording you with?  
 25 A Yes.

1 Q So you don't know if he actually taped the phone call?  
 2 A No, I do not.  
 3 Q But that's the machine he used?  
 4 A That's the machine he used when he took my statement.  
 5 Q You were asked about hearing Maynard Cross yell something  
 6 across the bar. And I apologize, I didn't get it all down, it was  
 7 "Quit acting like a motherfucker --"  
 8 A Do I have to say it again? "Quit acting like a crazy  
 9 motherfucker."  
 10 Q Did he say anything after that?  
 11 A Yeah, "Don't be a dumb nigger and shut your mouth."  
 12 Q When you came back into the bar, between 10:15 and 10:30  
 13 that you testified to, was Maynard Cross in the bar?  
 14 A Yes, he was.  
 15 Q Did you see Mr. Vance and Mr. Cross engage in any  
 16 conversation?  
 17 A After 10 o'clock?  
 18 Q Yes.  
 19 A When I had come in, they were -- I could see through the  
 20 window. It has windows all along. They were talking to this  
 21 other group of people, and Mr. Cross was in that group.  
 22 Q As to the conversation that you had with Mr. Vance later that  
 23 week, after Christmas, about the Christmas presents and the  
 24 money that was spent, did you ever talk to Mr. Vance about his  
 25 employment?

1 A Yes. And he had just been hired at United Hospital.  
 2 Q When was that?  
 3 A I would say the second week in December. It was the 6<sup>th</sup> of  
 4 December, it was my sister's birthday, and that night I did buy  
 5 him a drink.  
 6 Q And you indicated that had Mr. Vance made comments to you  
 7 about the robbery and homicide at Sabreen's, following your  
 8 initial report to your brother, you indicated that you wouldn't  
 9 have made any further reports to him, correct?  
 10 A Well, correct. That's because I didn't want to interfere. I mean  
 11 here's my brother, a police officer, and I am -- you know, it was  
 12 real complicated.  
 13 Q Why is it complicated? Why wouldn't you do that?  
 14 A I didn't want to, you know, in appearances of impropriety, the  
 15 collusion or -- because my brother is also in the judicial  
 16 practices.  
 17 Q You've got a brother that's a judge in Dakota County?  
 18 A Yes.  
 19 Q So it's your practice to try and --  
 20 A Not have it look too incestuous, you know. But I mean it was.  
 21 Q And you don't want to become a witness in your brother's case?  
 22 A I didn't mind becoming a witness. I just didn't want it to  
 23 appear that there was any kind of setup or coercion or --  
 24 Q So you were taking a hands-off approach?  
 25 A Yes.

1 Q After reporting it on December 22<sup>nd</sup>?  
 2 A Yes.  
 3 MS. KEENA: I have no further questions, Your  
 4 Honor.  
 5 MR. SHANDS: I just have one, Your Honor.  
 6 **RECROSS EXAMINATION**  
 7 **BY MR. SHANDS:**  
 8 Q Ms. McManus, had you told Mr. Vance that your brother was a  
 9 police officer?  
 10 A Yes, he and Mr. Johnson both knew that he was.  
 11 MR. SHANDS: Thank you.  
 12 MS. KEENA: When did you tell them that?  
 13 THE WITNESS: A year ago, before he was -- when  
 14 he was just out of St. Paul, before he went to the Gang Task  
 15 Force. I don't even know if he remembered.  
 16 MS. KEENA: I have nothing further, Your Honor.  
 17 THE COURT: Thank you. Now would be a good  
 18 time to take a break.  
 19 (JURORS EXCUSED)  
 20  
 21 THE COURT: Ms. Keena.  
 22 MS. KEENA: Thank you, Your Honor.  
 23 Ms. McManus just finished testifying, and in speaking with her  
 24 outside of the courtroom, she indicated to me -- the point  
 25 being, one of the questions that had arisen was the issue about

1 the four hundred -- between the four hundred and four  
 2 hundred fifty dollars that Mr. Vance told her he had spent on  
 3 Christmas presents.  
 4 I then inquired about whether he had talked to her  
 5 about employment, and Ms. McManus in her testimony made it  
 6 sound as if he had obtained employment on December 6<sup>th</sup> and  
 7 then he was employed up until the time that they had  
 8 conversation.  
 9 When we left the courtroom, the witness chided me  
 10 for not asking the follow-up question. She said that Mr. Vance  
 11 had told her that he had quit three days later. So that would  
 12 be her testimony, and it's an important point that the state  
 13 needs to make. If we don't do it this way, then the state would  
 14 intend on subpoenaing his employment records.  
 15 MR. SHANDS: Your Honor, we object to recalling  
 16 Ms. McManus. If my recollection serves me correct, she did not  
 17 mention employment and result to a question. That was  
 18 something that she coffered on her own.  
 19 THE COURT: She was asked. I forget who had  
 20 asked it.  
 21 MS. KEENA: I asked her.  
 22 MR. SHANDS: But, anyway, we object to it, Your  
 23 Honor.  
 24 THE COURT: Well, as long as she is still here --  
 25 I don't think anybody is prejudiced by it. I will let you recall

1 her.  
 2 MS. KEENA: We can go off the record now and  
 3 talk about the schedule for this afternoon.  
 4 (OFF RECORD DISCUSSION)  
 5  
 6  
 7  
 8 THE COURT: Mr. Rush, I know you mentioned to  
 9 Toni, our court attendant, that you didn't realize at the time --  
 10 frankly, I never made the connection either -- but you know  
 11 Judge McManus?  
 12 JUROR: Yes, I do.  
 13 THE COURT: Does anybody want to ask Mr. Rush  
 14 about it?  
 15 MR. SHANDS: Sure, Your Honor.  
 16 **BY MR. SHANDS:**  
 17 Q Mr. Rush, is there anything about your relationship with Judge  
 18 McManus that now, sitting in retrospect hearing some  
 19 testimony from his sister, is there anything about the  
 20 relationship between you and Judge McManus that would  
 21 come into play in your deliberations in this case?  
 22 A No, I just wanted to make you aware of it because I mentioned  
 23 earlier that I knew another attorney, so I wanted to bring it up  
 24 so that everybody was aware of it. That's all.  
 25 THE COURT: Ms. Keena, anything?

1 MS. KEENA: You are just being cautious?  
 2 JUROR: Yes.  
 3 MS. KEENA: I have nothing further.  
 4 MS. KEENA: Get the other jurors now.  
 5  
 6 \* \* \*  
 7  
 8 THE COURT: Have a seat. Ms. Keena.  
 9 MS. KEENA: Thank you, Your Honor. The state  
 10 recalls Colleen McManus.  
 11 **REDIRECT EXAMINATION (CONTINUED)**  
 12 **BY MS. KEENA:**  
 13 Q Ms. McManus, after you got off the stand previously, you and I  
 14 had a conversation, is that correct?  
 15 A That's correct.  
 16 Q And when I asked you about Mr. Vance's employment, do you  
 17 recall what you indicated?  
 18 A That he had just gotten a job at United Hospital.  
 19 Q And what was the date that you recalled that he got that job?  
 20 A December 6<sup>th</sup>.  
 21 Q Do you know how long he held that job?  
 22 A Four days.  
 23 Q How do you know that?  
 24 A Because that following week is my birthday and I had seen him  
 25 at a time where he should have been working. And I asked him

1 why he was not at work. He said he was no longer there.  
 2 Q Do you have any knowledge if he had any employment around  
 3 Christmas time?  
 4 A He was not employed.  
 5 Q How do you know that?  
 6 A Because I would see him at all hours.  
 7 MS. KEENA: I have no further questions, Your  
 8 Honor.  
 9 MR. SHANDS: I have no questions, Your Honor.  
 10 THE COURT: You can leave again. Thank you.  
 11 (Witness excused)  
 12 MS. KEENA: Your Honor, the state would call  
 13 Andy Shoemaker.  
 14 **ANDREW SHOEMAKER,**  
 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 Andrew Shoemaker,  
 19 S-H-O-E-M-A-K-E-R.  
 20 THE CLERK: Thank you.  
 21 **DIRECT EXAMINATION**  
 22 **BY MS. KEENA:**  
 23 Q Where are you currently employed?  
 24 A I am employed by the City of St. Paul as a police officer. I am  
 25 currently assigned to the Minnesota Gang Strike Force as an

1 investigator.  
 2 Q How long have you been a police officer?  
 3 A Almost 20 years. I am in my 19<sup>th</sup> year.  
 4 Q Have you spent your entire career at St. Paul?  
 5 A I have not. I was previously employed by the Stillwater Police  
 6 Department from 1985 until 1990. I came to St. Paul in 1990.  
 7 Q Are you currently a licensed peace officer in the state of  
 8 Minnesota?  
 9 A Yes, I am.  
 10 Q And you have been since 1985?  
 11 A That's correct.  
 12 Q Has your agency been assisting in the investigation of the  
 13 robbery-homicide at Sabreen's?  
 14 A Yes, we have.  
 15 Q Were you employed in your current position on January 3,  
 16 2003?  
 17 A Yes.  
 18 Q On that date were you involved in an undercover operation  
 19 involving Melissa Stites?  
 20 A Yes, I was.  
 21 Q Did you meet with Ms. Stites and discuss the operation with  
 22 her?  
 23 A Yes, I did.  
 24 Q What was the purpose of the operation?  
 25 A The purpose of the operation was to have Ms. Stites meet with

1 two persons that she had provided us with information on as  
 2 possible suspects in the Sabreen robbery-homicide. Also, the  
 3 purpose was for her to discuss with these parties whether or  
 4 not they had any guns. And if so, if they did possess guns,  
 5 what type they were, gather as much intelligence as possible,  
 6 and maybe lay the groundwork for some further options,  
 7 possibly obtaining one of those firearms.  
 8 Q And so did you discuss with Ms. Stites types of questions that  
 9 she should ask Mr. Vance?  
 10 A Yes, we did. We discussed a number of options. We had to  
 11 give her a number of different rules, ground rules, to work by,  
 12 safety considerations. But most of our briefing was directed at  
 13 what types of things she should probe, which areas she should  
 14 go as far as questions, what kind of things we wanted her to  
 15 learn from the two suspects.  
 16 Q And was Ms. Stites wired for sound?  
 17 A Yes, she was.  
 18 Q Prior to this undercover operation, did you know who Philip  
 19 Vance was?  
 20 A Yes, I was aware of who Philip Vance was, through my partner  
 21 and my current assignment, John McManus. Investigator  
 22 McManus had talked to me previously about Mr. Vance.  
 23 Q Did you participate in the actual surveillance of Ms. Stites and  
 24 Mr. Vance that night?  
 25 A Yes, I did.



ANDREW SHOEMAKER - DIR.

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1 Q And were you able to monitor the conversation between Ms.  
2 Stites and Mr. Vance?  
3 A Yes, I did. I had a monitor tuned to the frequency of the  
4 transmitter and monitored the entire operation.  
5 Q Could you just kind of go through what happened that night as  
6 far as -- starting from when Ms. Stites initially met with Mr.  
7 Vance, where that occurred, and walk us through that.  
8 A Okay. Ms. Stites advised me earlier in the evening that Philip  
9 Vance had stopped by her place of employment and agreed to  
10 meet with her at the Buttery Bar. The Buttery is located at  
11 Sixth and Robert, Downtown St. Paul. And that they were to  
12 meet at about 10:30 p.m. that evening.  
13 It was our plan to get her down to the Buttery Bar by  
14 about 10:30 that evening. As it worked out, she had some  
15 duties where she worked, that she had to wrap up before she  
16 could leave. So we met with her initially at 10:00 p.m., but she  
17 didn't get down to the Buttery until about quarter after 11:00,  
18 about 11:15, or thereabouts, that evening.  
19 We followed her from our meeting point to the Buttery  
20 Bar, watched her park the car, watched her walk inside. We  
21 had specifically given her some instructions on maybe where to  
22 try to position herself within the bar.  
23 And she almost immediately, upon entering and moving  
24 to the area where we told her to go, she was approached by two  
25 parties we recognized to be Philip Vance and Mr. Johnson.

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1 Q And did they go into the Buttery together?  
2 A No, she went into the Buttery alone and almost immediately  
3 was met by them inside the bar. So they had already been  
4 inside.  
5 Q So you were hearing this?  
6 A Yes. The position she took was near the corner of -- that would  
7 be the southwest corner of Robert and Sixth Street. And  
8 there's some large plateglass windows where you can actually  
9 see quite a bit of the bar. That was the area she initially went  
10 to and we could actually see her meet with these people.  
11 Q Did they leave the Buttery at some point?  
12 A Yes. That was -- well, at one point she called us from the bar  
13 to talk to Investigator McManus, and said that Mr. Vance  
14 wanted to leave the bar and go to another bar in the downtown  
15 area, lowertown area, called The Lab, also known as Fourth  
16 Street Station.  
17 And she wanted to know if that would be safe to do so.  
18 We advised her that, yes, it would. She could leave that bar, go  
19 with Vance to another bar, and that we would be providing  
20 constant surveillance and backup to her.  
21 Q Did they go to The Lab?  
22 A Yes, they left and arrived at The Lab at approximately twelve --  
23 about 12:19 p.m.  
24 Q Did Mr. Johnson go with them?  
25 A No, he did not. He stayed at the Buttery.

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1 Q During your surveillance of Ms. Stites and Mr. Vance, did you  
2 hear any conversation between the two regarding guns?  
3 A Yes, I did.  
4 Q What was said in that regard?  
5 A At approximately 12:45 a.m., Ms. Stites started to question  
6 Vance about firearms. She asked him if he owned any guns --  
7 asked Vance if he owned any guns and if he would be willing to  
8 teach her how to shoot. Vance immediately said that he did in  
9 fact own four guns and that he would be willing to teach her  
10 how to shoot.  
11 Q Was there any other conversation about firearms?  
12 A Yes. Ms. Stites asked Vance if he had ever used a firearm,  
13 had to shoot anybody. And Vance replied, "Yes, about two  
14 weeks ago over south, Boo." That's what he said to her about  
15 shooting someone. At that point, Ms. Stites asked him, "What  
16 did you do? What happened?"  
17 He replied that, "I shot a guy in the back five times."  
18 "I had to shoot a guy in the back five times."  
19 Ms. Stites asked him if at any point he stopped to see if the guy  
20 was dead or alive?  
21 He said, "No, I just kept going."  
22 \* Following that comment, Vance also told Ms. Stites that he's  
23 had to shoot at quite a few people previously.  
24 Q Were you able to record any of this conversation?  
25 A No. We initially intended to record this conversatio, but

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1 immediately at the Buttery and then through the night, over to  
2 the Lab, Fourth Street Station, the background noise was so  
3 loud and it was so much interfering, that it was difficult at  
4 points to hear the conversation.  
5 From past experience in similar situations as this, we  
6 recognized right away that a tape would not be possible, where  
7 you could actually hear the conversation on a tape-recorder.  
8 Just a lot of background noise, voices yelling and shouting,  
9 music, just a lot of noises and some distortion or static in the  
10 transmitter itself would make it impossible to receive any kind  
11 of quality recording -- or make any quality recording that night.  
12 Q Were you able to hear clearly this part of the conversation?  
13 A Yeah, the part that I've testified here to, as far as the questions  
14 about the firearms, the weapons, at that point that occurred in  
15 The Lab or Fourth Street Station. At that point my signal was  
16 clear and I could very clearly hear that conversation.  
17 Q Where were you positioned at this point outside of the bar?  
18 A Fourth Street Station is at the northeast corner of Fourth and  
19 Sibley and it's called the Lower Town area of St. Paul, kind of a  
20 warehouse looking building there. I was parked in a vehicle  
21 approximately 200 to 250 feet directly east of the main  
22 entrance.  
23 There is a multi-level parking ramp, and I pulled into the  
24 parking ramp and I moved to the top, which I believe is three  
25 floors up in the parking ramp. On the top of the parking ramp

1 there's nothing above me, no other physical structure, and that  
 2 would be the best place in that ramp to receive on the top  
 3 versus having another level above you.  
 4 Q Was there anybody in the vehicle with you? Were you  
 5 partnered with anybody?  
 6 A No.  
 7 Q And that's your recollection of the conversation that occurred  
 8 regarding firearms?  
 9 A That's correct.  
 10 MS. KEENA: I have no further questions, Your  
 11 Honor.  
 12 MR. SHANDS: Just briefly, Your Honor.  
 13 CROSS EXAMINATION  
 14 BY MR. SHANDS:  
 15 Q Officer Shoemaker, did you tape the conversation then after  
 16 replaying it or listening to it and found that it was inaudible,  
 17 just kind of discard the tape as being inaudible? Or, did you  
 18 just make a decision -- did you tape it at all?  
 19 A No, I did not. I had a tape with, but immediately decided that  
 20 it would not be of quality enough to produce a tape. So I did  
 21 not tape anything that night.  
 22 Q So when you say the reason the quality wasn't going to be good  
 23 is because there is static in the receiver, correct?  
 24 A That was one of the reasons. There was some static at certain  
 25 points within the evening.

1 Q There was background music?  
 2 A Yes.  
 3 Q Background noise in general?  
 4 A Yes.  
 5 Q That was playing also while you were listening?  
 6 A That's correct.  
 7 Q Now Mr. Vance specifically said that he had to put five in the  
 8 back of someone over south, is that correct?  
 9 A He specifically mentioned five shots, that's correct.  
 10 Q Okay. Did he mention the back?  
 11 A Yes.  
 12 Q And south?  
 13 A Over south. That's correct.  
 14 Q He did not say South St. Paul?  
 15 A No, he did not.  
 16 Q He did not say Sabreen's Grocery Store either?  
 17 A No.  
 18 Q Now one of the things you were hoping for when you set up this  
 19 sting was basically that Mr. Vance would give you the weapon  
 20 that was used in the Sabreen's homicide?  
 21 A That would be one of the possibilities we were looking for, yes.  
 22 Q Did you actually have contact with Ms. Stites after her  
 23 encounter with Mr. Vance?  
 24 A Yes, we debriefed her at some point in the evening when the  
 25 detail was ended.

1 Q And she gave you a gun that Mr. Vance gave her?  
 2 A No, not on this evening.  
 3 Q Okay. Mr. Vance had indicated he had shot a few people, is  
 4 that correct?  
 5 A He said that he had shot at many people previously.  
 6 Q All right. Did you do any independent investigation to confirm  
 7 or deny that? Or disprove that?  
 8 A About all we had at this point would be to look at his criminal  
 9 record. We had not had any other leads showing that he had  
 10 shot at anybody at this time.  
 11 MR. SHANDS: We have no further questions, Your  
 12 Honor.  
 13 MS. KEENA: Just a couple follow-up questions,  
 14 Your Honor.  
 15 REDIRECT EXAMINATION  
 16 BY MS. KEENA:  
 17 Q You were asked about hoping to purchase the murder weapon  
 18 and you said that was one of the possibilities. What other  
 19 possibilities were you hoping for that night?  
 20 A There were a number of things we were hoping to obtain,  
 21 possible admission. That he had in fact shot someone at the,  
 22 you know, at Sabreen's Market. That he had been involved in  
 23 other shootings that we could investigate, some specifics of  
 24 that.  
 25 Maybe that he would mention a particular caliber of

1 weapon used in a shooting. You know, there was quite a few  
 2 different things we were hoping for that night. Something to  
 3 further -- to give us further leads to go on for the investigation.  
 4 Q You indicated about the two different nights. There actually  
 5 was a subsequent meeting between Ms. Stites and Mr. Vance,  
 6 is that correct?  
 7 A Yes, that's correct, on January 7<sup>th</sup>.  
 8 Q Did she purchase a gun from him on that night?  
 9 A Yes, she did obtain a firearm she purchased from Mr. Vance on  
 10 that night.  
 11 Q Do you recall what type of firearm that was?  
 12 A The firearm was a -- I believe it to be a Browning semi-  
 13 automatic pistol, .22 caliber firearm. It was unloaded with no  
 14 magazine.  
 15 MS. KEENA: I have no further questions, Your  
 16 Honor.  
 17 MR. SHANDS: Just briefly.  
 18 RECROSS EXAMINATION  
 19 BY MR. SHANDS:  
 20 Q You didn't do any testing on that gun to see if in fact it was the  
 21 gun used at the Sabreen's crime scene?  
 22 A No, I did not. I am not anywhere trained in that area of  
 23 ballistics.  
 24 Q Okay. Do you know the answer, do you know if it was sent to  
 25 be tested?

1 A To my knowledge, yes, the firearm was tested.  
 2 Q Do you know what the results were of that test? Was it the  
 3 firearm used?  
 4 MS. KEENA: Objection, Your Honor, foundation.  
 5 THE COURT: Well, just ask him if he knows. Do  
 6 you know?  
 7 THE WITNESS: Yes. My understanding --  
 8 THE COURT: Wait.  
 9 THE WITNESS: Yes.  
 10 MR. SHAND: What was the conclusion?  
 11 MS. KEENA: Objection, foundation.  
 12 THE COURT: Why don't you come up?  
 13 (OFF RECORD DISCUSSION)  
 14 MS. KEENA: You know what, it doesn't matter. I  
 15 withdraw my objection.  
 16 THE COURT: Thanks. What was the result?  
 17 THE WITNESS: I'm sorry?  
 18 THE COURT: What was the result of the testing?  
 19 THE WITNESS: I have not formerly read any test  
 20 results, or anything, but my understanding is that the firearm  
 21 did not match the ballistics of the weapon in the crime scene.  
 22 MR. SHANDS: I have no further questions, Your  
 23 Honor.  
 24 MS. KEENA: Nothing further.  
 25 (Witness excused)

1 MS. KEENA: The state calls Sandra Kennedy.  
 2 **SANDRA KENNEDY.**  
 3 being duly sworn, was examined and testified as follows:  
 4 THE CLERK: For the record, please state your full  
 5 name, spelling your last name.  
 6 THE WITNESS: Sandra Lynn Kennedy,  
 7 K-E-N-N-E-D-Y.  
 8 THE CLERK: Thank you.  
 9 **DIRECT EXAMINATION**  
 10 **BY MS. KEENA:**  
 11 Q What's your current position?  
 12 A I am a St. Paul Police Officer currently assigned to the  
 13 Minnesota Gang Strike Force as an investigator.  
 14 Q How long have you been a St. Paul police officer?  
 15 A Approximately ten years.  
 16 Q I'm sorry?  
 17 A Ten years.  
 18 Q What are your duties in your current assignment?  
 19 A In my current assignment I deal with any crime involving gang  
 20 members, anything from contact on the streets with them to  
 21 reading reports and categorizing them as gang members,  
 22 undercover details, narcotics buys, homicides, robberies, agg  
 23 assaults, anything to do with gang involvement.  
 24 Q And you are obviously a licensed peace officer?  
 25 A Yes, I am.

1 Q How long have you--  
 2 MR. SHANDS: Objection.  
 3 THE COURT: Why don't you approach.  
 4 (OFF RECORD DISCUSSION)  
 5 **BY MS. KEENA:**  
 6 Q Officer Kennedy, how long have you been a licensed police  
 7 officer in the state of Minnesota?  
 8 A Ten years.  
 9 Q So all your time has been spent in St. Paul?  
 10 A Excluding the last three years as Minnesota Gang Strike Force.  
 11 It permits me to go statewide.  
 12 Q Okay. Were you employed in your current position on January  
 13 3rd, 2003?  
 14 A Yes, I was.  
 15 Q And it's my understanding that you got brought into the  
 16 investigation based on John McManus's connection with one  
 17 of the witnesses, Colleen McManus?  
 18 A Yes.  
 19 Q On the date of January 3, 2003, were you involved in an  
 20 undercover operation involving Melissa Stites?  
 21 A Yes, I was.  
 22 Q And what involvement did you initially play in setting that up?  
 23 A In the initial involvement it was arranged that Investigator  
 24 Shoemaker, Investigator McManus and myself would go and  
 25 pick up the CRI known as Melissa at her place of employment.

1 So we went to pick her up. She was still working at that time,  
 2 so we had to wait until she got off of work. And we spoke with  
 3 her a little bit on what would be expected of her and how to  
 4 act, and basically putting the transmitter, the mike, the bug on  
 5 her body, the different things to look for. So we briefed her on  
 6 that, and we waited for her to get off of work. I think it was  
 7 about 10:30 when she got off of work.  
 8 Q So were you one of the officers that, then, initially met with  
 9 her? Did you put the wire on her?  
 10 A Myself, Investigator Shoemaker and Investigator McManus met  
 11 her at the hotel. I drove back with Melissa and Investigators  
 12 McManus and Shoemaker followed us to headquarters. Once  
 13 we got to headquarters, I was the one who put the transmitter  
 14 on her, yes.  
 15 Q You knew what the purpose of the undercover operation was?  
 16 A Yes, I did.  
 17 Q What was your understanding?  
 18 A The understanding was to have the person involved in a  
 19 possible homicide admit to the homicide or the involvement in  
 20 the homicide.  
 21 Q Were you involved in instructing Ms. Stites on the types of  
 22 questions to ask or was that more Investigator Shoemaker?  
 23 A That would be Investigator Shoemaker.  
 24 Q Did you know who the subject was of your undercover  
 25 surveillance aside from Ms. Stites? Did you know the other

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1 person?  
 2 A The other person that we were looking for, yeah, Vance Philips.  
 3 Yes, and we were shown a picture of him before we went in.  
 4 Q Did you participate in the actual surveillance?  
 5 A Of that night, yes, I did.  
 6 Q Were you also monitoring the conversations that Ms. Stites  
 7 had?  
 8 A Yes, I did.  
 9 Q Did you see Ms. Stites meet up with Mr. Vance that night?  
 10 A When we left, we got to the Buttery at approximately quarter  
 11 after 11:00, and we were parked just east of the Buttery so we  
 12 had the view of her going into the bar. So we observed her  
 13 going into the bar. We were informed later, through phone  
 14 calls to Investigators McManus and Shoemaker, that they were  
 15 inside of the bar. So did I see her with him? No, I did not, but  
 16 we could monitor through the bug that she was talking to him.  
 17 Q So you could hear their conversation? X  
 18 A Yes, we could hear the conversation and she comes back to us  
 19 and she tells us that that's who she's talking to.  
 20 Q Did Ms. Stites leave the Buttery?  
 21 A She left the Buttery at -- she informed us that Vance wanted to  
 22 leave and wanted to go to another bar, so that was at about ten  
 23 -- I believe that was about ten after 12:00 that she left the  
 24 Buttery with Vance. And we followed them from the Buttery to  
 25 another bar called The Lab.

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1 Q And did the two of them go into The Lab?  
 2 A Yes, we set up, we followed them all the way over. We parked  
 3 and we watched the two of them both walk into the bar  
 4 together. And, yeah, we watched them walk into the bar.  
 5 Q During your surveillance did you hear any conversation  
 6 between Mr. Vance and Ms. Stites regarding guns?  
 7 A Yes, we did.  
 8 Q And where were they when that conversation was occurring?  
 9 A They were inside of the bar. We could not see them, but they  
 10 were inside of the bar, and I was in the vehicle with Sergeant  
 11 Pyka. I was taking notes as things were said over the  
 12 microphone.  
 13 Q And what do you recall that was said during that conversation  
 14 about guns?  
 15 A CRI Melissa informed Vance that she owned a gun, but she  
 16 didn't know how to shoot the gun. Vance in return said that  
 17 he owned four guns. She said, "Have you ever shot  
 18 somebody?"  
 19 And Vance in return says, "Two weeks ago Winchester on the  
 20 south side."  
 21 She says, "What happened?"  
 22 He returns in saying, "I shot a guy five times in the back."  
 23 She said, "Did you see if he was dead?"  
 24 He said, "Nope. I got out of there."  
 25 Then she said -- she again referred to that she wanted to know

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1 how to shoot the gun.  
 2 He said that he goes down by the railroad tracks in St. Paul.  
 3 He goes down by the railroad tracks, and that's where he  
 4 shoots his guns off.  
 5 Q Did the two eventually leave The Lab?  
 6 A The two left the lab. I did not document what time they left  
 7 The Lab, but I am guessing approximately, maybe ten after  
 8 1:00 that they left The Lab.  
 9 Q And do you know where they went?  
 10 A We followed them over to 956 Minnehaha.  
 11 Q And that's in St. Paul?  
 12 A Yes.  
 13 Q Do you know who resides there?  
 14 A I know from previous experience, I know a Kevin Anthony  
 15 resides there. So probably the Anthony family does. I know  
 16 his grandparents live there.  
 17 Q And were you able to hear the conversation clearly that night?  
 18 A It was a little distorted, especially when she was in the Buttery.  
 19 When we got over to the Lab, with the music in the back, it was  
 20 loud, but you could still pick up what was being said.  
 21 MS. KEENA: I have no further questions, Your  
 22 Honor.  
 23 MR. SHANDS: We have no questions, Your Honor.  
 24 THE COURT: Thank you.  
 25 (Witness excused)

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JOHN PYKA,

being duly sworn, was examined and testified as follows:

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

THE WITNESS: John Elmer Pyka, P-Y-K-A.

THE CLERK: Thank you.

MR. SHANDS: May we approach, Your Honor?

THE COURT: Yes.

(OFF RECORD DISCUSSION)

DIRECT EXAMINATION

BY MS. KEENA:

Q Good afternoon.

A Good afternoon.

Q Where are you currently employed?

A Well, I am a sergeant with the St. Paul Police Department on assignment to Minnesota Gang Strike Force.

Q How long have you been a peace officer?

A Since -- I started in June of 1984 at Austin, Minnesota. Then in December of 1984 I started in St. Paul.

Q Are you a licensed peace officer in Minnesota?

A Yes, ma'am.

Q And have been since 1984?

A Yes, ma'am.

Q And has your department been assisting South St. Paul in the investigation of a robbery and homicide at Sabreen's?

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1 A Yes, ma'am.  
2 Q Were you employed in your current position on January 3,  
3 2003?  
4 A Yes, ma'am.  
5 Q On that date were you involved in an undercover operation  
6 involving Melissa Stites?  
7 A Yes, ma'am.  
8 Q And there have been witnesses in before you that have kind of  
9 set up the scene for us. Getting to the point where Mr. Vance  
10 and Melissa Stites were in the Buttery, where were you  
11 positioned?  
12 A I was parked in a car with Officer Kennedy on Sixth, facing  
13 westbound looking at the Robert and Sixth, the front of the  
14 bar.  
15 Q Are you familiar with Dominic Johnson?  
16 A Yes.  
17 Q Did you see him that evening?  
18 A I don't think I saw him that evening.  
19 Q Did Ms. Stites eventually leave the Buttery?  
20 A Yes.  
21 Q And who left with her?  
22 A Philip Vance.  
23 Q And do you know where they went?  
24 A Yes. We followed them over to a bar, I think it's called *The Lab*.  
25 Q And were you monitoring conversations between Ms. Stites and

JOHN FYKA

1 Mr. Vance?  
2 A Yes.  
3 Q During your surveillance did you hear any conversation  
4 between Mr. Vance and Ms. Stites regarding guns?  
5 A Yes.  
6 Q What was said in that regard?  
7 A Well, it was when they were in the bar, in the -- she was talking  
8 about she wanted to buy a gun, but she didn't know how to  
9 shoot the gun. Then he said he could teach her. Then he was  
10 also -- he was telling her that he was a drug dealer at the  
11 Buttery and at The Lab.  
12 She asked him something about the last time he used it.  
13 He said it was like a couple weeks ago on the south side.  
14 He said something about a ~~Winchester~~, and then he said  
15 he *shot somebody five times in the back*.  
16 Q And you indicated there was something said about a  
17 Winchester?  
18 A Yes.  
19 Q Do you recall in what portion of his statement that came out  
20 in?  
21 A Well, it was the whole sequence. She's talking about buying a  
22 gun, but needs to learn how to shoot. He already talked some-  
23 thing about being a drug dealer down at those bars. Then she  
24 asked him something about "Have you ever used it or shot  
25 anybody?" And that's when he starts telling her, "Yeah, he

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1 shot somebody in the south side five times and it was a  
2 Winchester.  
3 Q Did he indicate a timeframe, how long ago that happened?  
4 A Without looking at the report, I think he told her *two weeks*  
5 *ago*.  
6 Q Was there any other conversation?  
7 A Yeah, he was telling her where he goes and shoots by some  
8 pathways by some train tracks, and that he was going to teach  
9 her how to shoot.  
10 Q Did they eventually leave the Lab?  
11 A Yes, ma'am.  
12 Q Did they leave together?  
13 A Yes, ma'am.  
14 Q Did you follow them?  
15 A Yes, we did.  
16 Q Did you see where they went?  
17 A Yes, they parked on -- I have to look at my report. It was like  
18 956 East Minnehaha, I think was the address.  
19 Q Sitting here today, do you know who lives there?  
20 A I thought some relatives of Philip Vance lived there. I have  
21 been there a few times over the last year and a half on different  
22 things.  
23 Q Does the name Kevin Anthony mean anything to you?  
24 A Yes, Kevin Anthony --  
25

MR. SHANDS: Objection, Your Honor, leading.

DAVID NYGREN

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1 THE COURT: Overruled.  
2 THE WITNESS: Kevin Anthony was living there, I  
3 don't know if he does now or not.  
4 BY MS. KEENA:  
5 Q Did you know if he was living there at the time?  
6 A I don't recall.  
7 MS. KEENA: I have no further questions, Your  
8 Honor.  
9 MR. SHANDS: I have no questions, Your Honor.  
10 THE COURT: Thanks.  
11 (Witness excused)  
12 MS. KEENA: The state calls Dave Nygren.  
13 DAVID NYGREN,  
14 being duly sworn, was examined and testified as follows:  
15 THE CLERK: For the record, please state your full  
16 name, spelling your last name.  
17 THE WITNESS: David Scott Nygren, N-Y-G-R-E-N.  
18 THE CLERK: Thank you.  
19 DIRECT EXAMINATION  
20 BY MS. KEENA:  
21 Q Good afternoon. Where are you currently employed?  
22 A I am employed with the Department of Justice, Federal Bureau  
23 of Alcohol, Tobacco, Firearms and Explosives, ATF.  
24 Q What is your position there?  
25 A My current assignment is Special Agent and Criminal



DAVID NYGREN

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1 Investigator.

2 Q What type of licensures do you hold?

3 A I have been employed with ATF for approximately fourteen

4 years. Prior to coming with ATF, I attended the National

5 Academy down in Glencoe, Georgia for a period of nineteen

6 weeks.

7 Q In your current position, have you been assisting in the

8 investigation of the robbery-homicide at Sabreen's?

9 A Yes.

10 Q Were you employed in your current position on January 3,

11 2003?

12 A Yes, I was.

13 Q On that date, were you involved in an undercover operation

14 involving Melissa Stites and Philip Vance?

15 A Yes, as part of my assignment to the Gang Strike Force, I was

16 out there assisting with the surveillance.

17 Q Initially, we've had previous witnesses that have come in and

18 testified about the setup of the operation. Were you positioned

19 outside of the Buttery Bar?

20 A I was positioned down the street from the Buttery Bar, yes.

21 Q And were you monitoring the conversation between Ms. Stites

22 and Mr. Vance?

23 A Yes, I was.

24 Q At some point did Ms. Stites and Mr. Vance leave the Buttery?

25 A Yes, they did.

DAVID NYGREN

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1 Q Where did they go to?

2 A To a bar on Fourth and Sibley known as *The Lab*. Now I

3 believe it's called the Fourth Street Station.

4 Q Were you monitoring their conversations this entire time?

5 A Yes.

6 Q Was there anybody -- were you in your own car?

7 A I was, yes.

8 Q Was there anybody with you?

9 A There was another investigator with the Minnesota Gang Strike

10 Force, he was a St. Paul police officer.

11 Q Do you recall his name?

12 A Officer Frank Verdaya (ph). -- X' X'

13 Q Did Ms. Stites and Mr. Vance go into *The Lab*?

14 A Yes, they did.

15 Q While they were in *The Lab*, did you hear any conversation

16 between the two regarding guns?

17 A Yes.

18 Q What was the substance of that conversation?

19 A Ms. Stites was asking Mr. Vance about getting a firearm. And

20 she asked him if he owned any firearms, to which he replied

21 that he had owned four guns.

22 Ms. Stites asked if he might teach her how to shoot a handgun

23 sometime. They talked about that.

24 She had asked him if he ever shot a gun. He said he had. His

25 response was that he had shot a guy five times in the back on

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1 the south side.

2 And she asked him what he did, if he checked to see if the

3 person was okay.

4 He said, "No, he got out of there."

5 And he also told her he shoots all the time down by the railroad

6 tracks.

7 Q When Mr. Vance was making these comments about having

8 shot someone, did he indicate a time period as to when that

9 had occurred?

10 A Yes, he said "I shot a guy two weeks ago on the south side.

11 MS. KEENA: I have no further questions.

12 MR. SHANDS: No questions, Your Honor.

13 THE COURT: Thank you.

14 (Witness excused)

15 MS. KEENA: May we approach, Your Honor?

16 THE COURT: You may.

17 (OFF RECORD DISCUSSION)

18 THE COURT: Go home, but don't talk about it.

19 (JURORS EXCUSED)

20 THE COURT: Let's make a record of the Gang

21 Strike Task Force. There was a motion made by the defense for

22 an Order prohibiting any testimony regarding street gang

23 affiliation of defendant. That was granted.

24 There has been no such evidence other than -- I

25 mean nobody has testified that Mr. Vance is a gang member or

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1 is affiliated with a gang. But maybe the impression is there,

2 since members of the Gang Strike Task Force have testified.

3 Ms. Keena, did elicit from Sandra Kennedy that her

4 involvement from the case stemmed from McManus's

5 involvement with witnesses. So I leave it to you. I know you

6 asked for a cautionary instruction, and I don't know, maybe it's

7 best to leave it alone. Maybe I'll tell the jury this is not a gang

8 investigation and leave it at that.

9 MR. SHANDS: Your Honor, with Officer Kennedy it

10 was not only that she said "I work for the Gang Task Force,"

11 she was pretty strong in indicating the only time she's involved

12 is when there is gang activity or when a gang member has been

13 accused of a homicide. And there was strong inference from

14 her and that's what really drew the objection.

15 We did ask for a cautionary instruction, and the

16 court kind of tossed it back at us and said what did they look

17 like? And, quite frankly, it's kind of late --

18 THE COURT: Actually, I suggested a verbatim

19 cautionary instruction I would give, but it didn't appear to fit.

20 MR. SHANDS: So at this point, it's kind of late,

21 quite frankly, off the hip I can't come up with one.

22 THE COURT: I could start in the morning by

23 telling them this is not a gang investigation.

24 MR. SHANDS: That would be fine.

25 THE COURT: I want to be correct, though.

1 MS. KEENA: Yes, and I would disagree with that  
2 characterization of it. I mean, it's not a crime that involves or  
3 I've charged that it was for the benefit of a gang. But Mr.  
4 Vance is a known gang member and it was my understanding  
5 that that was what, you know, the initial motion was. You  
6 know I was prohibited from eliciting any of that testimony.  
7 And as far as Sandra Kennedy, you know, I tried to temper  
8 what she said what her duties were by coming back and asking  
9 her what the connection was.

10 THE COURT: I think you did.

11 MS. KEENA: Quite frankly, the jury has already  
12 seen that they were involved through the jury questionnaire,  
13 which specifically asked them in the jury questionnaire  
14 whether they had any contacts with the Minnesota Gang Strike  
15 Force. So that knowledge is there. And sitting here as a  
16 litigator, I don't know if drawing more attention to it with a  
17 cautionary instruction would do more harm than good.

18 THE COURT: Well, the jury is already gone, so  
19 let's revisit it the first thing in the morning before we bring  
20 them back in.

21 Now what about Pyka testifying that defendant told  
22 Melissa Stites he was a drug dealer.

23 MS. KEENA: There was no objection to that.

24 THE COURT: And there was no prior --

25 MR. SHANDS: There was a motion in limine, Your

Honor.

THE COURT: Which one?

MR. SHANDS: We made reference to no drug  
dealing references in our motion in limine, I believe. I don't  
have it in front of me.

THE COURT: I looked through it and I couldn't  
find anything.

MS. KEENA: I instructed my witnesses to stay  
away from any of the drug activity. I don't think it was  
something that was done intentionally. I think he was nervous  
about testifying. You know, there was no objection at the time  
and there was no request made for a cautionary instruction at  
that time. Again, you know, I guess I would leave it to the  
defense on what they want to do with that.

MR. SHAND: Right. Only point being made is  
there was agreement the state was not going to elicit that  
testimony. It's not our position that the state did, but the  
testimony did come in. There was a motion in limine. The  
record basically --

THE COURT: I am not finding it.

MR. SHANDS: Because there were a lot of things,  
Your Honor. If you remember that day there were a lot of  
things that were agreed upon that didn't necessarily have to be  
in the exact motion because the state had indicated they were  
not going to elicit it. We all agreed that it was inappropriate

1 testimony.

2 THE COURT: I don't recall anything coming up  
3 about drug dealing. This is the first I've heard, since my  
4 involvement in the case, that there was ever a hint of drug  
5 dealing.

6 MR. SHANDS: That was the first witness.

7 THE COURT: I mean it never came up in any  
8 motions, any argument.

9 MR. SHANDS: And that's what we disagree  
10 because my recollection is it did come up. But it's neither here  
11 nor there, we did not object to it, we did not want to bring  
12 further attention to it.

13 THE COURT: You know what we could do is  
14 add the --

15 MS. KEENA: Well, if there's no objection, I mean  
16 there's no objection made, so I don't think the court has to do  
17 anything.

18 THE COURT: I want to try to do the right thing.  
19 We can add the instruction at the end. I don't think I've gotten  
20 your proposed instructions. But Ms. Keena's I have seen, and  
21 it doesn't include the instruction he is not to be convicted of  
22 anything he's not charged with. So think about it and we will  
23 revisit it. But when I instruct him, I could give him that  
24 instruction.

25 You know, there was a written motion for an Order.

1 prohibiting any testimony regarding prior alleged physical  
2 and/or verbal altercations and/or assaults. And Colleen  
3 McManus testified he was kicked out of the bar for punching  
4 somebody. Again, no objection was made.

5 MR. SHANDS: Well, we asked for the motion in  
6 limine. And I understand that Ms. Keena did not elicit that,  
7 but it is her witness.

8 MS. KEENA: Well, it was on redirect, though, after  
9 the door --

10 THE COURT: Oh, was it?

11 MS. KEENA: That's my recollection. Again, there  
12 was no objection made, so I am not sure why we are having the  
13 conversation about it.

14 THE COURT: Well, I guess it's --

15 MR. SHANDS: I guess one more thing, then we  
16 probably have to revisit it in the morning. I guess it's Ms. Keena's  
17 intention on introducing audio tape of some interviews  
18 with Mr. Vance while he was in custody, and there's some red-  
19 dacting. She provided us with some redacted transcripts. I  
20 know she wanted to talk. So maybe we could come up with  
21 some agreement on what's appropriate redaction or how we are  
22 going to deal with it.

23 MS. KEENA: Yes, I mean I had the redactions  
24 made that I thought were appropriate. Then after I heard the  
25 opening statement of defense, there might be some things that

1 they want to keep in. I took out the obvious stuff about dope  
2 dealing. I took out anything having to do with the Bois Stress  
3 Test that he underwent.

4 I took out things where -- well, what I thought  
5 would be objectionable, and tried to look at it from a defense  
6 standpoint as well.

7 I have provided them with copies of what I re-  
8 dacted, and thought it would be okay. But after hearing the  
9 opening statement, there had never been any discussion or any  
10 motions brought by the defense as to specifically what they  
11 want redacted from the statements. So they are going to have  
12 to look -- I have provided copies of what I intend on using.

13 THE COURT: Should I take a copy home with me  
14 so I am prepared in the event I have to rule on anything?

15 MS. SINGH: Well, we still need to go through it  
16 and figure out what we need to take out and so forth.

17 THE COURT: Why don't we gather a little early  
18 tomorrow. Is that okay?

19 MS. KEENA: This is the problem -- I don't know if  
20 all of this needs to be on the record. It's just logistic stuff.

21 THE COURT: Okay. We will go off the record.

22 (OFF THE RECORD)

23 (Adjourned)

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2 THE COURT: Ms. Kenna.

3 MS. KEENA: Your Honor, the state would call Kurt  
4 Moline.

5 KURT MOLINE

6 being duly sworn, was examined and testified under oath as follows:

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

9 THE WITNESS: It's Kurt Willis Moline, K-U-R-T  
10 M-O-L-I-N-E.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. KEENA:

14 Q Good morning. By whom are you employed?

15 A I work for the Minnesota Bureau of Criminal Apprehension,  
16 Forensic Science Laboratory. It's the crime laboratory for the  
17 state.

18 Q How long have you worked there?

19 A I have worked there since March of 1989.

20 Q And what's your job title?

21 A I am a forensic scientist.

22 Q And do you have any specialties as a forensic scientist?

23 A Yes, I do. I am presently working in the firearms and tool-  
24 marks section of the laboratory of firearms examiner.

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1 Q What type of examinations does a firearms examiner do?  
2 A Usually when people think of the firearms section, they think of  
3 comparing a fired bullet or a fired cartridge case back to a  
4 firearm to see if it was fired by that gun.

5 In addition to those exams, we can look at gunshot  
6 residue patterns found around bullet holes, usually on the  
7 victim's clothing. We can look at how firearms function. If  
8 they are functioning correctly, we can do toolmark examina-  
9 tions.

10 These are typically burglary types of cases where some-  
11 one has used a pry bar to pry open a door and gain access to a  
12 residence. Or, maybe they've used a bolt cutter to cut a  
13 padlock off to gain access into whatever it is. So those are tool-  
14 mark examinations.

15 We can also do *no gun type* of firearms examinations  
16 where we might just have a bullet or cartridge cases, and we  
17 will try and determine what information we can from those  
18 items.

19 Q What is your educational background?

20 A I have a bachelor's degree in biology from the College of St.  
21 Thomas and a master's degree in biology from the University of  
22 South Carolina in Columbia, South Carolina.

23 Q What specialized training do you have in the field of firearms  
24 examination?

25 A I've trained for a little over three years with the senior firearms

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1 examiner at the time, Jim Lansing. In addition to the in-  
2 service training with him, I have taken a variety of armors  
3 courses from different firearms manufacturers for M16, AR 15,  
4 Smith & Wesson pistols and revolvers, Beretta pistols, Benelli  
5 shotguns, Heckler & Koch, MP 5 Submachine guns and pistols.

6 I have also taken crime scene training through the  
7 laboratory and some FBI courses for firearms examiners also.  
8 Shooting reconstruction, firearms examinations and techniques  
9 and gunshot residue testing.

10 Q Do you belong to any professional organizations?

11 A Yes, I do. I belong to the American Academy of Forensic  
12 Sciences and The Association of Firearms and Toolmark  
13 Examiners. Also, I am a firearms instructor and belong to the  
14 Minnesota Association of Law Enforcement Firearms  
15 Instructors, and also the Minnesota Division of the  
16 International Association for Identification.

17 Q Have you testified as an expert witness in the area of firearms  
18 on previous occasions?

19 A Yes, I have.

20 Q How many times?

21 A More than sixty.

22 Q Drawing your attention to a case file, you are familiar with the  
23 investigation of the robbery-homicide at Sabreen's Market in  
24 South St. Paul?

25 A Yes.

1 Q And were various items submitted to you from the South St.  
 2 Paul Police Department in connection with that case?  
 3 A Yes, they were collected by our crime scene team.  
 4 Q So actually the BCA submitted them to you?  
 5 A Yes.  
 6 MS. KEENA: Permission to approach, Your  
 7 Honor.  
 8 THE COURT: Granted.  
 9 BY MS. KEENA:  
 10 Q Mr. Moline, I am showing you Exhibit 25. Do you recognize  
 11 that exhibit?  
 12 A Yes, I do.  
 13 Q And could you just, please, explain what that is?  
 14 A Exhibit 25 are four cartridge cases that were collected by our  
 15 crime scene team, and then were submitted to me for  
 16 examination.  
 17 Q Did you in fact examine those casings?  
 18 A Yes, I did.  
 19 Q Now showing you Exhibit 26, do you recognize that item?  
 20 A Exhibit 26, yes, I do. It has our laboratory case number and  
 21 item number on the packaging. It is a bullet that was  
 22 recovered.  
 23 Q And do you recall where that bullet was recovered from?  
 24 A I believe it was recovered at the crime scene.  
 25 Q And there were also two bullets recovered from the victim's

1 body, is that correct?  
 2 A I had bullets that were submitted to me, yes, that were said to  
 3 have been recovered from him.  
 4 Q I am showing you Exhibits 30 and 31.  
 5 A Yes. I recognize these items, Exhibit 30 and 31.  
 6 Q And those were also submitted to you for exam?  
 7 A Yes, they were.  
 8 Q Mr. Moline, we got casings and bullets up there before you.  
 9 Could you briefly explain what a cartridge is?  
 10 A Sure. A cartridge is a unit of ammunition. It's composed of  
 11 the cartridge case, it has the bullet, and inside of the cartridge  
 12 case there's some powder, then it also has a primer. Then  
 13 when the firearm holds that cartridge, it's contained within the  
 14 firearm, and the firing pin of the gun strikes the primary area  
 15 of the cartridge it will cause the primer to detonate, it will start  
 16 the powder to burn, and because it's contained within the gun,  
 17 the powder burning will create gas and increase the pressure,  
 18 and the pressure will push the bullet through the barrel of the  
 19 firearm and then the cartridge cases contained within the gun.  
 20 Q So when the cartridge is fired, what components come out of  
 21 the gun?  
 22 A The bullet will come out of the barrel and the cartridge case,  
 23 which is contained in the firearm, can be extracted and ejected  
 24 or thrown clear of the firearm from the firing process also.  
 25 Q You examined and compared the cartridge casings in this case,

1 is that correct?  
 2 A Yes.  
 3 Q Would you please describe the procedure you used in making  
 4 that comparison?  
 5 A Sure. The four cartridge cases that were recovered at the  
 6 scene, I intercompared them on my comparison microscope. I  
 7 wanted to see if they were fired from the same gun or if more  
 8 than one gun was involved.  
 9 My comparison microscope is one microscope on the left,  
 10 microscope on the right, and then with an optical bridge it  
 11 connects the two microscopes. So I can put one evidence  
 12 cartridge case on one side, another one on the other side, and I  
 13 can look for those matching features that are left on these  
 14 cartridge cases from when they were fired by the gun. So in  
 15 doing this, I was able to determine that the four cartridge cases  
 16 were fired by the same gun.  
 17 Q And what type of casings were they?  
 18 A These are .22 caliber, these are rim fire cartridge cases which  
 19 means the priming compound is on the outside or on the rim of  
 20 it.  
 21 Q Were you able to determine what brands the casings were?  
 22 A Yes, I was. If you look on the head or the back part of the  
 23 cartridge case, most manufacturers will put identifying marks  
 24 because they want everybody to know whose ammunition they  
 25 are shooting. They want to let them know that they are shoot-

1 ing their brand of ammunition.  
 2 So if you look on the back of each cartridge case, you can  
 3 tell by the markings what brand it is. Two of the cartridge  
 4 cases have a large "C" on the head, which indicates that it's  
 5 CCI brand ammunition, and two of the cartridge cases have a  
 6 diamond shape on the head of it which indicates that it's  
 7 Winchester Western Brand of ammunition. X  
 8 Q And when most people think of Winchester, they think of rifles.  
 9 But Winchester makes ammunition, correct?  
 10 A Yes.  
 11 Q Does Winchester make ammunition for semi-automatic pistols  
 12 or pistols?  
 13 A Yes.  
 14 Q After you determined that the casings had been fired from the  
 15 same weapon, did you enter that information into any form of  
 16 database?  
 17 A Yes, I did.  
 18 Q What database is that?  
 19 A In the laboratory we've got a computer system that's been  
 20 provided by the Bureau of Alcohol, Tobacco, Firearms and  
 21 Explosives, and it's called IVIS (ph). The government program  
 22 name is NIVEN (ph). And what it allows us to do is keep an  
 23 open case file on shooting cases.  
 24 So, for example, I took one of the cartridge cases. I took  
 25 pictures of it, entered it into the database, and the database

1 does a search against the other evidence that's in there to see if  
 2 the firearm that fired this evidence was used somewhere else.  
 3 And also this image is in our computer, and it's still in our  
 4 computer, and any time something new is entered, it will be  
 5 compared against all of the previously entered images of the  
 6 fired cartridge cases.  
 7 Q So after you completed your comparison, you entered the  
 8 results into that system?  
 9 A Yes.  
 10 Q And did you get any hits?  
 11 A No.  
 12 Q It wasn't matched up to any other reported shootings  
 13 anywhere?  
 14 A No.  
 15 Q Did you check again after that time to determine whether there  
 16 was any matches in the system up until today?  
 17 A No. If a hit would be spotted, you know, if we'd entered  
 18 something new and we'd spot a hit, then we would compare it.  
 19 To my knowledge, there has been no hit with the evidence.  
 20 Q The one bullet that was recovered from the scene, did you  
 21 examine that as well?  
 22 A Yes, I did.  
 23 Q Do you use the same type of procedure to examine the bullet as  
 24 you do for the casings or is it a different type of examination?  
 25 A It's a little bit different. I did use my comparison microscope to

1 inter-compare the bullets that I had received to see if I could be  
 2 able to determine if they were all fired from the same gun or  
 3 not.  
 4 Q What were your results in examining the bullets?  
 5 A With respect to comparing the bullets that I received, it was  
 6 inconclusive. I couldn't say if the three bullets were from the  
 7 same gun or not.  
 8 Q Why not?  
 9 A There wasn't enough features on the fired bullets to be able to  
 10 identify them to each other.  
 11 Q In just looking at the bullet that was recovered from the scene,  
 12 what can you tell us about that bullet?  
 13 A It's consistent with a .22 caliber bullet. It's been fired from a  
 14 firearm that has six slants and grooves, which means inside of  
 15 the barrel of that gun it's .22 caliber in diameter and there are  
 16 six grooves that have been cut into the barrel that fired this  
 17 gun. Those are class characteristics. They would apply to a  
 18 whole group or class of firearms.  
 19 Also looking at the bullet, you can see that it's kind  
 20 of grayish in color, which indicates that it's lead. It also has  
 21 some copper remnants on it. So originally it was a copper-  
 22 plated lead .22 caliber bullet.  
 23 Q And you can't tell if that came from the CCI brand or the  
 24 Winchester brand, is that correct?  
 25 A No, I can't link this bullet with one of these cartridge cases.

1 Q In examining the casings and the bullets, were you able to  
 2 draw any conclusions on the type of firearm that the bullets  
 3 may have been fired from?  
 4 A Well, in looking at the bullet and -- Exhibit 26 was in the best  
 5 condition. And in looking at those class characteristics on  
 6 Exhibit 26, you know, it's .22 caliber, it has remnants of six  
 7 slants and grooves impressed on it, and then I was able to  
 8 measure, using a micrometer, measure the dimensions of those  
 9 slants and grooves, and then refer and try to come up with a  
 10 list of possible firearms that could have fired this bullet. And  
 11 it's not an all inclusive list.  
 12 Q Could you describe what a semi-automatic firearm is?  
 13 A A semi-automatic action type for firearm is one in which the  
 14 energy of firing will work the mechanism and prepare it to be  
 15 fired again. So by pulling the trigger, the firearm will fire, the  
 16 cartridge case will be extracted or pulled out of the chamber, it  
 17 will be ejected or thrown free of the firearm, and then the next  
 18 cartridge will be loaded and ready to fire. And at that point, all  
 19 a person needs to do is release the trigger and pull it again and  
 20 it would fire again then, assuming everything is functioning  
 21 correctly.  
 22 Q So would a semi-automatic firearm in good-working condition  
 23 eject casings?  
 24 A Yes.  
 25 Q And, Mr. Moline, in your examination of these items, you were

1 never provided with a weapon in which you were able to match  
 2 those casings with a certain weapon, is that correct?  
 3 A Was I provided with a gun that I could identify to these  
 4 cartridge cases?  
 5 Q Correct.  
 6 A No.  
 7 MS. KEENA: I have no further questions.  
 8 THE COURT: Ms. Singh.  
 9 MS. SINGH: Thank you, Your Honor.  
 10 **CROSS-EXAMINATION**  
 11 **BY MS. SINGH:**  
 12 Q Going back to that last question, you weren't provided with a  
 13 weapon that you could match to the cartridge casings, correct?  
 14 A Correct.  
 15 Q Were you provided with a weapon to do testing on?  
 16 A Yes, I was.  
 17 Q Did you personally do any testing on that weapon?  
 18 A Yes.  
 19 Q And there was no match between that weapon and these  
 20 cartridge casings?  
 21 A That's correct.  
 22 Q What type of weapon was it?  
 23 A I would need to refer to the case file.  
 24 Q You can refresh your memory if you need to.  
 25 A Okay. The firearm that I was provided with, that I tested, was



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1 a Marlin Brand, 22 long rifle caliber, rifle. X

2 Q And you stated that that didn't match the cartridge casings

3 that were found at the scene?

4 A That's correct.

5 Q Mr. Moline, from the testing that you did, you determined that

6 it was a semi-automatic weapon, correct?

7 A No, I can't say that what fired these cartridge cases was a semi-

8 automatic firearm.

9 Q You can only say that it was a .22 caliber weapon?

10 A That fired the cartridge cases and the bullets?

11 Q Yes.

12 A Yes, .22 caliber.

13 Q You said there were two types of bullets that were found -- two

14 types of cartridge casings, excuse me, that were found at the

15 scene. There was a Winchester brand and a CCI brand,

16 correct? X

17 A Yes.

18 Q And those were the type of cartridge casings, correct?

19 A Those were the brands, yes.

20 Q Now do both of those makers make ammunition only or do they

21 make weapons as well?

22 A Winchester at that time made firearms. CCI does not make

23 firearms. They only make ammunition.

24 Q Now through the testing that you did, could you determine that

25 those bullets that you received and the cartridge casings would

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1 match to a particular weapon?

2 A I would have to have a gun to be able to determine if I could

3 identify the evidence back to a firearm.

4 Q Without the actual firearm, you can't link the cartridge casings

5 and the bullets together, correct?

6 A Correct, yes.

7 Q Now, Mr. Moline, you stated that you entered this information

8 into a database?

9 A Yes.

10 Q And there were no hits on that database as to other crime

11 scenes, correct?

12 A Yes, correct.

13 Q And that database, that is kept up for how long?

14 A How long have we had it or how long do we keep it?

15 Q How long does the information stay in the database?

16 A It would stay in there. We aren't deleting anything, so it would

17 stay in there.

18 MS. SINGH: No more questions, Your Honor.

19 MS. KEENA: I just have a followup.

20 **REDIRECT EXAMINATION**

21 **BY MS. KEENA:**

22 Q You indicated that you were given one weapon, a 22 long rifle

23 for comparison purposes?

24 A Yes, Marlin Brand rifle.

25 Q Did you or any of your co-workers receive any other firearms in

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1 for comparison?

2 A Yes, they did.

3 Q Could you tell me how many?

4 A I would have to refer to the file.

5 Q Go ahead.

6 A One of the other firearm examiners, Stephanie Eckerman,

7 she examined another firearm and compared it to the evidence

8 that we have here.

9 Q What was that firearm?

10 A The brand?

11 Q Yes.

12 A It was a Beretta, .22 caliber pistol.

13 Q That one wasn't a match?

14 A No.

15 Q Were there any others?

16 A No. There were no other firearms.

17 Q The Winchester casings that you found, was there anything

18 unusual about them?

19 A The diamond on the headstamp hasn't been used for quite a

20 while. References I have indicate that they stopped using that

21 headstamp in about 1969, so it's relatively old.

22 Q So would you consider that older ammunition?

23 A We get old ammunition all the time in for cases.

24 Q So from that aspect, it wasn't unusual for you to be seeing that

25 type of casing?

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1 A I wasn't surprised.

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

3 Honor.

4 MS. SINGH: I have no questions, Your Honor.

5 THE COURT: Thank you.

6 (Witness excused)

7 **JACQUELINE EZELL,**

8 being duly sworn, was examined and testified under oath as follows:

9 THE CLERK: Please state and spell your full name

10 for the record.

11 THE WITNESS: My name is Jacqueline Ezell,

12 I spell it J-A-C-Q-U-E-L-I-N-E E-Z-E-L-L.

13 THE CLERK: Thank you.

14 **DIRECT EXAMINATION**

15 **BY MS. KEENA:**

16 Q Good morning.

17 A Good morning.

18 Q Ms. Ezell, where do you live?

19 A 956 East Minnehaha Avenue, St. Paul.

20 Q I would like to draw your attention to Friday, January 3, 2003.

21 Did you reside at that same address at that time?

22 A Yes.

23 Q Do you know Philip Vance?

24 A Yes.

25 Q Do you know him as Florida?





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1 A Yes, as Florida.  
2 Q We are going to refer to him as Mr. Vance this morning.  
3 A Okay.  
4 Q Is the person that you know as Florida present in the  
5 courtroom today?  
6 A Yes, he is.  
7 Q Where is he at?  
8 A He is there (indicating).  
9 MS. KEENA: May the record reflect that she's  
10 identified the defendant, Philip Vance?  
11 THE COURT: It may.  
12 BY MS. KEENA:  
13 Q Did you know Mr. Vance as of January 3, 2003?  
14 A Yes.  
15 Q How did you know him?  
16 A He came to the house to see my granddaughter.  
17 Q What's her name?  
18 A Darlene Jones.  
19 Q Were they dating at the time?  
20 A You could say yeah, I would say yeah.  
21 Q On that day did Mr. Vance come to your house?  
22 A Yes.  
23 Q What time was that?  
24 A After twelve, after midnight.  
25 Q So actually it would have been like early Saturday morning

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1 then?  
2 A Yes.  
3 Q What were you doing at the time?  
4 A Sitting, looking at TV. Watching TV.  
5 Q And was Darlene home with you?  
6 A Yes.  
7 Q What was she doing?  
8 A Putting her baby to sleep.  
9 Q What happened when Mr. Vance came over to your house?  
10 A He knocked on the door and I said, "Who is it?  
11 And he said, "Florida Boy."  
12 In the process of him knocking on the door, my granddaughter  
13 came out of the room and told me to tell him that she wasn't  
14 there.  
15 Q So she wanted --  
16 A She didn't want to see him. So I answered the door, but I  
17 wouldn't let him in. And I asked him what did he want? And  
18 he kept saying that -- he asked me "Was Darlene asleep?"  
19 I said, "No, she's not here."  
20 He said, "Well, I need to come in."  
21 I said, "For what?"  
22 He said, "I need to get something out of the bedroom."  
23 I said, "What is it?"  
24 He wouldn't tell me at first. So I said, "Well, you not coming  
25 in." So then he said, "Well, I really need to go get something

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1 out of the bedroom."  
2 I said, "Well, I'm sorry, you are not coming in because Darlene  
3 didn't want -- she wasn't asleep, she just didn't want to be  
4 bothered," and I wasn't going to let him in.  
5 So I say, "You have to tell me what it is and I'll go get it."  
6 I thought it was a sweater or something. He said, "No, if I tell  
7 you, you going to be upset. You going to be mad."  
8 I said, "Well, you're not coming in, so you might as well just tell  
9 me what it is you want out of the bedroom."  
10 Q So you eventually found that something that he was looking for  
11 in the bedroom, is that correct?  
12 A Yes, I did.  
13 MR. SHANDS: Objection, Your Honor, lack of  
14 foundation.  
15 THE COURT: Overruled.  
16 THE WITNESS: Yes, I did.  
17 BY MS. KEENA:  
18 Q Did you give that to Mr. Vance?  
19 A Yes, I did.  
20 Q Okay. And did he then leave the house?  
21 A Yes, he did.  
22 Q What happened next?  
23 A Well, Darlene come out of the room because she knew she was  
24 in hot water with me. So she was explaining herself. Then a  
25 little while later, it might not have been about a half an hour,

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1 someone else knocked on the door.  
2 I said, "What is this, this time of night people coming to the  
3 house this late?" So he came in.  
4 Q Who was he?  
5 A All I know his name is Stacks. That's the name I know him by,  
6 Stacks. Stacks came in. So he asked us -- he wasn't really  
7 talking to me. Darlene was just sitting by me. He was really  
8 talking to her. He was asking her had she seen Florida. And  
9 we both just told him Florida just left not too long ago.  
10 He said, "Well, when you -- he was talking to Darlene,  
11 "When you see Florida, you tell him that he was bogus. And  
12 he's no longer -- I don't want nothing to do with him, he's no  
13 longer my friend. He played me wrong. And I just want my  
14 money. Be sure to tell him that." Because on the way, some-  
15 where he was coming from or, what he said, a police was  
16 shooting at him and he had to --  
17 Q We are not going to go into that part of it. Thank you.  
18 A Okay.  
19 MS. KEENA: I have no further questions, Your  
20 Honor.  
21 **CROSS EXAMINATION**  
22 BY MS. SINGH:  
23 Q Ms. Ezell, you just testified that Stacks came to your home that  
24 evening and he stated that he wanted his money, correct?  
25 A Yes.

1 Q That's all he said to you?  
 2 A (No response)  
 3 Q Let me ask another question. He told you that *Florida played*  
 4 *him wrong - Mr. Vance played him wrong?*  
 5 A Yes, he did.  
 6 Q And those were the only comments that he made to you that  
 7 evening?  
 8 A No, he made a lot of other comments, but it's not -- you know,  
 9 a lot of cuss words and lot of this and -- he was really upset  
 10 with Florida.  
 11 Q But there was other things he was upset about that night too?  
 12 A His money.  
 13 MS. SINGH: No more questions.  
 14 MS. KEENA: I have nothing further, Your Honor.  
 15 THE COURT: Thank you, Ms. Ezell.  
 16 THE WITNESS: Thank you.  
 17 MS. KEENA: The next witness will require set up  
 18 and transcripts, so if we could take a 20-minute break?  
 19 THE COURT: Sure.  
 20 (Break was taken)  
 21  
 22 MS. KEENA: Your Honor, the state would call Tom  
 23 Kreager.  
 24 THOMAS KREAGER,  
 25 being duly sworn, was examined and testified under oath as follows:

1 THE CLERK: For the record, please state your full  
 2 name, spelling your last name.  
 3 THE WITNESS: Thomas Edward Kreager,  
 4 K-R-E-A-G-E-R.  
 5 THE CLERK: Thank you.  
 6 DIRECT EXAMINATION  
 7 BY MS. KEENA:  
 8 Q Good morning.  
 9 A Good morning.  
 10 Q Were you employed by the South St. Paul Police Department?  
 11 A Yes, I was.  
 12 Q How long were you with that department?  
 13 A Twenty years.  
 14 Q And you've since retired, correct?  
 15 A This past July, yes.  
 16 Q And you were a licensed peace officer with that department?  
 17 A Yes, I was.  
 18 Q What was your last position with the police department prior to  
 19 retiring?  
 20 A I was a police corporal assigned to the patrol division.  
 21 Q And at one time did you serve as a detective in that  
 22 department?  
 23 A I served in the investigative unit for approximately five years.  
 24 Q Were you employed with the South St. Paul Police Department  
 25 on December 22, 2002?

1 A Yes, I was.  
 2 Q And at that time were you in the investigative unit?  
 3 A Yes, I was.  
 4 Q On that date did you become involved in the investigation of  
 5 the death of Khaled Al-Bakri at Sabreen's?  
 6 A Yes, I did.  
 7 Q And you were involved hands on in the investigation for how  
 8 long?  
 9 A Months.  
 10 Q Drawing your attention to early on in the investigation, did you  
 11 receive leads on potential suspects from two women that were  
 12 identified to you?  
 13 A Yes, we did.  
 14 Q And that would have been Colleen McManus and Melissa  
 15 Stites?  
 16 A Yes.  
 17 Q After receiving that information, did you take any action to  
 18 determine whether there had been any other shootings on the  
 19 night of December 22, 2002?  
 20 A Yes, I did.  
 21 Q What did you do?  
 22 A I contacted the major metropolitan law enforcement agencies  
 23 around the twin cities. That would include the St. Paul Police  
 24 Department, Minneapolis Police Department, Ramsey County  
 25 Sheriff's Office, Hennepin County Sheriff's Office, Dakota

1 County Sheriff's Office, Anoka County Sheriff's Office, Scott  
 2 County Sheriff's Office, State Patrol, I also directly contacted  
 3 Ramsey County and Hennepin County Medical Examiner's  
 4 Offices.  
 5 Q Why did you contact those two offices? What does a medical  
 6 examiner do?  
 7 A The medical examiner is responsible for forensic examination of  
 8 a deceased person on unnatural or death outside of medical  
 9 care.  
 10 Q So you were checking to see if any autopsies had been  
 11 performed?  
 12 A Correct.  
 13 Q What were the results of all those phone calls that you made?  
 14 A There were no other reported shootings or shooting deaths on  
 15 the evening of the 22<sup>nd</sup> of December.  
 16 Q Following the information that you received from Colleen  
 17 McManus and Melissa Stites, were you involved in conducting  
 18 any interviews of Philip Vance?  
 19 A Yes, I was.  
 20 Q When was the first interview of Mr. Vance conducted?  
 21 A I would have to refer to my notes to know the exact date.  
 22 Q Go ahead and do that.  
 23 A I believe that was January 15<sup>th</sup>.  
 24 Q Of 2003?  
 25 A Correct.



1 MS. KEENA: Your Honor, permission to approach?  
 2 THE COURT: You may.  
 3 (Exhibit 36 A, B & C marked)  
 4 BY MS. KEENA:  
 5 Q In the interview that you conducted of Mr. Vance on January  
 6 15, 2003, did you tape that interview?  
 7 A Yes, we did.  
 8 Q I am showing you what's been marked for identification as  
 9 Exhibits 36 A, B and C. Do you recognize what those items  
 10 are?  
 11 A Those are cassette recordings indicating that is the interview  
 12 with Philip Vance on January 15<sup>th</sup> of 2003.  
 13 Q What's Item 36-C?  
 14 A It's a typed transcript of the conversation that we had with Mr.  
 15 Vance.  
 16 Q There have been some redactions made from both the tapes  
 17 and the transcript, is that correct?  
 18 A Yes.  
 19 Q Other than that, are they the same as the originals?  
 20 A Yes.  
 21 Q Who participated in this first interview?  
 22 A Myself and Captain Vujovich.  
 23 Q Captain Vujovich is with the South St. Paul Police Department?  
 24 A Correct. He was my supervisor as an investigator with our  
 25 department.

1 MS. KEENA: Your Honor, the state is going to offer  
 2 Exhibits 36 A and B. Exhibit C will be a court exhibit. I would  
 3 like to play them at this time.  
 4 THE COURT: Any objection?  
 5 MS. SINGH: Not at this time.  
 6 THE COURT: Exhibit 36-C is received as a court  
 7 exhibit. That means it doesn't go back with the jury at the end  
 8 of the case.  
 9 MS. KEENA: Your Honor, may I distribute the  
 10 transcripts?  
 11 THE COURT: You may. We give you a copy of the  
 12 written transcript to follow along with the tape. We will collect  
 13 those when we're done.  
 14 (Whereupon, cassette tape was played  
 15 of January 15, 2003 interview)  
 16 THE COURT: Could you pass the transcripts  
 17 down, please?  
 18 MS. KEENA: Your Honor, could we approach?  
 19 THE COURT: Yes.  
 20 (OFF RECORD DISCUSSION)  
 21 THE COURT: Shall we let Mr. Kreager step down?  
 22 MS. KEENA: Sure.  
 23 THE COURT: Why don't you step down. We will  
 24 break for lunch, and start again at 1:00.  
 25 (Lunch break was taken)



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SEPTEMBER 29, 2004 - AFTERNOON

THE COURT: We are going to interrupt the testimony of Mr. Kreager and put another witness on.

KEITHA MCKINNEY,

being duly sworn, was examined and testified under oath as follows:

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

THE WITNESS: Keitha McKinney, K-E-I-T-H-A M-c-K-I-N-N-E-Y.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. KEENA:

Q Good afternoon. Ms. McKinney, I would like to draw your attention to the time period of December, 2002. Where were you residing at that time?

A In South St. Paul.

Q What was the address?

A 141 Fourth Avenue.

Q What timeframe did you reside at that residence?

A I don't remember the exact time that I was there.

Q Approximately how long did you live at that residence?

A Almost a year.

Q While living there, were you familiar with Sabreen's Market?

A Yes.

Q Did you ever go to Sabreen's?

KEITHA MCKINNEY - DIR.

1 A Yes.  
2 Q How far was Sabreen's from where you were living?  
3 A A few blocks.  
4 Q Do you know a man by the name of Richard Robinson?  
5 A Yes.  
6 Q How do you know him?  
7 A I used to date him.  
8 Q Approximately how long did you date him?  
9 A Maybe six, seven months.  
10 Q Do you recall from what month to what month that you dated him approximately?  
11 A Maybe November to April of '03.  
12 Q So November of 2002?  
13 A Um-hum. Yes.  
14 Q Does Mr. Robinson have a nickname that he is commonly referred to as?  
15 A Yes.  
16 Q What is that?  
17 A Hennessy.  
18 Q Do you know Philip Vance at all?  
19 A No, I don't.  
20 Q Do you know Dominic Johnson?  
21 A No.  
22 Q Do you recall on the evening of December 22, 2002, did you see either one of them that night?

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1 A No.  
2 Q During that month were you having some health complications?  
3 A Yes.  
4 Q How long were you sick?  
5 A About a month.  
6 Q And did that sickness require some hospitalization at some point?  
7 A Well, I had three trips to the emergency room.  
8 Q And in December of 2002, on that particular night, do you specifically recall what you were doing on December 22<sup>nd</sup>?  
9 A No, I don't.  
10 Q When you were getting sick from what you had, would you have to go to bed or what would you have to do?  
11 A I was mostly in bed if I wasn't at the emergency room.

MS. KEENA: I have no further questions.

THE COURT: Mr. Shands.

CROSS EXAMINATION

BY MR. SHANDS:

Q Ms. McKinney, I just have a few questions for you. You were interviewed several times by South St. Paul Police?

A Yes.

Q Is that correct?

A Um-hum.

Q And they asked you if you knew Mr. Vance, is that correct?

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1 A Yes.  
2 Q Each time that they interviewed you, you told them that you did not know Mr. Vance, is that correct?  
3 A Yes.  
4 Q And you also told them that you did not see Mr. Vance on the night of December 22, 2002?  
5 A Right.  
6 Q And no one has ever discussed with you anything about a robbery that happened at Sabreen's, is that correct?  
7 A Right.  
8 MR. SHANDS: I have no further questions, Your Honor.  
9 MS. KEENA: Just a follow-up question. You talked about being interviewed by the South St. Paul Police Department. During the course of questioning, did you -- first of all, Dominic Johnson, do you know him by any nickname or do you know him as Dominic Johnson?  
10 THE WITNESS: I don't know him.  
11 MS. KEENA: Did you come to learn during the questioning of you, any relationship between Dominec Johnson and your boyfriend at the time, Hennessy?  
12 THE WITNESS: Yes.  
13 MS. KEENA: What was that relationship?  
14 THE WITNESS: They are cousins.  
15 MS. KEENA: I have no further questions, Your

Honor.

MR. SHANDS: I have no questions, Your Honor.

THE COURT: Thank you.

(Witness excused)

MS. KEENA: Your Honor, the state would recall Tom Kreager.

THE COURT: You are still under oath.

**THOMAS KREAGER,**

being previously duly sworn, was examined and testified under oath as follows:

**DIRECT EXAMINATION (Cont'd)**

**BY MS. KEENA:**

Q Mr. Kreager, we just finished listening to the January 15, 2003 interview that was conducted of Mr. Vance. Did you participate in an interview of Mr. Vance on January 16, 2003?

A Yes, I did.

MS. KEENA: Permission to approach, Your Honor?

THE COURT: You may.

(Exhibit 37 A, B and C marked)

**BY MS. KEENA:**

Q I am showing you what's been marked for identification as Exhibits 37 A, B and C. Do you recognize those items?

A Yes, I do.

Q What are they?

A Two cassette recordings of the interview taken that day with myself, Mr. Vance, Captain Vujovich of the South St. Paul Police, and Investigator Sjogren of the Dakota County Sheriff's Office.

Q And these are copies of the originals, correct?

A Correct.

Q Exhibit 37-C and the tapes, there are redactions made to those items, correct?

A Correct.

Q Aside from those redactions, are they true and correct copies of the originals?

A They are.

MS. KEENA: For the record, I am showing counsel the exhibits.

Your Honor, the state would offer as exhibits 37-A and B. And we offer Exhibit 37-C as a court exhibit.

THE COURT: Received.

(Exhibit 37 A and B received)

MS. KEENA: Your Honor, may I pass out transcripts?

THE COURT: You may.

(Whereupon, cassette tape was played of January 16, 2003 interview)

THE COURT: We are done for the day. We will remind you tomorrow that we are on page 178. Remember,

don't talk to anyone about it, don't read any newspaper articles, don't listen to any news.

Have a nice evening.

(Adjourned at 4:40 p.m.)

**SEPTEMBER 30, 2004**

MR. SHANDS: Judge, I need to make a little record before we start.

THE COURT: Okay. Mr. Shands, you wanted to put something on the record.

MR. SHANDS: I did, Your Honor.

Your Honor, through our investigation, our investigators spoke to a Christina Perasaud. Ms. Perasaud was in custody down in Shakopee with a Mary Fleming. Mary Fleming is connected with Maynard Cross.

While Christina Perasaud was in custody with Mary Fleming, she indicated that Ms. Fleming had written letters to her or notes to her concerning the case here at hand.

Ms. Perasaud indicated that the deputies at Shakopee had confiscated these letters and subsequently turned them over to investigators, who are investigating this case.

We have not seen the letters. The letters were not

in our discovery. We believe they may have exculpatory information in regards to Mr. Vance.

We haven't received the letters, plus with the court's ruling on third-party perpetrator and reverse Spreigl on Mr. Cross, we wanted the record to be clear that we believe this evidence is out there. I don't know if in fact this is -- this is information we received. We have not received any letters in discovery.

If they are in the custody of the investigating officers on this case, we would ask that they be turned over to us. I guess that's sort of a Brady issue, but we just wanted the record to be clear on that.

Also, I want to put on the record, as this trial has been going, I anticipate that the state is going to call a Richard Robinson to come and testify, Yvonne White, Nicole Rauschnot and maybe a Troy Crawford.

Especially with Richard Robinson and Yvonne White, it's our position that these people, if the state calls them to testify, have the right to have an attorney here. And I'm not trying the state's case, but if they are to testify, they would possibly be implicated in this crime. And at least they could be considered aiding offender after the fact.

If the state intends to call them, they need to have representation. And I think that needs to come out now because if the public defender's office is going to be expected to

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1 step in and advise those people, they need to know. As this  
2 court well knows, our office is spread thin. We don't have  
3 anyone, plus, quite frankly, we will probably have to bring  
4 someone from another county to advise them.

5 So we wanted to make the record clear on that.  
6 Quite frankly, probably -- Keitha McKinney probably should  
7 have had an attorney also. Again, I am anticipating what the  
8 state is planning on doing, but I believe Keitha McKinney could  
9 be implicated as being someone who's involved in this crime or  
10 again, at least, an aider after the fact. She should probably  
11 have had an attorney to advise her of whether or not she  
12 should have testified under oath.

13 THE COURT: Ms. Keena?

14 MS. KEENA: Your Honor, on the Perasaud issue,  
15 the state is unaware of any of these letters that Ms. Perasaud is  
16 indicating to the defense investigator that she wrote. Ms.  
17 Perasaud is -- her credibility is zero to none. And she stepped  
18 forward basically trying to give us information implicating  
19 Maynard Cross, but wanted to get out of prison.

20 In investigating her, prison staff told us that she  
21 had a history of fabricating information in an effort to gain  
22 release.

23 Ms. Perasaud, within the previous year, claimed to  
24 have developed breast cancer and even went as far as having  
25 false medical documents sent to prison officials in an attempt

1 to get released early.

2 THE COURT: What's her relationship to Cross?

3 MS. KEENA: She was in custody serving time with  
4 Mary Fleming at Shakopee. Mary Fleming was a co-defendant  
5 to Mr. Cross. So she claims that Mary Fleming was telling her  
6 all these things, that Maynard Cross had told her some things.  
7 But her credibility is null. And I have no letters.

8 During the investigation, they went out to the  
9 prison, they talked to her, they talked to prison officials. There  
10 are no letters. So I think Ms. Perasaud is feeding them a line.  
11 I will check it out again, but to my knowledge, there are no  
12 letters.

13 THE COURT: Letters, are these letters from  
14 Maynard Cross implicating himself with --

15 MS. KEENA: No.

16 MS. SINGH: They are letters from Mary Fleming to  
17 Christine Perasaud discussing this particular crime.

18 MR. SHANDS: The real significance of that is Mary  
19 Fleming was the driver on the Maynard Cross murder that he  
20 was convicted of in Minneapolis. And so she -- at the point  
21 when this crime happened, Maynard Cross was not in custody,  
22 neither was Mary Fleming. That case had not been solved and  
23 taken care of.

24 In regards to the credibility issue, I understand  
25 that the police spoke to her. They did not find her credible.

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1 But there are other people that have the right to listen to  
2 testimony or see testimony and that's where the credibility is.

3 Judge, I am not saying that Ms. Keena has  
4 information she's not giving. I want to make this issue clear  
5 that this is what we are indicating, so in -- quite frankly, if Mr.  
6 Vance is ultimately convicted and then all of a sudden the  
7 letters surface, I want to make the record clear that we have  
8 Brady issues as far as having exculpatory evidence. This is  
9 evidence that we do not have now and somehow it was ruled  
10 out.

11 I just want to make the record clear that we are  
12 constantly still trying to investigate this case. This is  
13 information I have and I just wanted it on the record.

14 THE COURT: But it's not a case where anybody  
15 has a letter that was purportedly written by Maynard Cross in  
16 which he makes admissions?

17 MS. KEENA: No.

18 MR. SHANDS: That's not what -- I mean, no, it's  
19 my understanding that Maynard Cross didn't write the letters,  
20 but there's information in there concerning this actual  
21 investigation coming from someone who, quite frankly, may  
22 have been involved.

23 Now I understand that the court ruled we could  
24 not point the finger at Maynard Cross and basically show that  
25 he was not the one involved. Possibly if we were allowed to do

1 that, Mary Fleming could have been argued to have been the  
2 driver, just like she had been previously.

3 THE COURT: But I wouldn't have ruled as I did  
4 had I been presented with letters written by Maynard Cross in  
5 which he admitted, because I am allowing alternative  
6 perpetrator evidence on Mr. Smith, who apparently made some  
7 admissions.

8 MS. KEENA: There are no letters like that. There  
9 are no Maynard Cross letters to anybody indicating that he had  
10 any involvement in this crime. From what I gather, this is  
11 purely a Brady issue. The state is unaware of any letters.  
12 Mary Fleming was interviewed. She denies that she had any  
13 conversations with this Christina Perasaud about her case.

14 THE COURT: Okay.

15 MR. SHANDS: In regards to the --

16 MS. KEENA: In regards to appointing attorneys, as  
17 to Keitha McKinney, I did speak with her yesterday and she  
18 indicated to me that she had talked to an attorney and that she  
19 was just willing to come in and testify yesterday.

20 The other people that have been mentioned, I think  
21 if they take the stand, before the jury were called out, I think  
22 we would do an inquiry of them and, you know, I don't know  
23 how that's going to play out. But, you know, before the jury  
24 were brought in that we would have them take the stand and  
25 tell them that they have a right to an attorney. Nicole

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Rauschnot has got Earl Gray.

THE COURT: Well, she's well represented.

MS. KEENA: Some of them already have attorneys.

I understand the public defender's office would want some notice on that, but until they walk in, or whatever happens, we can't deal with it right now.

MR. SHANDS: My concern, Your Honor, is Keitha McKinney was arrested for aiding and abetting this crime. She had an attorney, Ira Whitlock.

I think the inquiry about *do you understand that you have certain constitutional rights, Fifth Amendment Rights*, that needs to be done by the court. And it should have been done on the record to make sure she clearly understands the gravity of what she's doing here today.

THE COURT: Well, why wasn't I told?

MR. SHANDS: The reason it came up now, Your Honor, quite frankly, is when Keitha McKinney took the stand I didn't understand what that was about. And I feel like, after talking with colleagues and what not, I do feel like I have somewhat sense of inking of what it's about.

THE COURT: Okay.

MR. SHANDS: Quite frankly, I think she should have been brought into court, there should have been an inquiry on the record. That's just something I wanted to put on the record.

MS. KEENA: Mr. Shands doesn't represent Keitha McKinney. I mean, Keitha McKinney, the risk that she takes is if the state were ever to prosecute her, and what she said on the stand yesterday could be used against her. That's her issue. That's not Mr. Vance's issue, that's not Mr. Shands' issue. So, yes, procedurally.

Procedurally, yes, but she indicated to me that she did talk to her attorney and that she was willing to take the stand and testify. So she did seek counsel. As far as for this case, that part of it isn't relevant.

MR. SHANDS: Your Honor, it's very relevant because that needs to be done on the record. And the problem that -- looking at the state, the problem they have is that if she has counsel, and she has an opportunity to say, "I'm taking the Fifth, I'm not going to testify," that becomes a witness that the state can't use.

And to propose to have this done outside the purview of the court -- because this is the court's inquiry about whether someone understands their rights and what's going on. It's not the county attorney, it's the court. I just want to make the record clear on my perspective of what happened.

THE COURT: Okay. Shall we start then?

MR. SHANDS: That's fine.

. . . .

THE COURT: Good morning. We had to discuss a few things, so we got a little late start. Please turn to page 178 and we will begin.

(Whereupon, cassette tape was continued of January 16, 2003 interview)

BY MS. KEENA:

Q Mr. Kreager, do you recall on the last comments made by Mr. Vance during the interview, was there anybody in the room with him at that time?

A No, there was not.

Q But somebody left the recorder running, obviously?

A Yes.

Q Did Mr. Vance contact you after that interview?

A Yes, he did.

Q And do you recall the date of that contact?

A January 23, 2003.

Q And was that in person or by phone?

A He called me at my office at the police department.

Q Did you record that phone call?

A Yes, I did.

MS. KEENA: Permission to approach, Your Honor?

THE COURT: You may.

(Exhibits 38 A and B were marked)



THOMAS KREAGER - DIRECT

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for identification)

BY MS. KEENA:

Q Mr. Kreager, showing you what has been marked for identification as Exhibits 38-A and 38-B, do you recognize those?

A Yes, I do.

Q What are they?

A It's a cassette recording of the phone call I received on January 23, 2003 from Mr. Vance, and a transcript of that.

Q And these are copies of the original, correct?

A That is correct.

Q And there's redactions made from both the tape and the transcript, is that correct?

A Yes.

Q And other than those redactions, are they accurate copies of the originals?

A Yes, they are.

MS. KEENA: Your Honor, the state would offer Exhibit 38-A as an exhibit, and Exhibit 38-B as a court exhibit only.

THE COURT: Received.

(Exhibits 38-A and 38-B were received in evidence.)

MS. KEENA: At this time, Your Honor, I would like

THOMAS KREAGER - DIRECT

to play the tape.

THE COURT: Okay.

(Whereupon, cassette tape was played of January 23, 2003 phone call)

MS. KEENA: Your Honor, for the next statement I have to set up the computer, so if we could take a break?

THE COURT: Okay. Fifteen minutes, ten after. (A break was taken.)

THE COURT: Have a seat. Proceed.

BY MS. KEENA:

Q Mr. Kreager, following the January 23rd phone call with Mr. Vance, did you have an opportunity to participate in another interview of Mr. Vance?

A Yes, I did.

Q When did that interview take place?

A April 17, 2003.

Q And aside from you, who participated in that interview with Mr. Vance?

A Captain Vujovich of the South St. Paul Police Department, Sergeant Pyka of the Minnesota Gang Strike Force, and Investigator Nygren, who I believe is ATF.

Q Was that interview recorded?

A Yes, it was.

MS. KEENA: Permission to approach, Your Honor?

THE COURT: You may.

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information did they give you regarding the blue Corsica?

A That they had a friend named Nicole Rauschnot that did own a blue Corsica, four door.

Q What did you do with that information?

A They had told me that they had used the car and ridden with her in the car at various times in the past, but it had broken down in Eagan and Nicole had basically abandoned the car where it broke down. This was at the end of the winter, they believed.

Q When you spoke with these two women, did they indicate whether they knew Mr. Johnson and Mr. Vance?

MR. SHANDS: Objection, Your Honor, leading.

THE COURT: Overruled.

THE WITNESS: Yes, I did.

BY MS. KEENA:

Q And what did they tell you?

A They did know Mr. Vance and Mr. Johnson.

Q So were you able to locate Nicole Rauschnot's blue Corsica that was described to you?

A Yes, I was. Through record searches, we found that the car had a lien on it. The lien holder was Car Hop Auto in West St. Paul.

Q Did you go to that location?

A Yes, I did.

Q Did you find Nicole Rauschnot's car there?

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A No, I did not. They informed me that the car had been impounded in Eagan through Magnum Towing, and they had written the car off as a loss. And it was still there to the best of their knowledge.

Q Did you go to Magnum Towing then?

A Yes, I did.

Q Did you find the car at that location?

A Yes, I did.

MS. KEENA: Permission to approach?

THE COURT: You may.

(Exhibit No. 41 was marked for identification)

BY MS. KEENA:

Q I am showing you what's been marked for identification as Exhibit 41. Do you recognize that?

A Yes, I do.

Q What is that?

A The car that had belonged to Nicole Rauschnot.

Q When approximately did you take the car -- did you take the car into custody?

A I did not.

Q Did the department take it into custody?

A Yes, they did. At the time the information was forwarded through Captain Vujovich, who assigned it to a detective to recover at that time.

Q What timeframe are we talking about? When was this going

PART #4

1 (Exhibits 39-A and 39-B were  
2 marked for identification)  
3  
4 BY MS. KEENA:  
5 Q I show you what's been marked for identification as Exhibits  
6 39-A and 39-B. Do you recognize those?  
7 A Yes, I do.  
8 Q And this interview was digitally recorded, correct?  
9 A That's correct.  
10 Q What's Item 39-A?  
11 A It's a disk containing the recording of that interview.  
12 Q And what's 39-B?  
13 A A transcript of that interview.  
14 Q There's redactions from each of these items, is that correct?  
15 A Yes.  
16 Q And aside from those redactions are 39-A and 39-B accurate  
17 copies of the originals?  
18 A Yes, they are.  
19 MS. KEENA: Your Honor, the state would offer  
20 Exhibit 39-A as an exhibit. And we will offer 39-B as a court  
21 exhibit only.  
22 MS. SINGH: No objection, Your Honor.  
23 THE COURT: Received.  
24 (Exhibit 39-A was received in evidence)  
25 MS. KEENA: I would like to play it at this time.  
THE COURT: Proceed.

1  
2 (Whereupon, digital recording was played  
3 of April 17, 2003 interview)  
4 THE COURT: Why don't we break for lunch. We  
5 will start at 1:15.  
6 (Lunch break was taken)  
7  
8 \* \* \* \*  
9  
10 SEPTEMBER 30, 2004 - AFTERNOON  
11 THE COURT: Have a seat.  
12 BY MS. KEENA:  
13 Q Mr. Kreager, during the April 17, 2003 interview with Mr.  
14 Vance, during the interview it was indicated that you guys were  
15 going to go back and talk to him the next day. Did you do  
16 that?  
17 A Yes, we did.  
18 Q So that was on April 18, 2003?  
19 A That's correct.  
20 Q Did you interview Mr. Vance on that date?  
21 A Yes, I did.  
22 Q Was that interview recorded?  
23 A Yes, it was.  
24 Q Who was present at that interview?  
25 A Captain Daniel Vujovich of the South St. Paul Police

1 Department, myself, and Philip Vance.  
2 MS. KEENA: Permission to approach, Your Honor?  
3 THE COURT: You may.  
4 (Exhibits 40-A and 40-B marked)  
5 BY MS. KEENA:  
6 Q Mr. Kreager, I am showing you what's been marked for  
7 identification as Exhibits 40-A and 40-B. Do you recognize  
8 those?  
9 A Yes, I do.  
10 Q What are they?  
11 A Exhibit 40-A is a cassette recording of the interview between  
12 Mr. Vance, myself and Captain Vujovich on April 18, 2003.  
13 Exhibit 40-B is a transcript of that tape.  
14 Q And these are copies of the originals?  
15 A That's correct.  
16 Q And there's redactions in each exhibit, is that correct?  
17 A Yes.  
18 Q And aside from those redactions, are they true and accurate  
19 copies of the originals?  
20 A Yes, they are.  
21 MS. KEENA: Your Honor, the state would offer  
22 Exhibit 40-A. And Exhibit 40-B is a court exhibit only.  
23 THE COURT: Any objection?  
24 MS. SINGH: No objection.  
25 THE COURT: Received.

1 (Exhibit 40-A was received in evidence)  
2 MS. KEENA: Your Honor, I'm going to play the  
3 tape at this time. First I am going to pass out transcripts.  
4 (Whereupon, cassette tape was played  
5 of April 18, 2003 interview)  
6 BY MS. KEENA:  
7 Q During the January 23, 2003 phone call and this last  
8 April 18<sup>th</sup> interview with Mr. Vance, there was discussion  
9 had about a blue Corsica?  
10 A That is correct.  
11 Q Through your investigation were you able to track down a blue  
12 Corsica?  
13 A Yes, I was.  
14 Q Would you please explain what investigation you did? How you  
15 came to this car.  
16 A I reinterviewed the women that he was talking about that lived  
17 in Eagan on Rahn Road, Amy Drager and Yvonne White. I  
18 interviewed them a couple of different occasions at the  
19 apartment there. At the second interview --  
20 MR. SHANDS: Your Honor, I am going to object to  
21 this sort of testimony as a narrative. I'd ask that questions be  
22 asked of this witness.  
23 THE COURT: Okay.  
24 BY MS. KEENA:  
25 Q So after you interviewed Yvonne White and Amy Drager, what

1 Q When you were interviewing Mr. Vance, while you were talking  
2 about the situation at Sabreen's, where you were interrogating  
3 him, sometimes you would bring out pictures of the dead body.  
4 Isn't that true?  
5 A That is true.  
6 Q You bring that out because you want to show him that dead  
7 body, hoping for some sympathy or hoping that will jog his --  
8 hoping that would make him confess. Isn't that true?  
9 A The pictures are used to stimulate an emotional response.  
10 Q Now when you were interviewing Mr. Vance, you were involved  
11 with interviews more -- I will ask you, did you interview Mr.  
12 Vance or involved in any interrogation with Mr. Vance other  
13 than the tapes that we've heard?  
14 A Possibly. I am not sure if there's more tapes to be introduced  
15 that I am on.  
16 Q Were you aware that Mr. Vance was interviewed by law  
17 enforcement officers more than the tapes that we've heard  
18 today? Or the tapes that we heard yesterday also?  
19 A I do not have an exact accounting as to how many interviews  
20 are on record.  
21 Q So were there interviews that weren't on record?  
22 A No.  
23 Q Now during your investigation of the Sabreen's homicide, isn't  
24 it true that you received information about other people that  
25 possibly committed this crime?

1 A Yes.  
2 Q You received information that other people possibly committed  
3 this crime. And during the course of this investigation, isn't it  
4 true that you authorized deals to be given to other people in  
5 exchange for information that Mr. Vance may have said some-  
6 thing about this crime while he was in jail?  
7 A I did not.  
8 Q You didn't authorize it?  
9 A No, sir.  
10 Q Did you know that it was happening?  
11 A Yes, sir.  
12 Q Now during part of this investigation or when you were  
13 interrogating Mr. Vance, especially during the January period,  
14 Mr. Vance was not in custody, isn't that correct?  
15 A That's correct.  
16 Q Mr. Vance never tried to abscond from St. Paul or leave or get  
17 away without telling you, did he?  
18 A No.  
19 Q In fact, Mr. Vance cooperated with you, whenever you wanted  
20 to interview him, he cooperated with the interview, correct?  
21 A Yes, he did.  
22 Q On April 17<sup>th</sup> of 2003 you interviewed Mr. Vance. Do you  
23 remember that interview?  
24 A I believe so.  
25 Q Mr. Vance wasn't in custody at that point, is that correct?

1 MS. KEENA: Do you need to refresh your  
2 recollection?  
3 MR. SHANDS: If it would help you to look at your  
4 notes, go ahead.  
5 MS. KEENA: Your Honor, could we approach for  
6 just a minute?  
7 THE COURT: Yes.  
8 (OFF RECORD DISCUSSION)  
9 BY MR. SHANDS:  
10 Q Officer Kreager, when you interviewed him on the 17<sup>th</sup>, that  
11 interview was done at a law enforcement facility, is that  
12 correct?  
13 A Yes, it was.  
14 Q When you interviewed Mr. Vance did you ever give him a  
15 breathalyzer or a PBT to determine if he had been drinking  
16 before the interview?  
17 A I never did.  
18 Q Do you know if any of your other fellow officers did?  
19 A I have no knowledge of that.  
20 Q Now with your understanding of Mr. Vance's drinking habits,  
21 when you talked to him, you never questioned whether or not  
22 he was sober when you interviewed him?  
23 A I did not.  
24 Q Now when you were interrogating Mr. Vance, you indicated that  
25 other people were working with you cutting deals. One person

1 you mentioned was Hennessy. Do you remember that part of  
2 the interrogation?  
3 A I'm sorry, could you rephrase all of that?  
4 Q You indicated to Mr. Vance that you already had Hennessy,  
5 and that Hennessy was already cutting a deal, and that Mr.  
6 Vance should be thinking about his own butt.  
7 MS. KEENA: I am going to object, Your Honor. I  
8 don't recall that being in. Maybe they could point it out. I  
9 don't recall that being the contents of any of the interviews.  
10 THE COURT: Maybe you could show in the  
11 transcript.  
12 MR. SHANDS: You testified that, you know, you  
13 are aware that there are other people that had been accused of  
14 this crime.  
15 MS. KEENA: Objection, Your Honor. I don't think  
16 he's -- oh, I'm sorry, I withdraw that.  
17 THE COURT: Okay.  
18 BY MR. SHANDS:  
19 Q You testified that you knew that there were other people that  
20 had been accused of this crime or had been investigated for --  
21 investigated as a suspect in the Sabreen's robbery and  
22 homicide, is that correct?  
23 A Yes.  
24 Q And isn't it true that some of those people actually lived in the  
25 South St. Paul area?

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1 on?  
 2 A The car was recovered in the middle of July, 2003.  
 3 Q Does this picture of the car accurately reflect what it looked  
 4 like at the time that you found it?  
 5 A Basically, yes. It has been sealed with evidence stickers, but  
 6 aside from that, it is in the condition I found it.  
 7 MS. KEENA: For the record, I am showing Exhibit  
 8 41 to counsel.  
 9 MR. SHANDS: Can I voir dire the witness?  
 10 THE COURT: Yes.  
 11 **BY MR. SHANDS:**  
 12 Q Officer Kreager, this picture also indicates that there shows a  
 13 key in the trunk of the vehicle. Was the key in the trunk of the  
 14 vehicle when you found it in the lot first?  
 15 A I don't recall.  
 16 Q So basically you don't recall if the key was in the trunk of the  
 17 vehicle?  
 18 A No.  
 19 Q Did you inspect the vehicle when you first saw it?  
 20 A Visually from a distance.  
 21 Q Okay.  
 22 MR. SHANDS: I object to the photograph, Your  
 23 Honor, as not ---  
 24 THE COURT: Why don't you come up.  
 25 (OFF RECORD DISCUSSION)

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1 THE COURT: Overruled, and Exhibit 41 is  
 2 received.  
 3 (Exhibit No. 41 was received  
 4 in evidence.)  
 5 MS. KEENA: Your Honor, may I publish this to the  
 6 jury?  
 7 THE COURT: You may.  
 8 **BY MS. KEENA:**  
 9 Q During one of the interviews it was mentioned that there was a  
 10 surveillance system at Sabreen's. Was there in fact a  
 11 surveillance system at Sabreen's?  
 12 A Yes, there was.  
 13 Q During the course of your investigation did you check the  
 14 surveillance system for the night of December 22, 2002?  
 15 A Yes, I did.  
 16 Q What did you do in that regard?  
 17 A The closed circuit TV and the video monitor were clearly still  
 18 functioning and powered on. There was a video recorder  
 19 attached remotely to it. That was basically a VCR recorder.  
 20 Q Did you find a tape in the recorder?  
 21 A There was a tape in the recorder. The recorder was not  
 22 powered on.  
 23 Q So did you review the tape?  
 24 A Yes, I did.  
 25 Q Was there any events at all from December 22<sup>nd</sup> of 2002 on

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1 that tape?  
 2 A There were not.  
 3 Q Was there a date on the tape?  
 4 A The tape was time stamped.  
 5 Q When was it from?  
 6 A Approximately two months prior.  
 7 MS. KEENA: I have no further questions, Your  
 8 Honor.  
 9 **CROSS-EXAMINATION**  
 10 **BY MR. SHANDS:**  
 11 Q Now, Officer Kreager, you testified that you spent -- on the tape  
 12 you specified that you spent over 500 man hours on the case?  
 13 A I believe I did refer to that figure.  
 14 Q Is that accurate?  
 15 A I am not sure.  
 16 Q You spent a lot of time on this case, correct?  
 17 A Yes, sir.  
 18 Q And you spent -- not only the South St. Paul Police Department  
 19 was involved in this, but you had the Alcohol, Tobacco and  
 20 Firearms, they were involved in it, correct?  
 21 A Correct.  
 22 Q You had assistance of the Minnesota Gang Task Force involved  
 23 in it, correct?  
 24 A Yes.  
 25 Q You have been an officer for over twenty years, correct?

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1 A Yes, sir.  
 2 Q During your training as an officer, you have gone to schools  
 3 where they teach you interrogation tactics, is that correct?  
 4 A Yes.  
 5 Q They teach you how to use *good cop, bad cop*, correct? Is that  
 6 one of the techniques they use?  
 7 A I never heard that in any school that I have been to.  
 8 Q Why don't you tell me some of the techniques that you have  
 9 been taught about.  
 10 A I have been to the Reid School for that technique of inter-  
 11 viewing. I have had, I believe, two other interview classes by  
 12 other experts in the field that have their own similar style  
 13 technique close to Reid. And I've had in-field training by more  
 14 experienced investigators.  
 15 Q Now you referred to the Reid Technique. What is that? Is that  
 16 the *good cop, bad cop* that I was referring to?  
 17 A I've never had anybody train me in a *good cop, bad cop*  
 18 scenario.  
 19 Q The scenario I am talking about is one cop comes in and he's  
 20 more of an aggressive cop. He does screaming up and down.  
 21 He's mean, he's more direct. Then you have another police  
 22 officer that comes through and he tries to make a -- he makes  
 23 contact with the individual that's being interrogated and tries  
 24 to make a connection with him, like, you know, that they can  
 25 talk to him. The other guy is mean and I can understand why

1 you wouldn't want to, but you can talk to the other one. And  
2 that's one way that they try to elicit information from him. Is  
3 that a technique? Is that the Reid Technique?

4 A No, it is not.

5 Q Why don't you tell me what the Reid Technique is.

6 MS. KEENA: Your Honor, I am going to object as  
7 to relevance.

8 THE COURT: Overruled.

9 THE WITNESS: The Reid Technique usually  
10 revolves around a single interviewer with a single suspect,  
11 trying to establish initially some type of rapport, searching for  
12 some common ground with the individual you are trying to  
13 interview. Then at some point you're introducing the evidence  
14 to the suspect to demonstrate the contradictions or the  
15 strength of the situation that the investigator has.

16 BY MR. SHANDS:

17 Q Okay. And you do that to -- you're trying to get a confession,  
18 correct?

19 A Yes, sir.

20 Q Now you used that technique on Mr. Vance, is that correct?

21 A In a form, yes, sir.

22 Q You interviewed Mr. Vance over all the hours of tape that we've  
23 heard so far and you were trying to get him to confess to the  
24 crime, isn't that true?

25 A No.

MINNESOTA  
JUDICIAL  
BRANCH



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MS. KEENA: Your Honor, I am going to object.

May we approach?

THE COURT: Yes.

(OFF RECORD DISCUSSION)

BY MR. SHANDS:

Q Officer Kreager, you testified that you used the Reid Technique on Mr. Vance?

A Of sorts. I used parts of that technique that have proven successful for me in the past.

Q When confronted with the Sabreen's robbery/homicide, Mr. Vance emphatically denied doing it, correct?

A He made denials.

Q He made denials that he didn't know who else did?

A Correct.

Q Now you confronted Mr. Vance with the possibility that you were going to go down and get the surveillance from Sabreen's, is that correct?

A Correct.

Q And you told him, you know, this was his only time to confess and come clean because when you got the tape it was going to show all, correct?

A Correct.

Q You also told him that you had fingerprints, you had ammunition, you had the shells, and he better come clean because you're going to test it all, correct?

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A Correct.

Q And if you didn't come clean then, that the DNA was going to come back and show that it was Mr. Vance, correct? Or, the fingerprints -- I'm sorry.

A To that affect.

Q Okay. Now in fact we know Mr. Vance is not on any surveillances at the store, correct? X X X

A Correct.

Q We know that they did not find any shoeprints that fit the shoes that Mr. Vance was wearing at the store?

MS. KEENA: Your Honor, I am going object to that question as to foundation.

THE COURT: Well, you can ask him if he's aware of any foot impressions that were taken.

MR. SHANDS: Okay.

BY MR. SHANDS:

Q Are you aware of any foot impressions that were taken at the crime scene?

A Yes, there were.

Q None of those came back and matched up to Mr. Vance?

MS. KEENA: Your Honor, I am going to object to that as to foundation.

THE COURT: Well, I think you can ask him if he is aware if there was any match.

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BY MR. SHANDS:

Q Are you aware if there was any match?

A I am not aware of any.

Q Are you aware that they found tire track impressions in the back of Sabreen's?

A Yes.

Q Are you aware if they attempted to match those tire tracks to the blue Corsica that Ms. Rauschnot used to own?

A I was not part of that part of the investigation.

Q I am asking you if you are aware that they did it?

MS. KEENA: Your Honor, I am going to object. Asked and answered.

THE COURT: It is.

BY MR. SHANDS:

Q Officer Kreager, you were asked some questions at the end of one of the audios we heard this morning. The audio was the one where you questioned -- whoever was doing the interrogation left the room and the audiotape was left on, and it picked up Mr. Vance talking. Do you remember that?

A Yes.

Q Okay. Is that a technique that you use in interrogation where you get up and you leave the room and you leave the tape recorder going in hopes that whoever you are interviewing will make some incriminating statements?

A Yes.

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Q So when that happened, that was not done by accident?

A Again, I have no knowledge if it was done intentionally or not at that time.

Q But that is an interrogation technique?

A It is a possible technique.

Q Now you also use a technique by telling Mr. Vance that Stacks, or Mr. Johnson, had already began to confess and that it was going to draw Mr. Vance in. So Mr. Vance should probably come clean now to try to save his skin. Isn't that correct?

A Off the top of my head, I don't recall saying that.

Q You used the technique to tell Mr. Vance if he tells you it was an accident, he can get a deal. He can maybe get, you know, manslaughter, three, four years. But if he doesn't, it's going to go down as premeditation. That's a technique you use to get someone to give you information that may incriminate them, is that correct?

A Yes.

Q Ands you used that with Mr. Vance?

A Yes.

Q Did you also use a technique where you interrogate Mr. Vance over a long period of time, you use multiple people to kind of wear him down, to get him tired.

A There were longer interviews with several officers participating, yes.

Q And one of the purposes of having that sort of interrogation,

1 the hope is that the person will get tired after multiple people  
2 have interviewed him about the same stuff and eventually they  
3 will break down and elicit and give you incriminating  
4 information?

5 A The point of any interview is to learn the truth.

6 Q And you accomplished your point.

7 MS. KEENA: Objection. Argumentative.

8 THE COURT: Well, overruled.

9 THE WITNESS: Would you restate it for me?

10 BY MR. SHANDS:

11 Q You accomplished your point. You say the purpose of any  
12 interrogation is to get to the truth.

13 MS. KEENA: Your Honor, I'm objecting --

14 THE COURT: Maybe you could rephrase it.

15 MS. KEENA: Could we approach so I can clarify  
16 what the --

17 THE COURT: Yes.

18 (OFF RECORD DISCUSSION)

19 MR. SHANDS: I have no further questions, Your  
20 Honor.

21 MS. KEENA: Just a few follow-up questions, Your  
22 Honor.

23 REDIRECT EXAMINATION

24 BY MS. KEENA:

25 Q Mr. Kreager, one of the questions that was asked of you on

1 cross was that in using the Reid Technique, that you are trying  
2 to get a confession, and you indicated no. What are you trying  
3 to do during the interview?

4 A During an interview you're trying to elicit facts that establish  
5 the truth, be those facts that prove the suspect was a  
6 participant in the incident or to prove that he was not, and I  
7 can focus my attention on someone that is.

8 Q One of the other questions you were asked about was whether  
9 you or any of the officers submitted Mr. Vance to a PBT. First  
10 of all, could you just explain what a PBT is briefly?

11 A It's a generic term for a preliminary breath test, to test the  
12 alcohol in one person's system on their breath.

13 Q And during the interviews that you were involved in with Mr.  
14 Vance, was there any indication that he was under the  
15 influence of anything?

16 A No. We were pretty sure he wasn't.

17 Q Why was that?

18 A He had been -- most of the time he had been under  
19 observation.

20 THE COURT: Can you come up?

21 (OFF RECORD DISCUSSION)

22 THE COURT: Go ahead.

23 BY MS. KEENA:

24 Q You can finish your answer.

25 A He had been in a controlled setting under observation for

1 numerous hours before we spoke with him.

2 Q You were asked about the Reid Technique and what the Reid  
3 Technique is. As part of the Reid Technique, are you also  
4 taught to look for body signals from the person that you are  
5 interviewing?

6 A Body language is a good portion of what's taught during the  
7 Reid Technique.

8 Q What does the Reid Technique teach you in that regard?

9 A That there are human traits that when they're under stress --  
10 and typically stress from trying to think of an untruth --  
11 human nature is certain body movements are quite reactive to  
12 that, and there are things that you look for to try and establish  
13 if you are receiving a truthful statement at that time.

14 Q So what type of body movements would be indicative of  
15 deception?

16 A Subtle ones from the direction that the interviewee's eyes go  
17 when he's speaking, where his eyes go when the interviewer is  
18 speaking. Body language, which is fairly well known, such as  
19 crossing arms, crossing legs, drawing themselves into a more  
20 defensive position, positions that are more open, which indicate  
21 the party's more likely to be truthful, more relaxed positions  
22 where they are open and expressive.

23 Q So in applying your training in the Reid Technique, what type  
24 of signals was Mr. Vance sending you during the course of  
25 these interviews?

1 A They were not consistent with open honesty.

2 MS. KEENA: I have no further questions.

3 MR. SHANDS: Just a few, Your Honor.

4 THE COURT: Yes.

5 REXCROSS EXAMINATION

6 BY MR. SHANDS:

7 Q So is it your testimony that when you were interrogating Mr.  
8 Vance you were only seeking to get information and not seeking  
9 to get a confession?

10 A Yes.

11 Q So you're telling this jury that when you were sitting there and  
12 you were interrogating Mr. Vance, that you weren't trying to get  
13 him to confess to any crime?

14 MS. KEENA: Objection, asked and answered and  
15 argumentative.

16 THE COURT: He answered it. Sustained.

17 BY MR. SHANDS:

18 Q Now you talked about the Reid Technique. Now when you were  
19 interviewing Mr. Vance, you had the resources to get a video  
20 camera, and not only have these interviews audio-taped, but  
21 also video-taped, is that true?

22 A It could have been possible.

23 MS. KEENA: Your Honor, could we approach real  
24 briefly on that point?

25 THE COURT: Yes.

(OFF RECORD DISCUSSION)

BY MR. SHANDS:

Q When you interrogated Mr. Vance, you let him know that he was being interrogated for a homicide, isn't that correct?

A Yes.

Q Okay. Isn't it true that most people who are being investigated as a suspect in a homicide would be nervous?

A Yes.

MR. SHANDS: I have no further questions.

MS. KEENA: Again, with the Reid Technique, though, in your training are you taught to take that into account?

THE WITNESS: Yes.

MS. KEENA: Nothing further, Your Honor.

MR. SHANDS: I have nothing further.

THE COURT: Thank you.

THE WITNESS: Thank you.

(Witness excused)

MS. KEENA: Shall we take a break?

THE COURT: Break time.

(Afternoon break was taken.)

MS. KEENA: The state calls Daniel Vujovich.

DANIEL VUJOVICH.

being duly sworn, was examined and testified under oath as follows:

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

THE WITNESS: Daniel Vujovich, V-U-J-O-V-I-C-H.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. KEENA:

Q Good afternoon.

A Good afternoon.

Q Captain Vujovich, what's your current employment position?

A I am employed by the City of South St. Paul in the police department. I am the captain in charge of operations, patrol, and investigations.

Q How long have you been with the South St. Paul Police Department?

A About 25 years.

Q Has that been your entire law enforcement career?

A Yes.

Q You are a licensed peace officer in the state of Minnesota?

A Yes, I am.

Q Were you employed in your current position on December 22, 2002?

A Yes.

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Q On that date did you become involved in the investigation of the robbery/homicide at Sabreen's?

A Yes, I did.

Q Where is Sabreen's located?

A It's located at 345 Fourth Avenue South in South St. Paul.

Q That's in Dakota County?

A Yes.

Q Have you been responsible for overseeing the investigation of this case?

A Yes, I have.

Q Drawing your attention to early on in the investigation, did you receive leads on potential suspects from the Minnesota Gang Strike Force?

A Yes, I did.

Q And what information was that?

A The first information we had was from an informant that the Minnesota Gang Strike Force had. Colleen McManus had called and said that the night before, on the 22<sup>nd</sup>, two individuals were in the Buttery Bar where she's employed and a man, later identified as Mr. Vance, was making comments that were suspicious to her.

Q What other information did you receive?

A He was saying that "he had really screwed up this time, that things were over, and he didn't mean it to go off, and just meant to scare him." While he was doing so, he was kind of

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holding his hand out illustrating as if he had a weapon.

MR. SHANDS: Objection, Your Honor, hearsay.

THE COURT: Why don't you come up.

(OFF RECORD DISCUSSION)

BY MS. KEENA:

Q Captain Vujovich, that was the information from Colleen McManus. Was there information that Minnesota Gang Strike Force advised you of from another witness?

A Yes, a Melissa Stites.

Q And from that information you indicated -- you mentioned Philip Vance's name?

A Yes.

Q In developing this information, did you obtain a physical description of Mr. Vance?

A Yes, we did.

Q How did you get that information?

A I believe it was off a computer printout that we had at our office.

Q Where does the computer printout information come from?

A It was off a booking sheet from a prior arrest.

Q And what was the listed height of Mr. Vance?

A Five foot nine.

Q Did you do the same thing for Mr. Johnson?

A Yes.

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1 Q What was the listed height of Mr. Johnson?  
2 A Five foot seven.  
3 MR. SHANDS: Objection, Your Honor, calls for  
4 hearsay.  
5 THE COURT: Overruled.  
6 BY MS. KEENA:  
7 Q I'm sorry, what was the height of Mr. Johnson?  
8 A Five foot seven.  
9 Q I would like to draw your attention to January 3, 2003. On  
10 that date were you involved in an undercover operation  
11 involving Melissa Stites?  
12 A I was involved, yes.  
13 Q And we've heard from a number of witnesses already in that  
14 regard. Were you able to monitor the conversation between Mr.  
15 Vance and Melissa Stites?  
16 A Yes.  
17 Q While you were monitoring the conversation between the two,  
18 was there anything said about guns?  
19 A Yes.  
20 Q What was said in that regard?  
21 A Melissa Stites had the conversation about how many weapons,  
22 how many guns he had. He commented that he had four of  
23 them. Then the conversation turned to "When was the last  
24 time he had used one?" and, he said, *I believe it was about two*  
25 *weeks ago prior, over on the south side, and that he gave an*

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1 *individual five to the back.*  
2 Q Was there any other conversation?  
3 A When he said he *gave him five to the back*, he said, "*Five to the*  
4 *back with my Winchester.*"  
5 Q During the course of your investigation were there any search  
6 warrants executed?  
7 A Pardon me?  
8 Q Were there any search warrants executed?  
9 A Yes, there were.  
10 Q Was there a search warrant executed at 291 Birmingham,  
11 Apartment 2, in St. Paul?  
12 A Yes.  
13 Q On what day was that search warrant executed?  
14 A January 9<sup>th</sup>.  
15 Q Of what year?  
16 A Of 2003.  
17 Q Who resided at that apartment at the time?  
18 A Terynthia Simms and Shawna Vance.  
19 Q What is Shawna Vance's relationship to Philip Vance?  
20 A It would be his sister.  
21 Q In the course of the investigation did you conduct interviews of  
22 Philip Vance?  
23 A Yes, I did.  
24 Q And you were involved in a number of them with Detective  
25 Kreager, is that correct?

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1 A Yes.  
2 MS. KEENA: Permission to approach, Your Honor?  
3 THE COURT: You may.  
4 (Exhibit Nos. 42-A and 42-B were  
5 marked for identification)  
6 BY MS. KEENA:  
7 Q Captain Vujovich, I am showing you what's been marked for  
8 identification as Exhibits 42-A and 42-B. Do you recognize  
9 those items?  
10 A Yes.  
11 Q And what are they?  
12 A A copy of an audiotape, Philip Vance's statement from April  
13 21<sup>st</sup>. And this would be the transcript.  
14 Q What year was that taken?  
15 A 2003.  
16 Q And these aren't the originals, correct?  
17 A No, they are not.  
18 Q There's redactions made in both 42-A and 42-B, is that  
19 correct?  
20 A Yes.  
21 Q Aside from those redactions, is the tape and the transcript  
22 the same as the originals?  
23 A Yes.  
24 Q Who participated with you in this April 21<sup>st</sup> interview?  
25 A It would be Agent Dave Nygren from ATF and myself.

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1 Q Thank you.  
2 MS. KEENA: Your Honor, at this time the state  
3 would offer Exhibit 42-A as an actual exhibit, and Exhibit 42-B  
4 as a court exhibit.  
5 THE COURT: Received.  
6 (Exhibit 42-A was received  
7 in evidence.)  
8 MS. KEENA: For the record, Your Honor, I will  
9 pass out transcripts.  
10 (Whereupon, cassette tape was played  
11 of April 21, 2003 interview)  
12 BY MS. KEENA:  
13 Q Captain Vujovich, you had one more opportunity to interview  
14 Mr. Vance following this interview, is that correct?  
15 A Yes, we did.  
16 Q Do you recall the date of that interview?  
17 A It would have been June 18th, and it was Detective Kreager  
18 and I.  
19 Q That was 2003?  
20 A Yes.  
21 Q And was that interview recorded?  
22 A Yes, it was.  
23 (Exhibit Nos. 43-A and 43-B  
24 were marked for identification.)  
25

1 **BY MS. KEENA:**

2 Q Captain Vujovich, I am showing you an exhibit that's been

3 marked as 43-A and an exhibit marked as 43-B. Was this

4 interview digitally recorded?

5 A Yes, it was.

6 Q So Exhibit 43-A is a CD, correct?

7 A Yes.

8 Q Does that contain the June 18<sup>th</sup> interview?

9 A Yes, it does.

10 Q What's Exhibit 43-B?

11 A That would be a transcript. Again, redacted as the previous

12 one.

13 Q Are the redactions made on the CD as well?

14 A Yes.

15 Q Besides those redactions, are these accurate duplicates of the

16 originals?

17 A Yes.

18 MS. KEENA: Your Honor, the state would offer

19 Exhibit 43-A, and would offer Exhibit 43-B as a court exhibit

20 only.

21 THE COURT: Received.

22 (Exhibit No. 43-A was received

23 in evidence.)

24 MS. KEENA: Your Honor, I would like to play the

25 disk. For the record, I am going to pass out transcripts.

1

2 THE COURT: Go ahead.

3 (Whereupon, digital recording was played

4 of June 18, 2003 interview)

5 THE COURT: This would be a good time to break.

6 MS. KEENA: Excellent.

7 THE COURT: 9:00 tomorrow we will start.

8 Remember, don't talk to anyone about it. Don't watch the

9 news.

10

11 (Adjourned at 4:35 p.m.)

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