

COPY

STATE OF MINNESOTA
COUNTY OF DAKOTA

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

File No. K6-04-736

State of Minnesota,
Plaintiff,

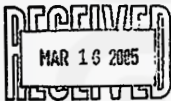
Appellate Court
File No. 04-0407

vs.

VOLUME 4

Philip Vance,
Defendant.

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



APPEARANCES:

KATHRYN M. KEENA, Assistant Dakota County

Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033, appeared representing the State.

NITU SINGH and **CEAN SHANDS**, Public

Defender's Office, appeared as co-counsel representing defendant.

OCTOBER 5, 2004

THE COURT: Please proceed, Ms. Singh.

MS. SINGH: Thank you, Your Honor. At

this time the defense would just like to make a motion for a judgment of acquittal on this matter. It's our position that the State has not proved its case beyond a reasonable doubt. We have mere speculation on this matter.

There is uncorroborated testimony from various witnesses that don't even put Mr. Vance at the crime scene. The only assumption -- the state is asking the jury to make an assumption in this case that puts Mr. Vance in South St. Paul, and that is through Keitha McKinney being a resident of South St. Paul during this time. In her testimony she stated she didn't even know Mr. Vance or Mr. Johnson, and she's never met them before, and she's only learned of the connection with Mr. Johnson through the investigation of this case.

We would assert that the state hasn't proven or showed anything that places Mr. Vance even in South St. Paul. And even through Keitha McKinney's testimony, she stated she was in and out of the emergency room during the month of December and was sick or was in her home. The state hasn't even shown that on December 22nd she was or wasn't at home.

CLOSING ARGUMENTS

THE COURT: Does the state wish to respond?

MS. KEENA: Your Honor, the state was present for the entire trial and heard all the evidence in this case. The state has introduced a plethora of evidence and believes it has met its burden in this case and would ask that the motion be denied.

THE COURT: Motion denied. Then we will bring the jury in. I will give them an abbreviated instruction regarding the transcripts that I've had a chance to read to the parties, and we'll start.

MR. KEENA: Your Honor, there was an additional issue that the state would like addressed this morning. I don't recall yesterday the exact sequence of events, but Mr. Shands had requested on behalf of Mr. Vance the instruction regarding the defendant's right not to testify. The jury has already been instructed on that.

Mr. Shands did converse with Mr. Vance about that. But before the jury actually gets a set of the instructions and takes them back to their deliberations, the state would ask that the court inquire of Mr. Vance if he in fact does wish the jury to have that instruction.

THE COURT: Okay. Mr. Shands.

MR. SHANDS: Your Honor, I have spoke with Mr. Vance. Yesterday we did put on the record certain

things that are Mr. Vance's rights. He made his decision in regards to whether or not to have a jury trial and whether or not he would testify.

In regards to the jury instructions and what instructions we would ask the court to give, we have conversed with Mr. Vance. He has been present and he was present when we went over the instructions. He was here when I asked the court to give that instruction. I am assuming that Mr. Vance wants that instruction to be given. Is that correct, Mr. Vance?

MR. VANCE: Yes.

THE COURT: Okay.

MS. KEENA: Thank you, Your Honor.

THE COURT: Bring the jury in.

1 THE COURT: Good morning. You were
2 provided with copies of taped conversations during the trial.
3 You should rely on what you heard rather than what you read,
4 if you find a difference between the tape and the transcript.

5 The transcripts were provided to you to
6 assist you in listening to the tapes and were collected from you
7 at the conclusion of the playing of each tape. The transcripts
8 will not be available to you during your deliberations.

9 We will now hear final arguments of the
10 parties, and Ms. Keena will begin.

11 MS. KEENA: Thank you, Your Honor.
12 Good morning. May it please the court, counsel, members of
13 the jury. We have reached that final stage of closing argu-
14 ments, and this is my opportunity to argue to you the facts
15 that you've heard over the course of this trial.

16 At the conclusion of my argument, I am
17 going to ask you to return verdicts of guilty against Mr. Vance
18 for the crimes of First Degree Premeditated Murder, First
19 Degree Murder while committing aggravated robbery, and
20 Second Degree Intentional Murder.

21 Let's turn to the facts of this case and what
22 the state established happened the night of December 22,
23 2002.

24 *Fact:* Vance and Johnson went to the
25 Radisson Bar in downtown St. Paul sometime between 7:00

1 p.m. and 8:00 p.m. What evidence did the state present to
2 establish that fact?

3 You heard from John Martin. John Martin
4 testified that he met the two men at the Radisson Bar the
5 evening of December 22, 2002 at approximately 7:00 p.m.

6 You also heard from Melissa Stites. As you
7 recall, Melissa Stites was a bartender at the Radisson Bar at
8 the time. She worked that particular evening from 4:30 p.m. to
9 10:00 p.m. She recalls Vance, Johnson and a third African
10 male getting there about 8:00.

11 She also testified that while the men were in
12 the bar, the three men appeared secretive, and Vance did not
13 engage her in the conversation as he usually would, you know,
14 like, "Hey, Melissa, Hey Baby, how 'ya doing?" He didn't do
15 that that night.

16 Melissa Stites testified that when she talked
17 to Vance and asked him what they were up to, his response
18 was, "We're just getting our plan on."

19 You also heard from Dontay Reese. Dontay
20 Reese testified that Vance told him that on the night of
21 December 22, 2002, he and Johnson went to the little bar. The
22 *little bar*, according to Dontay Reese, is also the Radisson Bar.
23 He described it as the *little bar* up in the skyway level in down-
24 town St. Paul in the Radisson.

25 Vance put himself at the Radisson Bar that

1 night. In his January 16th statement, in his January 23rd
2 phone call with Tom Kreaiger, in his April 18th statement, in his
3 June 18th statement, Vance said he went to the Radisson Bar
4 the night of December 22, 2002.

5 *Fact:* While at the Radisson Bar, Vance and
6 Johnson tell John Martin that they're going to South St. Paul
7 that evening. What evidence did we introduce to establish
8 that? Again, John Martin.

9 John Martin testified that that's what Vance
10 and Johnson told him, that they were going to South St. Paul
11 that evening. And while at the bar together, Vance and
12 Johnson discussed with him how they were going to put money
13 together for Christmas presents for their kids.

14 *Fact:* While at the Radisson Bar, Johnson
15 uses Vance's cell phone to call the South St. Paul girls. How
16 did we establish that? Again through John Martin.

17 John Martin testified that Johnson used
18 Vance's cell phone to call the South St. Paul girls for a ride. He
19 identified the South St. Paul girls as Yvonne White and Nicole
20 Rauschnot. He identified Yvonne White as being one of
21 Johnson's girlfriends.

22 Dontay Reese testified. He testified that
23 Vance told him that Stacks, nickname for Johnson, used
24 Vance's cell phone while at the Radisson Bar to call two girls
25 for a ride. He recalled the girls names to be Yvonne and Nicky

1 or Tiffany.

2 *Fact:* Vance and Johnson left the Radisson
3 Bar at approximately 8:30 p.m. that night. How did the state
4 establish that? Again through the testimony of John Martin.
5 John Martin testified that he, Vance and Johnson left the bar
6 together at approximately 8:30 that night.

7 We also had testimony of Melissa Stites.
8 Melissa Stites testified that the three men left at approximately
9 8:30 p.m. As they left, you recall Melissa Stites testified that
10 she commented to Vance, because these three never tip her,
11 *that the tips were low that night.*

12 In response, Vance turned back to her and
13 said, "Hey, Baby, when I get back, there'll be plenty of money."
14 Melissa Stites subsequently reported this information to the
15 Minnesota Gang Strike Force.

16 *Fact:* Vance and Johnson, after they left the
17 Radisson Bar, entered a blue Corsica automobile which
18 contained Nicole Rauschnot and Yvonne White. How did the
19 state establish that? John Martin.

20 John Martin testified that he saw Vance and
21 Johnson get into a blue Corsica by the bus sto, which was
22 located right in that area outside of the Radisson Bar. He
23 identified Nicole and Yvonne as being in the car. He identified
24 Yvonne as the passenger and Nicole, the driver.

25 You also heard testimony from Dontay

1 Reese. Dontay Reese testified that Vance told him that he and
2 Johnson were picked up near the bus stop by two girls.
3 Dontay Reese recalls Vance telling him that they got into what
4 he thought was either a blue Corsica or a blue Accord. He
5 remembers that the car name or the brand had an "O" in it.

6 Tom Kreager, through his investigation,
7 located a blue Corsica registered to none other than Nicole
8 Rauschnot. And you saw a picture of that car, dark car, mid-
9 sized, four doors.

10 *Fact:* Vance, Johnson, Nicole and Yvonne
11 drove to Hennessy's place in South St. Paul where they met up
12 with Troy Crawford. What evidence do we have to support
13 that?

14 By way of background information,
15 remember that in Vance's statement, in his April 17th interview,
16 Vance said that he knew this guy named Hennessy, Richard
17 Robinson, and had known him for about two years and also
18 knew that Johnson and Hennessy were actual blood cousins.

19 You heard testimony from Dontay Reese.
20 Dontay Reese testified that Vance told him that he, Johnson
21 and the two girls drove to Hennessy's place to meet Troy
22 Crawford.

23 You heard testimony from Keitha McKinney.
24 She never met Mr. Vance before, but what was relevant about
25 her testimony was that as of December 22, 2002, she was

1 residing about a block and a half from Sabreen's, and at the
2 time she was dating Richard Robinson, who was more
3 commonly known by his nickname of Hennessy. And
4 Hennessy stayed at her place.

5 You also heard on this point from Captain
6 Daniel Vujovich, who also testified that as of that date Keitha
7 McKinney and Hennessy were residing at that address. That
8 the residence is only about a block and a half from Sabreen's
9 and that the distance to travel from the Radisson Bar to that
10 area near Sabreen's is approximately 5.4 miles and takes
11 approximately twelve minutes to travel. Plenty of time.

12 That's the picture that you saw (indicating)
13 which shows how close the two places are, and also it shows
14 that there is an alley that runs from the 141 Fourth Avenue
15 South address all the way down to Sabreen's.

16 *Fact:* Vance, Johnson, Nicole, Yvonne and
17 Troy drove to Sabreen's and parked behind the store in the
18 alley. What evidence did we introduce to establish that?
19 Dontay Reese. Dontay Reese testified that Vance told him that
20 they drove down to Sabreen's and parked in the alley.

21 We have the three kids who came in and
22 testified. As they approached Sabreen's in the alley, they saw a
23 car parked in the middle of the alley.

24 *Fact:* Vance, Johnson and Troy exit the
25 vehicle, and Troy stays outside in back of the store, outside of

1 the back of the store. We have the testimony of Dontay Reese
2 that supports that. Vance told Dontay Reese that Vance,
3 Johnson and Troy exited the vehicle and that Troy stayed
4 outside at the back of the store.

5 *Fact:* Vance and Johnson went to the front
6 of the store and entered Sabreen's through the front door. How
7 do we know that? Well, Dontay Reese testified that Vance told
8 him that they entered the store, and Vance never told Dontay
9 Reese the name of the store. He did tell them what he was
10 under investigation for. He didn't refer to the store as
11 Sabreen's. He referred to it as a *pop store*. Well, that's what it
12 is. It's a family-owned business.

13 You heard Tariq Bakkri testify. It's a family
14 owned business. The fact that they went through the front
15 door was also supported by the testimony of Dr. Sedqi who
16 testified that the back door of Sabreen's had not been tampered
17 with, and that when they actually went inside the store it was
18 barred from the inside. You wouldn't have been able to get into
19 the store through the back door.

20 *Fact:* When Vance and Johnson entered
21 Sabreen's, they were wearing black masks that covered their
22 faces. How do we know that? You heard the testimony of
23 Kathleen Johnson. She testified that when she saw -- actually,
24 when she entered the store she saw the man behind the
25 counter wearing a black mask, but when she saw them exiting

1 the store, she noticed that both of them were wearing black
2 masks that completely covered their faces.

3 You also heard the testimony of Geronimo
4 Estrada, who testified that Vance told him that at the time they
5 committed the crime he was wearing a black mask.

6 *Fact:* Upon entering Sabreen's, Vance ran
7 behind the counter while Johnson ran around the store. What
8 evidence do we have of that? The testimony of Geronimo
9 Estrada. Geronimo testified that Vance told him that upon
10 entering Sabreen's, Vance immediately ran behind the counter
11 while Johnson went around the store.

12 As you recall from the testimony, this is a
13 picture of the front door of Sabreen's. As Tariq Bakkri told you,
14 that's the only way back behind the counter. It's right by the
15 door. So Vance ran through that front door and immediately
16 went behind that counter.

17 Kathleen Johnson testified that when she
18 entered Sabreen's, she saw one man behind the counter. This
19 supports what Vance told Geronimo Estrada. Kathleen
20 Johnson only saw one man behind the counter, and figured
21 there was a second person in the store because she heard
22 somebody say something. She described it as being "Hey," like
23 someone else was being alerted.

24 *Fact:* Vance commanded Khaled to the floor
25 and shot at him four times, striking him twice in the back of

1 the head. What evidence do we have of that?
2 Geronimo Estrada testified that Mr. Vance
3 told him what he was under investigation for. He didn't say the
4 name of the store. He didn't say "I did this at Sabreen's," but
5 he told Geronimo Estrada that it happened in South St. Paul,
6 at a store located in South St. Paul.

7 Vance also told him that, "We entered the
8 store," meaning he and Mr. Johnson. Geronimo Estrada also
9 testified that Vance told him that after running behind the
10 counter, the clerk was crying. Khaled was crying and begging
11 Vance not to hurt him.

12 Vance told the guy to "shut up." And when
13 he wouldn't, Vance, in his words to Geronimo Estrada, "laid the
14 bitch down and shot him twice in the head." That was
15 corroborated by Dr. Lindsey Thomas's testimony. She
16 performed the autopsy on Khaled. She recovered two bullets
17 from Khaled's head. One of the entrance wounds was to the
18 back of his head and the other entrance wound was to the back
19 of his neck. So he had one there, and he had one there
20 (indicating).

21 Either shot was fatal. We know -- or, the
22 evidence supports the fact that Khaled was in fact laid down
23 before he was shot. When officers arrived, when Dr. Thomas
24 arrived at the scene, she described for you, and we showed you
25 a picture, of how the body was found. Khaled was found face

1 down behind the counter.

2 Dr. Thomas also explained to you the
3 trajectory of the bullets that were found in Khaled's head, and
4 that the lack of injuries that he had -- he had no injuries on his
5 face, no injuries indicating that he fell. She testified that all of
6 that taken together was consistent with him either having been
7 sitting down -- there were no chairs behind there -- or kneeling
8 or actually laying down at the time that he was shot.

9 The crime scene investigation also supported
10 that Khaled was laying down at the time he was shot. As you
11 recall, there was a third bullet that was found at the crime
12 scene that was found in a flashlight that was located on a very
13 low shelf, which was near Khaled's head. The trajectory of that
14 bullet was indicative of him being down on the ground, face
15 down, laying down, at the time that he was shot.

16 There is the flashlight right there
17 (indicating). See how close his head is? This picture shows
18 that after the flashlight is removed, it shows the flag going
19 through to show you the trajectory. It's a downward trajectory.
20 The man was laying down when he was shot, a fact that Mr.
21 Vance knew and was relating to other people.

22 The fact that there were four shots fired was
23 corroborated by Dr. Sedqi, who testified that there were four
24 casings that were recovered from behind the counter.

25 **Fact:** Vance used a .22 pistol to murder

1 Khaled Al-Bakri. How do we know that it was a .22 pistol?
2 Well, you heard the testimony of Dontay Reese. Dontay Reese
3 testified that Vance told him that he used a *deuce deuce*. Mr.
4 Reese told you that lingo means a .22 pistol.

5 You heard the testimony of John Nunn.
6 Vance told John Nunn that he used a .22 when committing the
7 crime. It's all substantiated by Kurt Moline. Kurt Moline
8 examined the four casings and determined that all four were
9 .22 caliber and were fired from the same weapon, *bang, bang,*
10 *bang, bang.* Same time.

11 He also examined the two bullets recovered
12 from Khaled's body and the bullet recovered at the scene and
13 determined those to be .22 caliber as well. It's all consistent, it
14 all fits together.

15 **Fact:** Vance opened the cash register at
16 approximately 9:35 and took the money from the register.
17 What evidence do we have for this? Tariq.

18 You heard testimony from Tariq Bakkri. He
19 indicated that he left the store at approximately 9:29 that
20 night, after he faxed a business letter overseas.

21 The state also introduced the register tape.
22 And the last transaction on that cash register tape shows that
23 the register was opened and it says, "NS," which means *no sale*.
24 And the time that the cash register was opened was at 9:35 --
25 minutes, minutes after his brother left the store.

1 The timing was also established by Kathleen
2 Johnson who testified that she entered the store at approxi-
3 mately 9:40 that night and saw a man standing behind the
4 counter whipping cash out of the register. She only saw one
5 man behind the counter because Khaled was already dead on
6 the floor.

7 **Fact:** In addition to cash, Vance and
8 Johnson took lottery tickets, cigarettes, white bags and a
9 cordless phone. What evidence did the state introduce to
10 substantiate that? Well, we had the testimony of Tariq Bakkri.
11 Those are the things that he said were missing from his store
12 following the murder.

13 You heard testimony from Geronimo
14 Estrada. On February 9th of 2003, Vance told him that he had
15 gotten stacks of money, lottery tickets, cigarettes, baggies and
16 a phone. What was so significant about this, and what makes
17 Geronimo Estrada so completely credible, is that aside from the
18 money, none of those other items were ever mentioned in press
19 releases, they weren't in any newspaper articles, Mr. Vance was
20 never questioned in the five different statements that he gave
21 about any of those items. They were never mentioned. That's
22 items that only someone who was there, the perpetrator, would
23 know were taken from the store.

24 These are all items that were located
25 conveniently behind the counter. The cash register is right

1 there, the lottery tickets right there.

2 You heard Mr. Bakkri testify about how

3 unusual it was to have these lottery tickets pulled out in such

4 a fashion. Usually there'd just be maybe one or two that might

5 be out. The little white hook right there (indicating), that held

6 all the white bags are gone, and the cigarettes all along this

7 wall, and the phone base. The phone was missing. I can't tell

8 you if the phone was right there that night or if Khaleb was

9 carrying it around in his waistband, like his brother testified to.

10 That Khaleb had a habit of carrying that phone around on one

11 side and his cell phone on the other. All we know is that it was

12 taken. It was missing.

13 *Fact:* After seeing Kathleen Johnson enter

14 the store, Vance and Johnson exited Sabreen's and ran to the

15 car that was still parked in the alley. What evidence supports

16 that fact? Testimony from Dontay Reese.

17 Vance told him that after they did it, they

18 ran back to the car and jumped in. Vance also told Dontay

19 Reese that Crawford, Troy, did now get into the car and that

20 Vance did not know what happened to him, where he went.

21 Kathleen Johnson supports this fact. She

22 testified that she saw two men exit Sabreen's and run around

23 the corner towards the alley. Samantha and Matthew Renville

24 testified that they saw two men run to a waiting car yelling "go,

25 go, hurry."

1 *Fact:* Vance and Johnson left South St. Paul

2 and were dropped off at the Buttery Bar in Downtown St. Paul

3 at approximately 10:15 p.m. What evidence establishes this

4 fact? The testimony of Dontay Reese. Vance told him that they

5 were dropped off at the Buttery Bar following the homicide.

6 Colleen McManus testified that she saw

7 Vance and Johnson getting out of a car outside of the bar at

8 approximately 10:15 as she was returning to the bar. As you

9 recall, she left for a while to go home and check on her kids.

10 And she saw them as she was pulling up to the bar.

11 Eric Griffin testified that he arrived at the

12 Buttery Bar that night about 10:00 p.m. and that Vance and

13 Johnson entered the bar together a short time after that.

14 *Fact:* Vance murdered Khaled Al-Bakri.

15 At the beginning of this case, I was very open with you. I told

16 you that the state did not have any physical evidence that

17 linked Mr. Vance or Mr. Johnson to the scene of the crime. I

18 am sure the defense is going to hammer that point in their

19 closing. But the law doesn't require the state to have physical

20 evidence. The law doesn't require physical evidence for you to

21 find someone guilty of this crime. It's not required for me to

22 introduce physical evidence to you to meet my burden of

23 proving to you beyond a reasonable doubt that this man did

24 what he is accused of doing.

25 While I don't have any physical evidence, I've

1 got something just as good, it's equally as compelling:

2 admission, after admission, after admission, after admission

3 that he committed this crime. So let's take a look at those

4 admissions.

5 Colleen McManus, that's the first admission

6 you heard about. Less than an hour, less than an hour after

7 Khaled is shot at Sabreen's, Vance enters the Buttery Bar.

8 Colleen sees Vance is talking to Maynard Cross.

9 Eventually Vance and Colleen talk, and she

10 observes that he is very upset, so upset that he's crying. And

11 Colleen McManus, as you heard, found this extremely unusual

12 for Mr. Vance. He tells Colleen McManus, "I really fucked up

13 this time and I need to leave town." He continues and tells her

14 that he didn't mean for it to go off, and that he just wanted to

15 scare the guy.

16 As you recall, Colleen McManus demon-

17 strated to you that during this conversation Vance then

18 gestured his hand and pointed his hand as if firing a gun. He

19 went "Bang, bang."

20 Colleen asked him, "Did you shoot a guy?"

21 And through his tears, Vance told her that he did. While

22 speaking with Vance, you heard testimony about this during

23 the cross-examination of Colleen McManus, Maynard Cross

24 interrupts their conversation by yelling at Vance "Quit acting

25 like a crazy motherfucker. Shut your mouth."

1 I would submit to you that the first

2 admission wasn't to Colleen McManus, it was to Maynard

3 Cross. Colleen saw them talking together. Why else would he

4 be yelling that?

5 ~~With Colleen McManus, you should also~~

6 ~~remember that her brother was a cop.~~ Everybody in the bar,

7 all those guys that hung out there, knew that her brother was

8 a cop. So what does she do? She immediately reports it to her

9 brother.

10 Next admission. Eric Griffin. While he was

11 at the Buttery Bar that night, Vance told him that he had just

12 committed a robbery in South St. Paul. He further told, and

13 Eric Griffin testified to this, that Vance told him that the guy

14 wouldn't give up the money so Vance fucked him up.

15 Tom Kreaeger, you heard from him. Melissa

16 Stites and Colleen McManus reported the conversations that

17 they had with Mr. Vance the night of December 22, 2002.

18 Upon learning of this information, Tom Kreaeger, as he testified,

19 checked all over the metro area to see if there had been any

20 other shootings that night. There weren't.

21 The Sabreen shooting was the only one. It is

22 the only shooting that Mr. Vance could have been referring to

23 when he told Colleen McManus what he did. The same holds

24 true with the admission to Eric Griffin.

25 The next admission comes in the January 3,

1 2003 undercover operation, where Melissa Stites was wired,
2 and several law enforcement officers were monitoring the
3 conversations between she and Mr. Vance.

4 They started out at the Buttery Bar, but then
5 eventually ended up at the Lab Bar that night. While at the
6 Lab Bar the conversation between the two turned to guns.
7 Melissa Stites asked Mr. Vance, "Do you have any guns?" and
8 Mr. Vance said, "Yeah, I have four guns."

9 She asked him, "When was the last time you
10 used one?" His response, "Two weeks ago on the south side."
11 The murder/robbery at Sabreen's occurred twelve days earlier.
12 When asked what he did, Vance told her that he shot a guy five
13 times in the back.

14 You heard from Regina Hagerman. Vance
15 was at her house the Saturday before the 2003 Super Bowl.
16 So, more than likely, for those of you who actually watch the
17 Super Bowl, that would be sometime in late January. At the
18 time Vance was dating her niece, Darlene Jones.

19 By this time, Mr. Vance has already been
20 interviewed twice by police officers. He was interviewed
21 January 15th and January 16th. He knows he's under
22 investigation. He knows he is the primary suspect for the
23 crime. He tells Regina Hagerman that. He tells her that he did
24 it, but that the police won't be able to prove it.

25 Ah, Mr. Estrada. Mr. Estrada was

1 incarcerated with Vance at the Ramsey County Workhouse
2 from February 6th to February 10th of 2003. You heard
3 testimony from him that on February 9th Vance told him that
4 he was being harassed by officers for a murder in South St.
5 Paul. Approximately 45 minutes later, Vance tells Mr. Estrada
6 how it went down.

7 He tells Mr. Estrada that he and Stacks,
8 meaning Mr. Johnson, entered the store in South St. Paul.
9 That Vance ran behind the counter and "laid the guy down."
10 The guy was crying, asking Vance not to hurt him. Vance shot
11 him twice in the head. This is what he told Geronimo Estrada.
12 He told Geronimo Estrada, "I took stacks of money, lottery
13 tickets, cigarettes, baggies and a phone."

14 I already told you what the significance of
15 that is. Vance also told him that they were wearing black
16 masks at the time they committed the crime. All consistent.

17 You heard from Tyrone Crawford. By now
18 we're up to the sixth admission. This is the sixth or seventh
19 admission. Tyrone Crawford, he was incarcerated with Mr.
20 Vance in the Sherburne County Jail from April 21, 2003 to
21 December 19, 2003.

22 He testified that when Vance saw Maynard
23 Cross's picture in the paper, he became nervous because Cross
24 had knowledge about something that Vance had done. Again,
25 information that supports that he most probably told Maynard

1 Cross that night at the Buttery Bar what he had done.

2 Later, Vance told him that he was under
3 investigation for a robbery/homicide and that he had shot a
4 guy while robbing a grocery store. You saw what the store
5 looks like. It is a grocery store. It's a small one, but it's a
6 grocery store. We know which one he's talking about.

7 John Nunn, seventh or eighth admission.
8 John Nunn and Mr. Vance were incarcerated together in the
9 Sherburne County Jail from April 22nd through June 9th of
10 2003. And, again, at the Sandstone Correctional Facility from
11 December 19, 2003 through February 13, 2004.

12 Mr. Nunn testified that a few days before
13 Vance was scheduled to be released from Sandstone, Vance
14 told him that he had committed a robbery at a store using a
15 gun and that he had to merck someone. As Mr. Nunn
16 explained, that means that he shot or killed someone.

17 Isaac Hodge, admission number nine or ten.
18 Isaac Hodge testified that he and Mr. Vance were incarcerated
19 together in the Sherburne County Jail from April 21st through
20 July 18th of 2003. Here again the Maynard Cross admission --
21 or admisaion to Maynard Cross. Isaac Hodge testified that
22 when Vance saw Maynard Cross's picture in the paper, he
23 became nervous because Maynard Cross had some shit on
24 him.

25 Vance told Isaac Hodge that he committed a

1 murder/robbery and no truer words were ever spoken than that
2 he killed a guy and that it wasn't worth it.

3 Dontay Reese. You know, we had Geronimo
4 Estrada who kind of gave you all the details. Vance gave him
5 the details about what happened inside of the store. With
6 Dontay Reese we got more of the details about being at the
7 Radisson Bar, getting into the blue Corsica, going over to
8 Hennessy's house, driving down to Sabreen's. He gave us a
9 fuller picture of how it went down that night. All information
10 that could be corroborated through other witnesses.

11 Dontay Reese and Mr. Vance were
12 incarcerated together in the Dakota County Jail from March
13 18, 2004 through March 20, 2004. Then again from June 22nd
14 through August 4th. Now Mr. Reese testified that the conver-
15 sation that he had with Mr. Vance occurred about five or six
16 months ago, which would put it right in that March 18th to 20th
17 timeframe. That's when that conversation occurred.

18 Dontay Reese told you how Vance told him
19 that Johnson and Vance met with John Martin, met up with
20 Martin at the Radisson Bar that night. That while at the bar,
21 Johnson used Vance's cell phone and called two girls for a ride.
22 Reese remembers the names, in his testimony, as being Yvonne
23 and Nicky. He testified that Vance told him that the two girls
24 picked the two men up, near the Radisson Bar, in a blue
25 Corsica or an Accord.

1 The four drove to Hennessy's place and met
2 up with Troy Crawford. Vance, Johnson and Crawford, and the
3 two girls, drove to Sabreen's and parked in the alley behind the
4 store. Vance and Johnson entered the store while Crawford
5 stayed in back of the store.

6 Inside of the store Johnson yelled something
7 at Vance while they were robbing Sabreen's. Vance told him --
8 and which may be consistent with when Kathleen Johnson
9 walked in. Kathleen Johnson testified that she heard some-
10 body yell something like "Hey." That was probably the yelling.

11 Vance told Dontay Reese that he gave *dude*
12 five to the back of the head, got the money and got out of there.
13 Vance told Dontay Reese that they ran back to the car, drove
14 off, and were dropped off at the Buttery Bar.

15 Vance also told Dontay Reese that he didn't
16 know what happened to Troy. Troy didn't get back into the car
17 with them.

18 Again, as I told you earlier, Vance didn't tell
19 him the name of the store, but referred to it as a *pop store*.
20 And he also told Dontay Reese the type of weapon that he used,
21 a *deuce deuce*.

22 Other things that I would point your
23 attention to, besides all the admissions, is the physical
24 description. Captain Vujovich testified that Vance is five foot
25 nine. Johnson is five foot seven. Kathleen Johnson described

1 that one of the men was approximately five nine and the other
2 man was a couple of inches shorter. She described both men
3 as having slender builds. You can see for yourself, Mr. Vance
4 has got a slender build.

5 We also have the clothing description.
6 Kathleen Johnson described the men as wearing baggy jeans
7 and hooded sweatshirts. Samantha Renville described the men
8 as wearing loose fitting jeans and hoodies, which means
9 hooded sweatshirts.

10 Colleen McManus, dark baggy pants and
11 hooded sweatshirts under jackets, by the time they got to the
12 Buttery.

13 Eric Griffin, he testified that Vance was
14 wearing dark baggy bluejeans and a hoodie. All consistent.

15 So let's talk about the money. What
16 happened to the money? Not that it's relevant, but let's talk
17 about it because it fits in the facts of this case.

18 Vance told Colleen McManus a few days after
19 Christmas that he had purchased Christmas presents for his
20 kids, and that he spent about four hundred dollars, which is
21 very interesting, given the fact that he had been unemployed
22 for about a year, which you heard in his January 15th
23 statement.

24 When questioned about money for Christmas
25 presents, Vance's explanation was, "Well, Sonya gives it to me.

1 Sonya's got the rich grandma, so she gives me whatever I
2 need." The problem is that he told investigators that she only
3 gave him fifty to a hundred dollars. It wasn't four hundred
4 dollars.

5 Then there must have been a little falling
6 out, as you heard from Jackie Ezell. Jackie Ezell told you that
7 Vance showed up at her house on the night of January 3rd,
8 2003, which was the same night as the undercover operation.
9 He was there to get something. At the time Vance was dating
10 her granddaughter, Darlene Jones, who lived at that residence.

11 Vance left, and approximately a half hour
12 later Johnson shows up. And he's upset. He says he's looking
13 for Florida, Mr. Vance. Looking for Vance because Vance has
14 his money, and he tells Jackie and Darlene that he is done
15 with Vance.

16 Eventually they mend their fences and they
17 agree to a code of silence. Vance and Johnson are very close.
18 In his January 15th statement, Vance refers to Johnson as his
19 *homey*, and tells officers that he doesn't hang around with
20 anyone else but Stacks, Mr. Johnson. They adopt a code of
21 silence, which was exemplified in the September 10, 2003 letter
22 from Vance to Johnson, which I introduced.

23 This is a portion of that letter. "Before I
24 holler at you, I'm letting you know, never ever discuss the
25 past," *never ever* - in capital letters. Gee, I wonder what he's

1 referring to? To accentuate the meaning of the code of silence,
2 this is how he signs the letter. This is his closing, "Blood
3 Brothers, Florida."

4 What's the message in that letter? Don't tell.
5 Don't tell. Mr. Vance didn't follow his own advice. He couldn't
6 keep his mouth shut. He knew as early as January 9, 2003
7 that he was being investigated and that he was a suspect in
8 this crime because that's when his sister's house was searched.

9 There was a search warrant executed at her
10 house because he was staying there off and on, and you can
11 damn well bet that his sister told him, because nobody likes to
12 have their door come crashing down in a search warrant, you
13 can well bet that Mr. Vance knew about that search warrant
14 that was executed on January 9th, and he definitely knew as of
15 January 15th that he was a suspect, because that's when he
16 was first interviewed by the police.

17 Even so, even when he knew that he was
18 being investigated, he continues to admit and discuss his role
19 in the crime to several other people: Regina Hagerman,
20 Geronimo Estrada, Tyrone Crawford, Isaac Hodge, John Nunn
21 and Dontay Reese. This is why his explanation to officers
22 about his admissions to Colleen McManus is so completely
23 unbelievable.

24 In his January 15th statement, Mr. Vance
25 was confronted about his admission to Colleen McManus at the

1 Buttery Bar on the night of December 22nd when he told her
2 that he shot someone.

3 He initially denied making that statement. "I
4 didn't say that, I didn't say that." But, then, all of a sudden,
5 "oh, yeah, oh, that." You know, he magically remembers that
6 he had told her that because he was broke and he really
7 wanted a free drink.

8 Officer Kreager pointed out, "Why wouldn't
9 you tell somebody that your dog died or, as he said, your kitten
10 fell out the window." No, instead you tell somebody that you
11 blasted somebody to get a free drink. To garner sympathy, you
12 told somebody that you killed somebody. Who would do that?
13 Who's going to be sympathetic to that?

14 It didn't work on Colleen McManus. She
15 didn't give him any free drinks that night. She didn't give him
16 any drinks that night. She called her cop brother instead.

17 And if this is the reason why he told Colleen
18 McManus that he shot somebody, what was he thinking when
19 he told Geronimo Estrada at the Ramsey County Workhouse,
20 "Yeah, I did this." Can I have my free drink now? It makes no
21 sense.

22 Why would he tell John Nunn, Isaac Hodge,
23 Tyrone Crawford? They're all in custody. You don't get to
24 drink alcohol when you're in custody. Did he think he was
25 going to get free drinks from all those folks? No. He told them

1 because he did it.

2 One of your jobs as a juror is to assess
3 credibility, to assess credibility of the witnesses that you've
4 heard testify. In their opening statement, the defense
5 characterized Mr. Vance as a *gravy train*.

6 The defense asserted that the only reason
7 many of the state's witnesses came forward is because they
8 were receiving something in exchange for their testimony,
9 insinuating that the state's witnesses should not be believed.

10 After hearing all of the state's witnesses, it
11 should be clear to you that Mr. Vance is nothing - he is not a
12 "gravy train." He is, anything but, I characterize him as a
13 wrecking ball.

14 Look at Melissa Stites. Melissa Stites
15 received some relocation expenses. But, she felt it necessary to
16 move out of state for her own safety.

17 This wasn't some glamorous relocation like
18 you see on TV with the Witness Protection Program, where they
19 get put up in some swanky penthouse apartment and given
20 everything, you know, the best that life has to offer. You heard
21 her. She sat there and she went, "Well, I remember I had to
22 spend about \$999 of the money on a U-Haul trailer. Whoopity
23 do. Wrecking ball. Her life was placed in total upheaval
24 because she was willing to come forward and do the right thing
25 in this case."

1 Colleen McManus. Colleen McManus did not
2 get anything in exchange for her testimony. The only thing she
3 got was that she had to quit her job. Wrecking ball.

4 Eric Griffin. Eric Griffin, he did get some-
5 thing in exchange. Minnesota Gang Strike Force had arrested
6 him on a drug charge and, because of his cooperation, they are
7 going to recommend to the Ramsey County Attorney's Office
8 that the drug charge be dismissed.

9 Even so, Eric Griffin felt it necessary to move
10 out of state. He described the situation that happened to him
11 as he was standing outside of his house. He felt threatened.
12 His life was put in total upheaval.

13 Regina Hagerman. Regina Hagerman isn't
14 getting anything, not a thing.

15 Tyrone Crawford. Tyrone Crawford, he is not
16 getting anything in exchange for his cooperation except going
17 back to the Sandstone Correctional Facility, probably with the
18 label of being a snitch, which is not a real great label to have
19 when you are in that type of setting.

20 Same thing with Isaac Hodge. Isaac Hodge
21 isn't getting anything for his testimony except a label. He is
22 going back to the Anoka County Jail with a label.

23 John Nunn. John Nunn is not getting
24 anything.

25 And think about these people's demeanor as

1 they were testifying. You know, they just came up and told
2 you what they knew.

3 Dontay Reese. Dontay Reese is getting
4 something in exchange. Dontay Reese is getting 36 months
5 knocked off on his sentence. But, remember, when you are
6 assessing his credibility, Dontay Reese did not come forward on
7 his own. He was outed.

8 He was outed by another inmate from South
9 St. Paul, who lived in South St. Paul, was familiar with
10 Sabreen's and wanted to see justice done. So it was him, it
11 was that inmate that called the South St. Paul Police Depart-
12 ment and said, "This guy has got information on your case,
13 good information. You need to come and talk to him."

14 So they did. Dontay Reese said, "I don't
15 want to talk to you." And before he made the decision, because
16 that's something he's never done before, he talked to his mom
17 and his dad, and he talked to his lawyer. You know, are you
18 going to fault a guy for putting himself out there, for wanting a
19 little time shaved off? Think about how he appeared on the
20 stand. He was open. He told you what he knew.

21 Law enforcement officers. In their opening
22 statement and during their questioning of the officers in this
23 case, the defense insinuated, and right out told you during the
24 opening, that the officers in this case have a vested interest in
25 what happens. All the hours that have been worked, the

1 nature of the crime, you know, it's telling you that cops have a
2 vested interest.

3 They don't have a vested interest in this
4 case. They're trying to insinuate that you can't believe the
5 officers, that they had tunnel vision. You know, that they were
6 on Philip Vance from day one. They had to solve this crime.
7 That's not the case.

8 They don't have a vested interest. And they
9 shouldn't have to stand up here -- and I am not going to stand
10 up here and apologize for police officers doing their job. You
11 want your officers to put in the hours that it takes to solve a
12 crime, any crime, especially a crime of this magnitude. You
13 want to get a killer off the streets. That's what the public
14 wants, that's their job.

15 Whether they solve it or not, they still get to
16 go home at night. They don't have a vested interest. They
17 don't have any monetary interest in the case. They are just
18 doing their job and they shouldn't have to apologize for it.

19 Finally, Geronimo Estrada. This man was
20 probably the most negatively impacted person in all of this,
21 because he was willing to cooperate. He didn't like what Vance
22 had done.

23 He was incarcerated with him, and on
24 February 9th Mr. Vance began spilling his guts about the
25 murder at Sabreen's. There were other people present. You

1 heard that. There were other people present. But Mr. Estrada
2 was the only one who was willing to step forward. It wasn't an
3 easy decision for him. You heard how after Vance spilled his
4 guts, he went and laid on his bunk for two hours trying to
5 decide what he should do. Thank God he made the decision
6 that he did.

7 And then he called his girlfriend Sonya, and
8 you heard the phone call. You heard the distress that he was
9 under. He said, "Baby, I don't want none of that. I don't want
10 none of that." Meaning I don't want to hear this, because he
11 knows he is now a witness.

12 He did not put himself in that position.
13 Philip Vance put him in that position. Philip Vance put all
14 those people in that position. They didn't go out looking for it.
15 It was him. It was his admissions.

16 ~~Geronimo Estrada did it anyway because he
17 knew it was the right thing to do. For his cooperation, he got
18 beat up at the Ramsey County Workhouse. He got thrown into
19 seclusion for his own protection. He had to be placed into
20 protective custody. That's not fun -- I mean jail is not fun
21 anyway, but being in protective custody is worse.~~

22 He did receive four hundred dollars from the
23 South St. Paul Police Department. As you heard, when you are
24 making phone calls out of the jail, they're collect phone calls.
25 He and his girlfriend had racked up a bill. So after he came

1 forward, after he testified in the grand jury, they gave him four
2 hundred dollars to go towards his overdue phone bill. Whooppy
3 do.

4 We've got all these people. All these people,
5 the only two people that had any relationship or knew each
6 other were Isaac Hodge and John Nunn. Isaac Hodge was
7 John Nunn's nephew. They testified that they never talked
8 about this. They never talked about this case.

9 You've got all these different people, all these
10 admissions were made to these people. They were made at
11 different times, different locations, and they all point to Philip
12 Vance. The one common denominator is Philip Vance.

13 So when you are assessing their credibility, I
14 want you to keep a few points in mind. Some of them we've
15 already talked about. These people didn't ask to bear witness
16 to his confessions. They just came up here and told you what
17 they knew. None of the witnesses exaggerated their testimony
18 about what Mr. Vance told them. Again, they just came up and
19 they told you what they knew, and they did so in a very
20 straight-forward manner.

21 Keep in mind again the testimony of
22 Geronimo Estrada and the details that Vance related to him at
23 the Ramsey County Workhouse. What was taken the night of
24 the murder? They were items that only the perpetrator had
25 knowledge of--Philip Vance.

1 In their closing statement, the defense will
2 undoubtedly talk about the statements that were made by Mr.
3 Vance to law enforcement officers in this case, and accentuate
4 the point that throughout all of those statements he kept
5 saying "I didn't do it, I didn't do it, I didn't do it."

6 I am sure, and I hope you realize by the time
7 we finally got to the June 18th statement, that the state didn't
8 introduce those statements so that you could hear the denial
9 after denial after denial. What was key in those statements is
10 all the inconsistencies: inconsistency after inconsistency after
11 inconsistency.

12 ~~Mr. Vance was never able to provide an
13 explanation as to where the hell he was at on December 22,
14 2002. He was never able to tell the investigators where he was
15 during that timeframe that the murder was committed.~~

16 For example, first he said that he and
17 Dominic Johnson were together all night, which would not be
18 unusual because they were very close. They were homeys.
19 When pressed about his whereabouts that evening, he told
20 investigators during the January 16th statement that he was at
21 the home of Jackie Ezell where his girlfriend, Darlene Jones,
22 lived.

23 Well, that was refuted by Tom Kreager. You
24 heard that. They went and checked it out. "Nope, you weren't
25 there."

1 "Hum, well, gee, I guess I'm going to have to
2 come up with something else."

3 During his January 23rd phone call with
4 Tom Kreager, he places himself smack dab in the middle of the
5 truth. He was at the Radisson Bar with Johnson and John
6 Martin, and he and Mr. Johnson were picked up by two girls
7 driving a blue Corsica.

8 In that telephone call, one of the girls was
9 someone Mr. Johnson was messing with, that being Yvonne
10 White. "Hum," well, realizing that "gosh now I put myself in
11 this blue Corsica, and I really was in the blue Corsica that
12 night," he had to come up with yet again another story.

13 Later he says - "Oh, no, no, no. That was
14 another night. That was another night I was in the blue
15 Corsica." Even though John Martin put him in the blue
16 Corsica that night, even though he told Dontay Reese he was in
17 the blue Corsica that night.

18 During the first interview, Mr. Vance was
19 adamant that he was with Mr. Johnson all night. "I was with
20 Mr. Johnson all that night."

21 In his April 17th statement, Mr. Vance was
22 confronted with his cell phone records. These were the cell
23 phone records that were going to shed the light on his where-
24 abouts that night. When he was confronted with telephone
25 calls going to Keitha McKinney, Hennessy's girlfriend, to her

1 phone, he then all of a sudden, "Oh, ho, ho, ho, wait a sec. No,
2 no, no, no. No, that was the night that Mr. Johnson had my
3 cell phone and I was trying to find him, and I wasn't with him
4 between eight and ten that night," the time that the murder
5 and robbery was going to happen.

6 "No, no, I wasn't with him. I caught up with
7 him at the Buttery later that night, and he was already sitting
8 in the Buttery, and then I saw him, and so I walked in." That's
9 a bunch of hooley. Colleen McManus saw him go in together.
10 Eric Griffin saw them come in together. Another inconsistency.

11 When confronted with the comments that he
12 made during the January 3, 2003 undercover operation, Mr.
13 Vance adamantly denied that he made them. "I did not say
14 that." And he maintained this denial even though Melissa
15 Stites heard it and six or seven law enforcement officers heard
16 it.

17 And what did they hear? That he had four
18 guns, that he shot a guy two weeks ago on the south side, that
19 he shot a guy five times in the back, and that he didn't stop to
20 check to see if the guy was dead.

21 To get around this statement and the other
22 statements that Mr. Vance has made about, you know, that he
23 shot someone five times in the back -- not four times, but he
24 shot someone five times in the back, that the defense in their
25 questioning have asked the witnesses, "Well, now he said five

1 times, right? Not four times. He said five times, right?"

2 "Yes. That's what he said." So he couldn't
3 have been talking about the murder of Khaled Al-Bakri at
4 Sabreen's because there were only four shots fired. Well, I
5 would submit to you that anybody in that position, who runs
6 into a store and is out to kill somebody, doesn't remember
7 whether it was *bang, bang, bang, bang* or *bang, bang, bang,*
8 *bang, bang.* One shot difference. You're not going to remember
9 that. He was one off. It was four in the back.

10 I just want you to remember in those
11 statements, inconsistency after inconsistency after
12 inconsistency. The statements did nothing but support the
13 state's case.

14 I would like to turn to the substantive law.
15 You have three crimes under consideration during your
16 deliberations. The Judge instructed you on these yesterday,
17 but I just want to briefly touch on them at this time.

18 The first is First Degree Premeditated
19 Murder. And there are four elements. First, the death of
20 Khaled Al-Bakri must be proven.

21 Two, the defendant caused the death of
22 Khaled Al-Bakri.

23 Three, the defendant acted with pre-
24 meditation and with the intent to kill Khaled Al-Bakri.

25 Finally, the defendant's act took place on or

1 about December 22, 2002, in Dakota County. And you will
2 have all of these given to you before you retire to your
3 deliberations.

4 The one element that I would like to touch
5 upon and discuss with you is element number three, pre-
6 meditation and the intent element. This is a portion of the
7 definition. You will get the full definition in the instructions.
8 But briefly, premeditation means that the defendant
9 considered, planned, prepared for, or determined to commit the
10 act before he committed it. And premeditation, there's no
11 certain amount of time that is required to form premeditation.
12 It's not required that the premeditation occurred the day
13 before, that this plan came the day before. There is no time
14 period.

15 Mr. Vance acted with premeditation and with
16 intent to kill Khaled Al-Bakri. This is most evident by the fact
17 that Mr. Vance entered the store with a loaded pistol that
18 night. He didn't need to do that. He did not need to do that.
19 He could have gone in with an unloaded pistol, pointed an
20 unloaded pistol at Khaled Al-Bakri. He probably could have
21 stuck a finger in his hoodie and pointed it at Khaled Al-Bakri
22 and made threats at him. You know, "Give me the money or
23 else."

24 No, he didn't do that. Nope. He went in with
25 a loaded pistol, ran immediately into the front door, right

1 behind the counter, laid Khaled Al-Bakri down and shot him.
2 He knew he was going to do that the moment he entered the
3 store. He wasn't going to leave a witness behind. He had that
4 planned before he went in. That was his plan.

5 Khaled Al-Bakri was already dead by the
6 time he was whipping money out of the cash register. He was
7 already dead when they were taking other items from the store.
8 If you look at the picture again of Khaled laying there, you will
9 see that the drawer from the cash register is positioned merely
10 on top of his body. There is a white plastic bag laying on top of
11 his back. Those are items that had to have been placed there
12 after he was already dead on the floor.

13 He knew, he planned it. And Khaled didn't
14 stand a chance that night. Khaled had no escape route
15 because the only exit from the counter was blocked by an
16 armed man wearing a black mask, Philip Vance.

17 Alternatively, you know, if the premeditation
18 didn't occur there, premeditation occurred when Vance was
19 telling Khaled Al-Bakri to shut up. And when he got tired of
20 listening to Khaled Al-Bakri plead for his life, he decided to lay
21 him down on the floor and shoot him.

22 That's a shorter amount of time, but it's still
23 sufficient for premeditation. And the intent, even Mr. Vance
24 admits in his statement, that if you shoot at a guy four times,
25 you sure as hell intended, it's not an accident.

Murder in the Second Degree, Intentional

1 Murder in the Second Degree, also has four elements. The
2 death of Khaled Al-Bakri must be proven. The defendant
3 caused the death of Khaled Al-Bakri, the defendant acted with
4 the intent to kill Khaled Al-Bakri, and the defendant's act took
5 place on or about December 22, 2002.

6 These elements are identical to First Degree
7 Premeditated Murder with the exception that with First Degree
8 you have to act with premeditation and intent. With Murder in
9 the Second Degree, you just have to act with intent. Pre-
10 meditation isn't required.

11 So if you find that he's guilty of First Degree
12 Premeditated Murder, this is a lesser included offense of that
13 crime. He would then also necessarily be guilty of Second
14 Degree Intentional Murder.

15 The last crime is Murder in the First Degree
16 while committing aggravated robbery. The first element, the
17 death of Khaled Al-Bakri must be proven. The defendant
18 caused the death of Khaled Al-Bakri. The defendant acted with
19 the intent to kill Khaled Al-Bakri. And at the time of the act
20 causing the death, the defendant was committing the crime of
21 aggravated robbery.

22 Finally, the defendant's act took place on or
23 about December 22, 2002, in Dakota County.

24 The laws of Minnesota provide that if you kill

1 someone while you're committing an aggravated robbery, where
2 you are stealing stuff from somebody, where you go in with a
3 gun and start stealing stuff from somebody, if you kill anybody
4 during the course of that robbery, you are guilty of Murder in
5 the First Degree while committing aggravated robbery.

6 The state has proven each of the elements of
7 each of these crimes beyond a reasonable doubt. Money,
8 cigarettes, lottery tickets, plastic bags and a cordless phone.
9 That's all Mr. Vance got that night.

10 The one truism that Mr. Vance voiced in all
11 the admissions that he made, which I already told you, was
12 when he told Isaac Hodge *it wasn't worth it* It wasn't worth it.
13 He is so right. It wasn't worth it.

14 Khaled Al-Bakri's life, as any human life,
15 cannot be measured by material things. This man had a
16 bright, promising future that was cut short by Philip Vance's
17 act of violence and greed.

18 Thank you for your attention and your
19 consideration throughout this trial. When you retire to
20 deliberate today, the state would ask that you apply your
21 common sense, apply it to the evidence that you've seen and
22 heard, and find the defendant guilty of First Degree Pre-
23 meditated Murder, First Degree Murder while committing
24 aggravated robbery, and Second Degree Intentional Murder.

25 Thank you.

1 phone, he then all of a sudden, "Oh, ho, ho, ho, wait a sec. No,
2 no, no, no. No, that was the night that Mr. Johnson had my
3 cell phone and I was trying to find him, and I wasn't with him
4 between eight and ten that night," the time that the murder
5 and robbery was going to happen.

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 22 Khaled Al-Bakri.

23 Three, the defendant acted with pre-
 24 meditation and with the intent to kill Khaled Al-Bakri.

25 Finally, the defendant's act took place on or

1 about December 22, 2002, in Dakota County. And you will
 2 have all of these given to you before you retire to your
 3 deliberations.

4 The one element that I would like to touch
 5 upon and discuss with you is element number three, pre-
 6 meditation and the intent element. This is a portion of the
 7 definition. You will get the full definition in the instructions.
 8 But briefly, premeditation means that the defendant
 9 considered, planned, prepared for, or determined to commit the
 10 act before he committed it. And premeditation, there's no
 11 certain amount of time that is required to form premeditation.
 12 It's not required that the premeditation occurred the day
 13 before, that this plan came the day before. There is no time
 14 period.

15 Mr. Vance acted with premeditation and with
 16 intent to kill Khaled Al-Bakri. This is most evident by the fact
 17 that Mr. Vance entered the store with a loaded pistol that
 18 night. He didn't need to do that. He did not need to do that.
 19 He could have gone in with an unloaded pistol, pointed an
 20 unloaded pistol at Khaled Al-Bakri. He probably could have
 21 stuck a finger in his hoodie and pointed it at Khaled Al-Bakri
 22 and made threats at him. You know, "Give me the money or
 23 else."

24 No, he didn't do that. Nope. He went in with
 25 a loaded pistol, ran immediately into the front door, right

1 behind the counter, laid Khaled Al-Bakri down and shot him.
 2 He knew he was going to do that the moment he entered the
 3 store. He wasn't going to leave a witness behind. He had that
 4 planned before he went in. That was his plan.

5 Khaled Al-Bakri was already dead by the
 6 time he was whipping money out of the cash register. He was
 7 already dead when they were taking other items from the store.
 8 If you look at the picture again of Khaled laying there, you will
 9 see that the drawer from the cash register is positioned merely
 10 on top of his body. There is a white plastic bag laying on top of
 11 his back. Those are items that had to have been placed there
 12 after he was already dead on the floor.

13 He knew, he planned it. And Khaled didn't
 14 stand a chance that night. Khaled had no escape route
 15 because the only exit from the counter was blocked by an
 16 armed man wearing a black mask, Philip Vance.

17 Alternatively, you know, if the premeditation
 18 didn't occur there, premeditation occurred when Vance was
 19 telling Khaled Al-Bakri to shut up. And when he got tired of
 20 listening to Khaled Al-Bakri plead for his life, he decided to lay
 21 him down on the floor and shoot him.

22 That's a shorter amount of time, but it's still
 23 sufficient for premeditation. And the intent, even Mr. Vance
 24 admits in his statement, that if you shoot at a guy four times,
 25 you sure as hell intended, it's not an accident.

1 Murder in the Second Degree, Intentional
 2 Murder in the Second Degree, also has four elements. The
 3 death of Khaled Al-Bakri must be proven. The defendant
 4 caused the death of Khaled Al-Bakri, the defendant acted with
 5 the intent to kill Khaled Al-Bakri, and the defendant's act took
 6 place on or about December 22, 2002.

7 These elements are identical to First Degree
 8 Premeditated Murder with the exception that with First Degree
 9 you have to act with premeditation and intent. With Murder in
 10 the Second Degree, you just have to act with intent. Pre-
 11 meditation isn't required.

12 So if you find that he's guilty of First Degree
 13 Premeditated Murder, this is a lesser included offense of that
 14 crime. He would then also necessarily be guilty of Second
 15 Degree Intentional Murder.

16 The last crime is Murder in the First Degree
 17 while committing aggravated robbery. The first element, the
 18 death of Khaled Al-Bakri must be proven. The defendant
 19 caused the death of Khaled Al-Bakri. The defendant acted with
 20 the intent to kill Khaled Al-Bakri. And at the time of the act
 21 causing the death, the defendant was committing the crime of
 22 aggravated robbery.

23 Finally, the defendant's act took place on or
 24 about December 22, 2002, in Dakota County.

25 The laws of Minnesota provide that if you kill

1 someone while you're committing an aggravated robbery, where
2 you are stealing stuff from somebody, where you go in with a
3 gun and start stealing stuff from somebody, if you kill anybody
4 during the course of that robbery, you are guilty of Murder in
5 the First Degree while committing aggravated robbery.

6 The state has proven each of the elements of
7 each of these crimes beyond a reasonable doubt. Money,
8 cigarettes, lottery tickets, plastic bags and a cordless phone.
9 That's all Mr. Vance got that night.

10 The one truism that Mr. Vance voiced in all
11 the admissions that he made, which I already told you, was
12 when he told Isaac Hodge it *wasn't worth it*. It wasn't worth it.
13 He is so right. It wasn't worth it.

14 Khaled Al_Bakri's life, as any human life,
15 cannot be measured by material things. This man had a
16 bright, promising future that was cut short by Philip Vance's
17 act of violence and greed.

18 Thank you for your attention and your
19 consideration throughout this trial. When you retire to
20 deliberate today, the state would ask that you apply your
21 common sense, apply it to the evidence that you've seen and
22 heard, and find the defendant guilty of First Degree Pre-
23 meditated Murder, First Degree Murder while committing
24 aggravated robbery, and Second Degree Intentional Murder.

25 Thank you.

1 THE COURT: We will take a break.

2 (A break was taken.)

3 THE COURT: Mr. Shands.

4 MR. SHANDS: Thank you, Your Honor.

5 May it please the court, Ms. Keena, Mr. Vance, ladies and
6 gentlemen of the jury. You know, yesterday as we were sitting
7 here and Captain Vujovich was testifying, I was thinking about
8 what I was going to say to you in my closing argument. I knew
9 that the case was almost over and I was going to have to close. I
10 was thinking about what was I going to say.

11 Captain Vujovich talked about doing some
12 investigation on this case as late as September 25, 2004. That
13 was the preceding Friday.

14 This case still has not been solved. If the
15 police knew what happened, they would not be continuing
16 investigating the case. They still haven't solved it. Captain
17 Vujovich told you he's still looking for the gun. They don't
18 know what happened. I can tell you what happened.

19 On December 22, 2002, there was a robbery
20 at Sabreen's. While this robbery was in process, Kathleen
21 Johnson came upon it. She testified she walked in on the
22 robbery, looked up, realized what was happening, startled the
23 robber, she was startled herself. She turned around, she ran.

24 While she was in the store, she indicated she
25 heard the person she saw behind the counter say something.

1 She didn't know what he said, but he said something. That's
2 how she knew that there were men doing the robbery. A deep
3 voice. She indicated she knew they were men. She ran out
4 and got into her car.

5 She testified that she saw two people run
6 out. She was specific. She said one of them had on a dark
7 blue hoodie, one of them had on a dark maroon hoodie, baggy
8 pants, dark. She testified they ran through the back alley.

9 Now the kids are walking down the back
10 alley as this happens. Their testimony is very important. They
11 were there. They testified to what they saw. Matthew Renville
12 saw two people get into a vehicle. It was a big vehicle. It was
13 gray. He was very specific about the color. It had oval tail-
14 lights, he remembered that.

15 Samantha Renville, remember her testimony.
16 She saw the two people get into the car. She heard someone
17 say "Go, go, go." She also remembered it was a large car. She
18 was very specific about that. She told you she knew it was a
19 large car. Her parents had a four-door Ford Taurus. She knew
20 it was much bigger than that.

21 Two people, they drive out of the alley and
22 they leave. Now if we go back earlier in the afternoon, you have
23 Mr. Vance, Mr. Martin and Mr. Johnson. They are at the
24 Capitol Bar. The reason they go to the Capitol Bar is because
25 Melissa Stites works there.

1 Now Mr. Martin is a convicted felon. You
2 heard testimony about how he gets money, his deal is he takes
3 checks, he writes checks, writes it for over the amount, gets
4 money back. They like to go to the Capitol Bar because Melissa
5 Stites allows him to write checks there. She also serves Mr.
6 Johnson, who is underage. That's why they like to go there.

7 Now Melissa Stites also is a convicted felon,
8 and her conviction is for passing forged checks. She knows the
9 game. That's why they like to go there.

10 Now Mr. Vance recently turned twenty-one,
11 and has a ninth grade education. You heard about that. He
12 doesn't have a job. The way to get money is that he has his
13 girlfriend give him money. The way he gets drinks -- and you
14 heard he likes to drink. As a matter of fact, most of the testi-
15 mony you heard about Mr. Vance is he's trying to get drunk or
16 he is drunk.

17 December 22, 2002, they are at the Capitol
18 Bar. Mr. Martin said they're sitting around talking about
19 Christmas presents, what are they going to get their kids for
20 presents, what is Mr. Martin going to get his girlfriend. His
21 testimony was they weren't secretive. They were sitting out in
22 the opening, they all have drinks, they bought pizza.

23 They leave the bar. Now as they leave the
24 bar, Mr. Martin gets on the bus and he goes to see his girl-
25 friend. Now he testified that Mr. Vance and Mr. Johnson are

1 being picked up by some girls in a blue car, two females. He
2 recognized one as Yvonne. He didn't know if she was driving or
3 if she was a passenger, but there were two people and it was a
4 blue car.

5 Now Mr. Vance and Mr. Johnson, they get in
6 the car, and they leave. Later Mr. Vance and Mr. Johnson go
7 to the Buttery. They go inside of the Buttery to do what they
8 always do, get drunk, trying to scam, trying to continue to
9 drink and get drunk.

10 They go into the Buttery and they have a
11 conversation. First conversation they have is with the people
12 that committed the robbery and the murder at Sabreen's.
13 Those people tell Mr. Vance --

14 MS. KEENA: Objection, Your Honor.

15 THE COURT: Approach.

16 (OFF RECORD DISCUSSION)

17 MR. SHANDS: Mr. Vance has a conversation
18 with someone. After that conversation, Mr. Vance is ecstatic,
19 he is loud, can't believe it. He continues on with what he
20 normally does, goes to the bar, and talks to Eric Griffin. Talks
21 to Eric Griffin, talking about a robbery/homicide, trying to
22 make himself be big.

23 Mr. Griffin testified that he didn't even
24 believe Mr. Vance what he was talking about. Mr. Vance said
25 something about *fucking some body up*. He thought he meant

Whore fucker from Council

He testified that you consented.

Bogus ↑

1 beating him up.

2 Next, Colleen McManus comes in. Now
3 Colleen McManus testified that she sees Mr. Vance and he
4 immediately comes over to her and he says, "Don't kick me out,
5 don't kick me out," because he was not supposed to be in the
6 bar.

7 She said, "I'll talk to you later." She goes in
8 the back, takes off her coat, comes back. Then she says she
9 engages in conversation with Mr. Vance and she is asking him
10 "What's wrong? Something looks wrong."

11 He's like, "No, no."

12 She said, "Really, what's wrong?"

13 Then she said Mr. Vance put his hands in
14 his jacket and brought it out and did something that she
15 thought was a shooting gesture. She was very specific after
16 that.

17 She asked Mr. Vance, "Did you shoot
18 somebody?" Now she testified that Mr. Vance did not affirm
19 that question. He did not say yes, but he did not deny it
20 either.

21 At this point they're interrupted in their
22 conversation. Maynard Cross, he yelled across the bar, "Shut
23 your mouth, you crazy nigger. Quit acting crazy. Shut your
24 mouth." At that point they are interrupted. Colleen McManus
25 and Mr. Vance don't finish their conversation.

1 Mr. Vance does continue to try to get drinks.
2 He's trying to scam his way to get drinks, "I'm leaving out of
3 town. Man, I gotta get out of here. Come on, Colleen, hook me
4 up with one more drink. Take care of me."

5 She testified that Mr. Johnson interrupts
6 them also. Mr. Johnson comes over and he interrupts them
7 because he's trying to get some money for cigarettes. They
8 leave the bar. Colleen McManus calls her brother. She doesn't
9 know, she thinks Mr. Vance knows something about something
10 that happened. She calls her brother.

11 The very next day Colleen McManus calls
12 Mr. Vance again. This time law enforcement is with her. She
13 calls, she couldn't remember if that call was tape-recorded, but
14 she knew law enforcement was there. She calls to see if he's
15 okay. He doesn't mention anything about any robbery, any
16 homicide. She urges him if he wants to talk about something.
17 "No, everything's fine."

18 Now Mr. Vance is on the radar. Melissa
19 Stites reenters the picture. Colleen McManus's brother is a
20 police officer. And what he does, he's worked with Melissa
21 Stites before. She testified that she has done undercover work
22 for the police before. She knows she gets paid for it, too. She
23 knows that.

24 She talked about being lean on money
25 around this time. They set up a sting operation. The purpose

1 for the sting operation is Mr. Vance has some information,
2 that's what they suspect, so they want to set up a sting
3 operation to, one, they want Melissa to get Mr. Vance to sell her
4 a gun. Two, they want to get some information from Mr.
5 Vance. They want a confession.

6 A sting operation takes place. Mr. Vance -
7 let me back up. Remember, Mr. Vance thinks he's on a date.
8 He doesn't know there's a sting operation. He is with Melissa.
9 He goes back into his mode. He always pumps himself up.
10 He's trying to be hard, he's trying to get the street credibility.
11 The most important thing -- or the highest street credibility
12 that you can have is to be investigated for a murder. That's it.
13 That's the biggest thing you can be investigated for and that's
14 how you get the credibility.

15 He sells Melissa Stites a gun. We heard that
16 that gun was tested and it was not the gun used in the
17 Sabreen's robbery. That was a hoax. That was not the gun.

18 He makes the comment "Two weeks ago, five in the back on the
19 south side."

20 Now the significance of that is we know
21 certain things from the crime scene. One, it was not five. Mr.
22 Al-Bakri was shot twice. *South side*, didn't say South St. Paul.
23 So we had to make the assumption he was talking about South
24 St. Paul.

25 He has information of what happened, but

BOGUS

1 you need more than information. They have to prove that he
2 did it. All along Mr. Vance, he has information of what is going
3 on, but we don't know how he got this information. The state
4 contends the only way you can get the information is by doing
5 it. Mr. Vance has the information because he was told about it
6 and he --

7 MS. KEENA: Objection, Your Honor.

8 THE COURT: Sustained. Why don't you

9 approach.

10 (OFF RECORD DISCUSSION)

11 MR. SHANDS: Mr. Vance is no longer on the
12 radar. Mr. Vance is a full-fledged suspect. Now at this point
13 Mr. Vance is brought in, and he is interrogated. This is
14 Detective Kreager. This is when the tapes come in. Now the
15 tapes speak for themselves and you heard the tapes.

16 Part of the significance of the tape is I
17 wanted you to see the interrogation methods that are used.
18 Detective Kreager testified, he's retired now, he has been a
19 police officer for over twenty years.

20 This is what he's trained to do. He's trained
21 to get confessions and that's what he tried to do. You'll be able
22 to see all the techniques that he used.

23 One thing that stays consistent, Mr. Vance
24 not only says "I didn't do it," but he says, "When you get that
25 evidence, when you get all the DNA, the footprints, the

1 fingerrints, the tire tracks, when you go to the crime scene and
2 you get that evidence, it's going to show you that I didn't do it.
3 I am confident in that. He maintains that.

4 Now the first time he gets investigated is
5 early. He's now in jail, he gets out of jail, he leaves the state.
6 He testified one of his children's mother went to Kansas City.
7 He went to Kansas City on a Greyhound bus to see her and he
8 came back.

9 Those aren't the actions of a guilty mind. As
10 a matter of fact, we heard of some other criminals who were in
11 jail. They asked him the same question, "If you did it, why did
12 you come back?" Because Mr. Vance knows there's no
13 evidence against him. He knows that the evidence they have
14 will not put him there. He's confident in that. Mr. Vance goes
15 to Regina Hagerman's Super Bowl party.

16 This is another example of what Mr. Vance
17 does. He tries to get drunk or gets drunk, and he starts puffing
18 himself up. He's getting on, he wants to make himself look big,
19 the big man. He talks about the fact he is being investigated
20 for a homicide. He tells her that. He doesn't even know her.
21 That's why he's trying to impress her and that's why he's
22 talking up a big game. He talks about being investigated. He
23 talks about they surely won't prove it.

24 She testified he said they won't prove it
25 because he has a good lawyer. At that point he didn't even

1 have a lawyer. But he was confident that he was going to be
2 exonerated. Again, he falls back and says, "Bring me the
3 evidence."

4 Now in opening statements Ms. Keena talked
5 about the evidence. And there's an insinuation that there was
6 no evidence at the scene. In fact, there was a ton of evidence.
7 And you heard Dr. Sedqi come in and talk about some of the
8 things they found at the scene. They found tire tracks. They
9 collected cigarette butts. The purpose of that is to check the
10 DNA, match it against suspects.

11 They found shoeprints. They found finger-
12 prints. They found the shell casings. They found fingerprints
13 on the countertop, on the till, on the door. There was a lot of
14 evidence. And that evidence was tested. And guess what?
15 They vindicated Mr. Vance, he was sure about it. He told
16 them, "Check that stuff."

17 You remember in interrogation there was a
18 surveillance tape of that store. Detective Kreager says, "Hey,
19 you better fess up now because this is going to go down. If we
20 have to wait until we get this evidence, you're not going to have
21 a chance to cut any deals. You better fess up now."

22 Mr. Vance says, "I'm not worried about it.
23 That stuff is going to show you I wasn't there. I didn't do it."
24 Mr. Vance has knowledge. They can't prove how he has that
25 knowledge. If they had a gun that was used in that shooting,

1 put it in Mr. Vance's hands, then prove it.

2 If they had somebody who was with him who
3 came in and confessed, "Hey, we did it, and this is Mr. Vance's
4 role in it," they would have proof. They don't, and they're
5 searching for it. They're still searching for it to this very day.

6 They have evidence, they do not have proof.
7 The interrogation of Mr. Vance continues. And again we heard
8 two days worth of interrogation. You heard it, I heard it, and I
9 will let you reflect back on what was said.

10 But now Mr. Vance is in custody, and we
11 had what I kind of referred to as the day of snitches. This was
12 all the people that came in and said, "I was in custody with Mr.
13 Vance, this is what he said."

14 Now Tyrone Crawford is important here.
15 Tyrone Crawford indicates he's in jail with Mr. Vance, and Mr.
16 Vance says -- they either see a news article on Maynard Cross
17 or they see a newspaper article. Tyrone Crawford says, "Mr.
18 Vance sees it and says "That's the guy who's putting my name
19 in a bunch of bullshit."

20 Now Tyrone Crawford also talked about jail
21 life. He told you people come into jail and they lie about their
22 crimes and they lie about their lives. There's a hierarchy in
23 jail. To be on the top, be investigated for murder. You're the
24 tough guy, you're the big guy. Mr. Vance will perpetuate that.
25 But he knows he's going to be exonerated.

BOGUS

1 He's in jail. He knows he's going to be
2 exonerated because they're going to get that evidence, the
3 evidence that will prove who did it. They will get it and that
4 evidence will not point to him. He knows it. That's why he
5 keeps talking about it. He's in jail. He knows about the crime.
6 But we don't know how he knows. He keeps talking about it,
7 talking about it.

8 Now Eric Griffin. And, remember when some
9 of these witnesses testify, one of the things Ms. Keena would do
10 is she'd talk about the preliminary matters. And the preliminary
11 matter would be a criminal history.

12 That's not a preliminary matter. That's part
13 of these people. These people that were in jail with Mr. Vance
14 are criminals. They're familiar with jail. They know what to
15 do.

16 Not only do you try to pump yourself up
17 while you are in jail to be the big man, you also keep your ears
18 open to hear what people are saying so you can try to use it to
19 help yourself out.

20 Eric Griffin. Eric Griffin did not come
21 forward with this information until he was in jail. When he
22 first met the police, he told them, "I'm not going to talk to you
23 until you can do something for me." It got Eric Griffin out of
24 jail, and for his testimony, his case is going to be dismissed in
25 Ramsey County.

BOGUS

1 Isaac Hodge, John Nunn, uncle, nephew. I
2 mean we have whole families using Mr. Vance. Now Dakota
3 County may not have gave them anything in exchange for their
4 testimony, but they didn't come in here out of the goodness of
5 their heart. They come in, they testify, maybe they'll get
6 something in return.

7 Dontay Reese. Dontay Reese, first, is a
8 convicted felon. When he first came to light, he was not going
9 to testify. He talked to his attorney, talked to his mother,
10 talked to his family, realized, "Hey, you can get three years cut
11 off your sentence." Dontay Reese is going to be sentenced on
12 another felony. In exchange for his testimony, he's going to get
13 three years cut off his sentence.

14 Dontay Reese brings a story in. Dontay
15 Reese comes in and the story differs from what I tell you, in
16 that Dontay Reese's explanation is Yvonne and another woman
17 picks up Mr. Vance and Mr. Johnson. They go to Richard
18 Robinson's house where Troy Crawford is at.

19 Troy Crawford comes up with a plan, "Let's
20 rob a store." Troy Crawford is the lookout. Troy Crawford
21 didn't go in the store -- and this is important to remember,
22 because he is very specific about it. Troy Crawford does not go
23 into the store. He stays in the back of the store.

24 He says, "Mr. Vance and Mr. Johnson go in,
25 rob the store, come out, and run to the car." Now the reason

1 this version of the story is -- I find illuminating, is because it is
2 disproved by what we know by witnesses who were there.

3 First of all, it makes no sense that Troy
4 Crawford would be behind the store. Sabreen's does not have
5 any back windows, there's no way to communicate to people in
6 the store from out in the back in the alley. Why would the
7 look-out be in the back of the alley if he cannot warn people
8 that someone is coming?

9 In fact, someone did walk in on them.
10 Kathleen Johnson. That makes no sense. But, most
11 importantly, they are stuck with the blue car. If Dontay Reese
12 is right, you are stuck with the blue car.

13 Witnesses that saw the two people get into
14 the vehicle and leave, Matthew Renville, Samantha Renville, it
15 was not a blue car, it was a gray car, it was a big car. We are
16 familiar with the Corsica. There's a picture of it. The Corsica
17 does not have oval tail lights. The Corsica will not hold six
18 people to do the robbery. Those are the facts from the scene,
19 from the people who were there, who saw it. It could not have
20 gone down like Dontay Reese said it did.

21 Geronimo Estrada. Now, Geronimo Estrada
22 met Mr. Vance in jail. Mr. Vance is doing what he does in jail,
23 in the hierarchy. He is talking about being investigated for a
24 homicide.

25 Now Mr. Vance talked about some facts.

1 Well, Mr. Estrada comes in and says, "Mr. Vance told him some
2 things." And the state contends that the only way he would
3 know of these items is if he did the crime. I submit to you, if
4 someone tells you about it, you would know.

5 MS. KEENA: Objection, Your Honor.

6 THE COURT: Approach.

7 (OFF RECORD DISCUSSION)

8 MR. SHANDS: Let's talk about some of the
9 things that the state finds significant. Telephone, cigarettes,
10 money, lottery tickets, and I believe the plastic bags. Now
11 there's a difference between evidence and proof. There is
12 evidence that these items were missing from the store. I
13 submit to you the state hasn't proved it.

14 Now when we talked -- if you remember the
15 testimony of Tariq Bakri, I asked him, "How many cigarettes
16 were taken?" And he indicated to me, "Well, I don't do
17 inventory. This is a mom and pop store. I don't do inventory.
18 I didn't write down how many cartons of cigarettes I have. I
19 kind of eyeball it. I speculated. It looked different."

20 There's evidence that cigarettes are gone.
21 There is no proof that cigarettes were taken from that store,
22 but there is speculation. Let's assume, for argument sake, that
23 cigarettes are missing, specifically identifying Marlboro
24 cigarettes. Let's go back to Geronimo Estrada.

25 Geronimo Estrada was very specific when he

1 was talking about the cigarettus, he said, because they were
2 bragging that they had snuck some of the cigarettes into the
3 workhouse. They were selling them to other people, it was
4 contraband in the workhouse. He was also specific about
5 Newportts. It completely contradicts Tariq Bakkri. He was
6 specific in Marlboros. He has been to the store.

7 The hand-held phone. Now the hand-held
8 phone baffles me because this is one of the phones where you -
9 it's alleged that the phone was taken, but they left the base,
10 which makes absolutely no sense. These are one of these
11 phones that to use the phone you got to take it off. You would
12 have to be across the street, that's the range of the phone, and
13 then the battery is going to die because you can't recharge it.

14 Now there was speculation as to if Khaled
15 Al-Bakri even had the phone on him. His brother testified it's
16 his habit to take the phone, put it in his belt. Okay? So the
17 assumption is if the phone was taken, it was taken from his
18 belt.

19 Dr. Thomas testified that he had a cell phone
20 on his belt. If they're looking to take this expensive phone, why
21 didn't they take the cell phone?

22 If you remember, Geronimo Estrada also
23 talked about lottery tickets. Again, there was speculation that
24 lottery tickets were taken. I asked about the serial numbers.
25 Can we track it back to the State Lottery Department to figure

1 out "Well, we issued you this many. This was a serial of the
2 ones you have. What's missing? Have they been cashed? We
3 could find out who cashed them." That's how we prove things.
4 Again, he eyeballed them. They've never come up.

5 Mr. Estrada also talked about it was the first
6 time, and the only time, about the Cadillac. Remember Mr.
7 Estrada's testimony? He came in and he told a story about
8 how Mr. Vance was driving a Cadillac in Wisconsin, they hit a
9 deer, they thought it was somewhere near Eau Claire, they had
10 some clothes in there, all the evidence. They abandoned the
11 car at a truck stop. And that whole story never went anywhere.
12 It does not match the facts that we've got.

13 Mr. Estrada was -- well, Mr. Estrada also
14 talked about the facts of Mr. Al-Bakri being laid down. That's
15 what really he thought was wrong. I submit to you that that's
16 not how he's going down. That was talking big, that was
17 bragging, saying that *he cried like a bitch*. That was bragging.
18 We don't know how he went down.

19 I made a *big* to do about Exhibit 13, and you
20 will see it back in the jury room. The money was taken out of
21 the till. If you look at Exhibit 13, right above Mr. Bakri's head,
22 right where the flashlight was found with a bullet in it, there's
23 a big stack of cash sitting wide and open.

24 If he had already shot Mr. Bakri and was
25 back there taking cash out, why didn't he take the cash that's

1 right in front of him?

2 You had Mr. Sedqi come in and he said, "You
3 know what, the people didn't necessarily have to be behind the
4 counter. Either they were behind the counter or the gun was
5 pointed behind the counter."

6 I submit to you the state has proven that
7 Mr. Vance knows about the crime. They have not proven to
8 you that he committed the crime. And that's a problem
9 because Mr. Vance is not charged with knowing about the
10 crime.

11 The state has to prove, by proof beyond a
12 reasonable doubt, all the charges against Mr. Vance. I submit
13 to you that I have presented a theory of this crime, but I have
14 not proven it to you. I have given you evidence and pointed out
15 evidence that makes my theory just as plausible as the state,
16 but I haven't proven it. And neither has the state. But I don't
17 have the burden. The state does.

18 Presumption of innocence and proof beyond
19 a reasonable doubt are the cornerstones for the criminal justice
20 system. That's what it's built on. The exact opposite of that is
21 suspicion of guilt. That's what eats away at it.

22 An example of suspicion of guilt is Melissa
23 Stites. Remember when Melissa Stites talked about *getting*
24 *their plan on*? And she said that meant to do a robbery.

25 On December 22nd of 2002, getting the plan

1 on didn't mean a robbery. She put two and two together
2 afterwards, after she found out what happened, after she found
3 out they were investigating. She told you that because she
4 knows Mr. Vance is being investigated for a robbery. That's
5 suspicion of guilt.

6 Suspicion of guilt is when we switch the
7 burden on Mr. Vance. He couldn't tell the police -- he couldn't
8 prove to the police that he didn't do it, and they wanted him to.
9 They investigated. He couldn't prove that. He doesn't have to.
10 That's suspicion of guilt. When you go there, the system is not
11 working.

12 Another example we saw of suspicion of guilt
13 is Samantha Renville. God bless her heart, she's the kid who
14 goes to Sabreen's. She knew them. She was familiar with
15 Sabreen's. The testimony that shows suspicion of guilt is when
16 she talked about the race of the perpetrators.

17 She testified that she didn't see them, didn't
18 see their faces. But she assumed on the stand, she said, "Well,
19 they're black." She didn't do that because she's a racist. She
20 didn't do that because she was trying to set Mr. Vance up. She
21 was trying to help the state. She looked over and saw Mr.
22 Vance was on trial, she said, "Well, they must have been
23 black." That's suspicion of guilty.

24 Reasonable doubt, I like to use a railing as
25 an example when I talk about reasonable doubt. If you look at

1 this railing and consider it continual proof. You start here and
2 you move this way. Right here is preponderance of evidence
3 (indicating). This is when you have two stories competing and
4 you say, "Well, I think this one is right." That's preponderance
5 of evidence.

6 You move down further, you have clear and
7 convincing. That's when you say it's fifty-one to forty-nine.
8 That's how you weigh them. You get here (indicating), this is
9 reasonable doubt. The state doesn't only have to take you all
10 the way down here, they have to take you out here (indicating).
11 It's proof beyond a reasonable doubt. It's not enough to get
12 you here to reasonable doubt. They have to get you here
13 (indicating).

14 It's like in a football game, you march down
15 the field, you get to the goal line and you don't get to stop and
16 say "I scored a touchdown." You have to score. You have to
17 get over that line.

18 I have worked on this case for a long time.
19 And in my representation of Mr. Vance I have done the best I
20 could do. Sometimes, in representing zealously, I offend or I
21 say something that will offend a juror. If I have done that, I
22 apologize. And if I have done that, please do not hold it against
23 Mr. Vance.

24 Lot of times lawyers take responsibility for
25 making sure the system works. It's zealous representation.

1 You hear about judges taking responsibility for it. The truth is,
2 you're the reason it works. I asked you in jury selection, we
3 talked about your civic duty, and you all said, "Hey, it's some-
4 thing we have to do," and acknowledging the gravity of the case
5 that's before you. It's a murder case.

6 Mr. Vance's life is in your hands and you
7 acknowledged that. You told us that you would listen to the
8 evidence, that you would be fair, that you would hold the state
9 to their burden.

10 Now I ask you, when you go back into the
11 jury room, look over the evidence, talk to each other,
12 deliberate. Come back in, deliver a verdict that the evidence
13 compels, that justice requires, verdicts of not guilty on all
14 counts.

15 Thank you.

16 THE COURT: Ten-minute break.

17 (JURORS EXCUSED)

18 THE COURT: We should make a record.

19 There were objections made by the state during Mr. Shands'
20 final argument. Ms. Keena?

21 MS. KEENA: Your Honor, the objections that
22 were most noteworthy, as you recall, were Mr. Shands'
23 innuendos regarding an alternative perpetrator having
24 committed this crime and that Mr. Vance obtained his
25 knowledge about these crimes or about the facts of the case

1 from an alternative perpetrator.

2 I think, again going back to Maynard Cross
3 connection, it's been made very clear that Mr. Cross was not
4 linked to this crime. There was no evidence put forward in the
5 proffer that he was linked to this crime.

6 The fact is that Mr. Vance made an admis-
7 sion to Maynard Cross at the Buttery Bar that night. That's
8 what the evidence was that went into the grand jury, so for the
9 defense to get up and argue that it was Maynard Cross who
10 committed it, that was the basis for the state's objection.

11 THE COURT: Anything, Mr. Shands?

12 MR. SHANDS: Your Honor, in the state's
13 closing argument, they brought up Maynard Cross. They said
14 Mr. Vance had a conversation with Maynard Cross. They did
15 not bring Maynard Cross in to say that Mr. Vance told them. It
16 was speculation innuendo. All I did was give the jury some-
17 thing else, that maybe during this conversation Mr. Vance did
18 not confess to Mr. Cross, but maybe it was vice versa. I did not
19 say it was.

20 Quite frankly, I told the jury I didn't prove
21 anything. But when the state dabbled into speculation of what
22 was happening with that conversation, I believe they opened
23 the door for me to at least address it.

24 THE COURT: Anything else?

25 MS. KEENA: No, Your Honor.

1 THE COURT: Thanks. Ten minutes.

2 Quarter to.

3 (A break was taken)

4 THE COURT: Please be seated. Our rules of
5 court allow the state to make a rebuttal argument. Ms. Keena.

6 MS. KEENA: Thank you, Your Honor. And I
7 promise to be brief. I promise. I just want to touch on a few
8 points that defense raised in their closing. One was the discus-
9 sion about the car and how the state is stuck with this blue
10 Corsica. Well, the state doesn't feel stuck with the blue
11 Corsica. That's the information that Vance provided to Dontay
12 Reese. John Martin saw Vance and Johnson get into a blue
13 Corsica.

14 The only thing that doesn't quite fit is what
15 the kids described or how they described the car in the alley.
16 What I want you to remember is the testimony of those three
17 kids. They indicated that as they walked up into the alley they
18 were messing around. Excuse me, Mr. Dale Marx talked about
19 how he was sliding on the ice. Mr. Renville testified how dark
20 it was behind the store, the lighting was bad, and all three of
21 them testified that when they saw these two guys out, they
22 didn't think anything of it.

23 They didn't realize what they were wit-
24 nessing, they didn't realize the significance of what they were
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seeing. Three kids, Samantha was fourteen, I believe, at the time. So they were fourteen and fifteen years old. They were mistaken.

There was also discussion about Samantha Renville and this idea of suspicion of guilt and how when she was asked on cross-examination she, you know, was asked, "Well, you don't know if they were White, Hispanic," you know, this whole litany, and she blurted out, "I saw Black." She said "Black."

Now she didn't say that to help the state. That's what she saw -- thought she saw. If you recall Ms. Renville, after the cross-examination, she completely shut down up on that stand. She did not like the experience that she was going through, and I had to coax her into answering more questions for the state. She didn't blurt out Black because of anything that the state did.

There was also mention in the defense's closing argument about that Vance could have obtained this information elsewhere, the specific facts about the crime. There is absolutely no evidence that has been submitted in this case indicating that, that he could have obtained that knowledge about this case, about the specific things that were taken, from anywhere else or from anyone else.

Finally, the last item I want to talk about is reasonable doubt. Mr. Shands showed you this continuum of

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reasonable doubt along the rail here and he had you way out here (indicating) on reasonable doubt. That's proof beyond all doubt. The state is not required to prove Mr. Vance's guilt beyond all doubt. It's a reasonable doubt.

Reasonable doubt, as the court told you yesterday, it doesn't mean a fanciful or capricious doubt nor does it mean beyond all possibility of doubt. It's such proof as ordinarily prudent men and women would act upon in their most important affairs: when you are buying a house, when you are buying a car. That's proof beyond a reasonable doubt, not way off the railing.

Thank you.

THE COURT: In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment.

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

You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous. But, you should not surrender your honest

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opinion simply because other jurors disagree or merely to reach a verdict.

In arriving at your verdict, you shall not permit bias, prejudice or sympathy to affect your verdict. You should base your verdict entirely upon the evidence which has been received in court and upon the law which I have given you in these instructions.

There are twelve of you on this jury. And in order to reach your verdict, again, all of you must agree the verdict must be unanimous. The verdict is to be signed by the foreperson alone, who will insert the date and hour at which you arrive at the verdict.

You will remain in the jury deliberation room until you deliver your verdict in open court. When you arrive at a verdict, notify the officer in charge or bailiff, and the court will be summoned to receive your verdict, no matter at what hour of the day or night you are ready to report.

I mentioned verdict forms. You will receive six verdict forms. One for Murder in the First Degree with pre-meditation. You will receive a guilty verdict form and a not guilty verdict form.

Murder in the Second Degree, Intentional. You will receive a guilty verdict form and a not guilty verdict form.

First Degree Murder while committing an

1 armed robbery, you will receive two verdicts, a guilty verdict
2 form and a not guilty verdict form.

3 During your deliberations you are not to
4 communicate with members of your family or with other
5 persons except the bailiffs in charge. And to them and them
6 alone you may make known your needs.

7 After you have retired for your deliberations,
8 if you desire information on any point of law in the case, you
9 may ask the bailiff to bring you back into the courtroom. And,
10 ladies and gentlemen, in considering this case, remember that
11 you are not advocates or partisans, but that you are judges of
12 the facts.

13 The final test of the quality of your service
14 will lie in the verdict you return to this court and not in any of
15 the opinions you may have as you retire from this case.

16 Let the court remind you that in your
17 deliberations in the jury room there can be no triumph except
18 the ascertainment and declaration of the truth. And remember
19 that this case is important to both sides.

20 It is important in the respect that a person
21 who is guilty of committing a crime be brought to justice and
22 be punished. It is equally important that a person who is not
23 guilty of a crime should not be punished for something they did
24 not do.

25 I will swear the bailiffs.

(The court administered an oath
to the bailiffs)

THE COURT: Well, this is difficult because
there are fourteen of you sitting there, and twelve will decide
the case. Mr. Walters and Ms. Pape, you are our alternates. I
will allow you to go back with the other jurors, but no one is to
discuss the case. And we are going to keep you available in the
event we need one of you. So as you wait together, don't talk
about the case, the two of you. And we will make you as
comfortable as we can.

Anything else?

MR. SHANDS: No, Your Honor.

MS. KEENA: No, Your Honor.

THE COURT: Thanks.

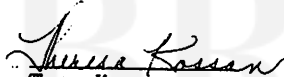
(Adjourned at 12:00 p.m.)

(Whereupon, the jury reached a
verdict at 8:30 p.m. Sentencing
was set for October 8, 2004)

STATE OF MINNESOTA)
: ss.
COUNTY OF DAKOTA)

I, Theresa Kossan, being one of the official court
reporters for Dakota County, First Judicial District, State of
Minnesota, do hereby certify that the foregoing transcript,
consisting of the preceding 561 pages, is a true and accurate
reproduction of my original Stenographic machine shorthand
notes taken by, heard before the Honorable Rex D. Stacey.

Dated: November 9, 2004


Theresa Kossan
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