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A052444  
ORIGINAL (2)

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

FILED

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

06 MAR -3 PM 12:41

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4 State of Minnesota, D.C. File No. 04035635  
COUNTY ADMINISTRATOR S.Ct. File A05-2444

5 Respondent/Plaintiff,

6 vs.

**TRIAL TRANSCRIPT**

7 MARVIN HAYNES, JR.,

VOL I, pp. 1-213  
(Aug. 22-23, 2005)

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, at 659-C Hennepin County  
13 Government Center, Minneapolis, Minnesota, on the  
14 22nd day of August, 2005.

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared as counsel for and on  
18 behalf of the State.

19 KASSIUS BENSON, ESQ., appeared as counsel on  
20 behalf of the DEFENDANT, who was also personally  
21 present.  
22  
23

24 CLERKS: Toni Rahn, Andrea Martin

25 REPORTER: Jolyn R. Lund

04035635

1 (Whereupon, the following  
2 proceedings occur prior to jury selection.)

3 THE COURT: Okay, Mr. Furnstahl, you can  
4 call the case.

5 MR. FURNSTAHL: Thank you, Your Honor.

6 This is State v. Marvin Haynes, SIP number  
7 04035635, County Attorney number 04-5324. Mike  
8 Furnstahl for the State. Mr. Haynes appears in  
9 person along with his attorney, Kassius Benson.

10 Do you want to introduce --

11 MR. BENSON: Your Honor, also at the  
12 defense's counsel table is Jennifer Pawlcyn,  
13 P-A-W-L-C-Y-N.

14 THE COURT: And before we bring the jury  
15 up, we have a couple of motions that I understand  
16 we're prepared to argue, the one motion that Mr.  
17 Benson has filed with regard to the reconsideration  
18 of the Court's ruling on the statement of Mr. Haynes,  
19 is that right?

20 MR. BENSON: That's correct, Your Honor.

21 THE COURT: Okay. Go ahead.

22 MR. BENSON: Your Honor, with respect to  
23 the reconsideration, I would have made this request  
24 in front of Judge Connolly, however he, due to  
25 scheduling matters, is no longer on this case so I

1 make it before Your Honor.

2 We are pretrial in this matter. We had a break  
3 because of the State's interlocutory appeal, and I  
4 would ask the Court to reconsider this primarily, and  
5 I'll cite from a document that the State gave me a  
6 little bit ago, State v. Montjoy, says public policy  
7 favors correction of errors at the trial court level  
8 and a timely motion to reconsider is an appropriate  
9 method to be utilized in directing the attention of  
10 the trial court to a claim of error.

11 And the reason -- so I bring my motion because  
12 in State v. Burrell, 697 N.W.2d 579, a decision from  
13 May 19th of this year, 2005, the Minnesota Supreme  
14 Court reversed a conviction because a statement was  
15 not suppressed.

16 This situation is similar to Mr. Haynes's case.  
17 The defendant in that case, that Burrell case, was a  
18 16-year-old juvenile who had been certified as an  
19 adult. He was taken to the adult police station, he  
20 was interrogated, he had made repeated requests for  
21 his mother, he had been lied to by the police. And  
22 given all the circumstances in that case, Your Honor,  
23 the Supreme Court found that his statement should  
24 have been suppressed.

25 Because this decision came out after the

1 decision that Judge Connolly made in the prior case,  
2 I bring this to this Court's attention and ask you to  
3 reconsider Judge Connolly's ruling, primarily because  
4 in Judge Connolly's ruling there was -- while he did  
5 note something about there was no parental presence,  
6 he did not go into the details which the Burrell  
7 opinion dealt with in that matter.

8 In the Burrell opinion, there's talk about the  
9 closeness of the relationship between the defendant  
10 in that case and his mother. I've asserted in our  
11 papers that there was a close relationship between  
12 Mr. -- or between Marvin Haynes and his mother.

13 Should the Court have an opportunity to actually  
14 review the videotape, which I believe Judge Connolly  
15 did have an opportunity to review, I'm not exactly  
16 sure at this time, I know this Court has a transcript  
17 of the statement, however the videotape in one of the  
18 dead areas, if you will, areas where Mr. Haynes was  
19 left alone in a room, he knocks on the door at one  
20 point and he says to the police officer on the other  
21 side of the door, I'm going to tell my mom, you know,  
22 she's going to take care of you, something to that  
23 affect. I think that within this case with Mr.  
24 Haynes, there's a closeness with his mother and with  
25 his request for his mother.



1           In light of also the lies the police made to  
2 Marvin Haynes, and it's undisputed by the State, we  
3 dealt with this to some extent on another unrelated  
4 matter at the first trial, the police in their  
5 interrogation did lie to Mr. Haynes about certain  
6 things such as having fingerprint evidence, such as  
7 having DNA evidence, and to a certain extent, to the  
8 extent of the evidence that they had against Mr.  
9 Haynes.

10           So those lies in conjunction with his age and  
11 his repeated requests for his mother, I would ask the  
12 Court to grant our motion to suppress evidence. The  
13 statement was involuntary. He was a juvenile in an  
14 adult situation, and in light of State v. Burrell I  
15 think that that motion to suppress is warranted.

16           THE COURT: Let me ask you a question about  
17 that. I have not seen the videotape. I have the  
18 transcript, and in the transcript there's a couple of  
19 mentions of the mother, I think a couple of times  
20 where it's, you know, not really explicit but pretty  
21 much implied that he wants to talk to his mother.

22           The case that you cited maybe is more the other  
23 extreme with being like 13 requests to talk to the  
24 mother. And I know our Supreme Court has looked at  
25 this with regard to, and in particular EJJ and

1 juveniles who are about to be certified. Do you have  
2 any position with regard to the explicitness of the  
3 request that must be made by the defendant? Or, you  
4 know, does the defendant need to say I want to talk  
5 to my mother before we go on, or what is the Supreme  
6 Court's thinking on that with regard to juveniles?

7 MR. BENSON: Your Honor, I believe it to  
8 be, based upon Burrell, the Supreme Court's thinking  
9 is that that is one of the factors.

10 Now, I will concede in our case there are not  
11 explicit, you know, 13 explicit statements. There is  
12 only two statements there plus what I've represented  
13 to the Court with respect to I'm going to tell my  
14 mom, which isn't in the transcript. However, I think  
15 given the totality of the circumstances, the asking  
16 for a parent is important. If there was no request  
17 for a parent at all, I think just the absence of a  
18 parent may or may not move the Court that much, but  
19 whether it's 13 or whether it's two, it's something  
20 that this Court should definitely consider.

21 Also I would just note that this case, like  
22 Burrell, is a direct certification case in that the  
23 prosecutor files a charge, it goes directly to adult  
24 court due to the age of Mr. Haynes.

25 THE COURT: And Mr. Haynes was 17 at the

1 time of the interrogation?

2 MR. BENSON: He was 16.

3 THE COURT: 16 at the time of the  
4 interrogation.

5 MR. BENSON: Yes. He was 16, Your Honor,  
6 as the defendant in Burrell, and I think that that's  
7 important just simply because Your Honor mentioned  
8 that this comes up a lot in certification proceedings  
9 and certification or EJJ context. We didn't even  
10 have that there.

11 When there is -- I think the court does draw a  
12 line to this regard, that if there is a request it  
13 should be considered, for a parent. And even though  
14 the totality of the circumstances in other cases  
15 where the defendant does not ask for a parent, that  
16 may be a reality but there isn't a request. I think  
17 once there is a request for a parent, given all the  
18 circumstances, then we get to a situation where that  
19 person's will could be overborne when we deal with  
20 voluntariness issues because it could be very fair to  
21 say that Mr. Haynes wanted his mother to help him  
22 decide whether he wanted to speak or not.

23 It's not the same thing as an attorney, however,  
24 if the police officers keep proceeding if they  
25 indicate that they will talk to his mother, if they

1 indicate instead of going to get his mother and  
2 stopping the interrogation, they proceed to tell him  
3 lies about the state of the evidence. All these  
4 things one on another on another creates a situation  
5 where his will is overborne, and I think that the  
6 Burrell case is an extreme example of that. It's  
7 something that the court has said we are going to  
8 look at this request for parents in a greater  
9 context.

10 But I will say that obviously in Burrell he  
11 asked a number of times, but given all the  
12 circumstances, plus the fact that Mr. Haynes was  
13 being arrested on a charge of murder, that was  
14 looking at -- he's looking at, as an adult he's  
15 looking at 20 to 30, you know, 40 years. Given all  
16 the circumstances, his will was overborne.

17 THE COURT: And when, like in the first  
18 instance when he mentions -- when they are asking  
19 him, when they are telling him that he can have an  
20 attorney, and the question is I can have my own, I  
21 don't have my mom down here, your mom -- then it says  
22 no verbal response, okay, well, I'm talking right now  
23 about an attorney, you realize that you have that  
24 right, yes. So he goes on to continue to answer  
25 questions about his rights and is that -- by the

1 police conduct of continuing to go through the rights  
2 and kind of going over the mention of his mom, is  
3 that something that overbears his will? Or being a  
4 16-year-old, you know, he's -- do we have to consider  
5 the fact of what his experience is with the police  
6 and that type of thing?

7 MR. BENSON: Yes, Your Honor. In the  
8 context of -- excuse me -- the context of any  
9 interrogation you would do that.

10 In this case, the fact that he asked for his  
11 mother in the context of the reading of the rights I  
12 think is important, and while his mother is not an  
13 attorney, it is important in the fact that whether he  
14 wants to talk to the police, and I think that the  
15 police should have to take some additional steps when  
16 you're dealing with a juvenile in an adult setting,  
17 which is in the adult jail.

18 You'll also note that in this case there are  
19 repeated -- or in this statement there is repeated  
20 requests for Mr. Haynes to go back to juvie, go back  
21 to JDC to get away from that situation, to leave that  
22 situation. Those matters were all dealt with in our  
23 first motion before Judge Connolly.

24 However, I think Burrell puts all this in a  
25 different context in that, if nothing else, Burrell

1 was a first degree, highly publicized first degree  
2 murder case, but Burrell was a situation where  
3 there's a 16-year-old in similar circumstances and  
4 the court, the Supreme Court, you know, chose to look  
5 closely at that and look at all the circumstances,  
6 including the request for a mother and the timing of  
7 the request for a mother during the waiver of the  
8 rights, and ultimately deciding that this statement  
9 should be suppressed.

10 And while these issues to some extent were  
11 raised before Judge Connolly, we didn't have the  
12 Burrell decision and that's, I think it's something  
13 that the Court should look at closely now rather than  
14 later, should that eventuality arise.

15 THE COURT: All right. Mr. Furnstahl.

16 MR. FURNSTAHL: Well, Judge, it's my  
17 understanding that this issue here today is solely  
18 limited to the effect of the Burrell decision on the  
19 evidence that was put before Judge Connolly and  
20 nothing else.

21 You had asked a question about, and I think  
22 counsel talked about prior police contacts the  
23 defendant might have had with law enforcement, we  
24 litigated that in front of Judge Connolly, but if the  
25 Court is going to go beyond what I think the narrow

1 issue is here, then I want an opportunity, because I  
2 have documentation, I think 31 contacts this  
3 defendant had with law enforcement prior to this  
4 conversation that he had with the investigators in  
5 this case. But I'm going to limit my arguments just  
6 to that narrow issue.

7 And it's our position, Judge, that the decision  
8 should not be overturned for two reasons. Number  
9 one, you do not have the authority to do it; and  
10 number two, because Burrell can be distinguished.

11 First of all with respect to the first argument,  
12 I've provided Court and counsel with a memorandum  
13 that I used in a different case which I think  
14 correctly sets out the law, and the rules say that  
15 only in extraordinary circumstances can a judge  
16 overturn an Omnibus ruling of another judge. There  
17 is no such extraordinary circumstances in this case.

18 In that memorandum I also cite to the law of the  
19 case doctrine and that can be an extraordinary  
20 circumstance to allow a court to overturn a decision  
21 of another Omnibus judge.

22 So if Burrell were a change in the law that  
23 might be a basis for this Court to review this, but  
24 Burrell does not change the law. It specifically  
25 says -- I don't have the page set, I believe it's

1 page 39? That might not be right, but whatever,  
2 there's a quote and it says, we reiterate there is no  
3 per se rule requiring a parent's presence before a  
4 juvenile waives his Miranda rights.

5 The circumstances of this case suggest that  
6 Burrell's repeated requests for a parent were enough  
7 to render his Miranda waiver ineffective, so the  
8 Burrell decision was driven by the facts and the  
9 facts alone in that case. It represents no change in  
10 the law, therefore there are no extraordinary  
11 circumstances that would allow this Court to review  
12 Judge Connolly's decision; there is no change in the  
13 law such that the law of the case doctrine would  
14 allow the Court to review Judge Connolly's decision.

15 My second argument is in respect to the Burrell  
16 decision, you picked up on one of -- I mean, as I  
17 said earlier, Burrell is driven by the facts, so if  
18 Burrell applies then the facts in this case must be  
19 very closely akin to the facts in Burrell, and they  
20 are not.

21 First of all, as you pointed out, in Burrell the  
22 defendant specifically asked for his mother 13 times.  
23 In this case, the defendant did not. On page four he  
24 mentioned his mother, and I don't recall the --  
25 counsel had cited to a portion of the videotape. I



1 don't recall that, where that was or if it even  
2 occurred, you know. And I guess I would ask the  
3 Court to, I don't know if the Court wants to look at  
4 that videotape or what. If the Court does then I  
5 want to reserve an opportunity to address that issue.  
6 But otherwise, since this was the stuff that was  
7 handed to me, I would ask the Court to base your  
8 decision solely on the transcript that was provided  
9 to you.

10 But in the transcript there are two areas where  
11 the defendant references his mother. The first one  
12 is that -- you said it on page four, and he made a  
13 comment out of the blue when the officers are  
14 advising him of his Miranda rights and he does not  
15 ask for his mother, he just makes mention of his  
16 mother, and the officer is confused and rightly so  
17 because the statement about his mother is taken  
18 totally out of context, and so the only thing that  
19 the officer can understand that might have relevance  
20 to -- in that portion of the conversation is whether  
21 or not the defendant's mother is in fact a lawyer,  
22 and he addresses that and he moves on.

23 Then he asked the defendant do you want to talk  
24 to me. He doesn't say I want to talk to you but  
25 first I want to talk to my mother. He says sure, I

1 can talk a little bit, or words to that effect.

2 The second place in the transcript where he  
3 references his mother is on page 31, and he asks the  
4 officers if they will call his mom to let her know  
5 what's going on. And the officer says do you want me  
6 to let your mom know, I'll call her; do you want me  
7 to give your mom a call, answer, yeah, because I, I  
8 don't, I swear. And then -- and that was it. And  
9 then the officer excuses himself, goes to make a  
10 phone call, and I was trying to wrack my brain but I  
11 believe at the last hearing the testimony was that  
12 the officer tried to contact the defendant's mother  
13 and was unsuccessful in doing so. So they made an  
14 attempt to call the defendant's mother. But the  
15 point is he was not requesting his mother's  
16 assistance, so that's one big distinction between the  
17 facts of this case and the facts of Burrell.

18 One of the other things in Burrell the court  
19 said that was salient to its decision is the close  
20 relationship between the defendant and his mother in  
21 that case. And I haven't marked this, but I've given  
22 counsel a copy of two Minneapolis police reports that  
23 I have, they are one an incident from July 31, 2001,  
24 and another one an incident from July 19th -- I'm  
25 sorry, February 19, 2004. The July 2001 situation

1 was an incident where the defendant's mother called  
2 the police because the defendant wasn't getting along  
3 with his mother. He damaged the house because she  
4 was trying to put limits on him that were imposed  
5 upon him by his probation officer and he reacted  
6 violently by doing damage to his mother's house.

7 The incident from February of 2004 is another  
8 incident where the defendant threatened his mother  
9 and did damage to her house, and I would tender these  
10 to the Court and ask that they be made a part of the  
11 record. Counsel has a copy of that. So that's  
12 another fact that distinguishes this case from  
13 Burrell.

14 One of the other factors that the Supreme Court  
15 found to be salient in Burrell was the fact that the  
16 law enforcement officers were misleading the  
17 defendant in that case. Counsel has made  
18 representations that that occurred here, but I say  
19 except with respect to one point they did not do  
20 that, the officers did not do that.

21 Counsel referred on page three of his  
22 memorandum, he refers to several instances where he  
23 claims the officers lied. He says that the officers  
24 lied about having recovered Mr. Haynes's fingerprints  
25 in the flower shop. There were two areas where they

1 addressed that, first on page 17 and the second one  
2 on page 24. You see on page 17, I think they asked  
3 it in the form of a hypothetical. But on page 24  
4 they say yeah, we do have your fingerprints.

5 I was trying to review the report of the officer  
6 that did the fingerprinting in this case and I'm not  
7 sure, I couldn't get the documentation but I'm not  
8 sure that these officers had that information at the  
9 time that they talked to the defendant. The  
10 information was that they were not able to get  
11 fingerprints off of a card that the defendant  
12 allegedly handled at the crime scene. So if there  
13 was a lie, that's the only thing that arguably is a  
14 lie.

15 And then it says on the memorandum the officers  
16 lied about having evidence linking Marvin Haynes to  
17 the flower shop. That is not a lie. They had  
18 evidence linking the defendant to the flower shop.  
19 They go on to talk about it later on in the  
20 statements. They have the sister of the murder  
21 victim positively identifying this defendant in a  
22 photo lineup, and another juvenile who was outside  
23 right about the time of the murder also positively  
24 identified this defendant in a photo lineup.

25 In addition we had gotten a tip that it was this

1 defendant that was responsible for the flower shop  
2 murder. As a result of getting that tip, we arrested  
3 this defendant on a juvenile warrant, not on a  
4 criminal warrant because we had to do some follow-up  
5 investigation, but that gave us some idea of who the  
6 person was that committed this, and that was an  
7 unknown confidential reliable informant that provided  
8 some information to a member of the black community  
9 who provided it to us. So those are three sources  
10 that the officers had that was linking this defendant  
11 to the flower shop murder. That was not a lie. That  
12 was, in fact, the truth.

13 Counsel also talks about the officers lied about  
14 having Marvin Haynes on videotape doing something at  
15 the flower shop. They did not do that. There are  
16 two places where they refer to the videotaping, on  
17 page 17 and again on page 24. On page 17 they talk  
18 about there are video cameras everywhere, and in  
19 fact, Your Honor, the officers canvassed the area.  
20 There was a number of businesses in that area and  
21 they found four locations, four businesses, I believe  
22 it was four or five, who had video cameras and they  
23 had secured those, and I'm not sure if these officers  
24 had a chance to review them at the time, but they  
25 were businesses in the area, so they were not lying

1           about having the possibility of seeing this defendant  
2           on a videotape in the area.

3           On page 24, they ask in the form more of a  
4           hypothetical, if somebody videotaped you, how could  
5           that happen, or words to that effect. They did not  
6           say we have you on video tape. In fact, they knew  
7           from the facts of the case that the killer would not  
8           be persuaded if the officers were to tell them that  
9           we have you on video tape at the flower shop because  
10          the robber who came in indicated or requested, one of  
11          the first things he requested was for the tapes from  
12          the video camera, and Cynthia McDermid who had waited  
13          on him and ultimately got the gun pulled on her, told  
14          him the cameras don't work, the cameras are broken or  
15          they don't have any tapes in them. And the officers  
16          knew that full well when they went into this  
17          interrogation. They knew full well that they  
18          couldn't tell this defendant and be believable to him  
19          that we have you on video tape at the flower shop,  
20          because he already had information that there were no  
21          video tapes inside the flower shop. They were merely  
22          referring to the video tapes taken from other  
23          businesses, and as I said there were four or five  
24          other businesses.

25                 And then the last thing they said that counsel

1           references is that the police officers lied to Marvin  
2           Haynes about having DNA evidence. They did not lie  
3           about that. They did not tell Marvin Haynes we have  
4           your DNA. They ask it more in the form of a  
5           hypothetical. What's going to happen if we have your  
6           DNA, and I don't have the cite to it, but it's more  
7           to the effect of what's going to happen if we get  
8           your DNA. And that was, that's a perfectly  
9           appropriate interview technique is to get a suspect  
10          thinking about evidence that might be out there that  
11          could inculcate them, to give them an opportunity to  
12          discuss how that could be there. And that's a  
13          perfectly appropriate police technique.

14                 So there is only one incident where it can be  
15          said that the officers lied to this defendant, and on  
16          all the other areas this case is distinguished from  
17          Burrell. There is no close relationship, he did not  
18          repeatedly request to ask to speak to his mother  
19          before he spoke to the officers, and the officers did  
20          not engage in a pattern of deceit or trickery when  
21          they spoke to this defendant. In fact, they were  
22          pretty straight-up with the guy. I mean, eventually  
23          they told him about the witnesses that did identify  
24          him.

25                 So for all those reasons, Your Honor, we would

1 ask that -- oh, the other thing is that I would ask  
2 the Court to think about, and -- well, I'll leave it  
3 at that. I would ask the Court to deny the request  
4 based upon our --

5 THE COURT: I have one question for you. I  
6 understand your argument that if Burrell is not a  
7 change in the law that this Court is not supposed to  
8 go back and review the factors that Judge Connolly  
9 looked at in making the original ruling, but did I  
10 understand you to say that that was properly argued  
11 in terms of the number of police contacts, the  
12 experience of the defendant in dealing with the  
13 police, was that argument made to Judge Connolly?  
14 Was it part of his initial consideration in  
15 determining whether or not this statement should be  
16 suppressed?

17 MR. FURNSTAHL: I believe it was. Matter  
18 of fact, I think there were three or four police  
19 reports that I gave to Judge Connolly where the  
20 defendant had in the past been Mirandized, and I can,  
21 if you want them I can cite to you the dates of  
22 those.

23 THE COURT: No. I just want to make sure  
24 that that was -- I was just asking that question to  
25 see that that was argued. I understand your position



1           that this Court is not supposed to look at that.

2                   MR. FURNSTAHL:   Yes.

3                   THE COURT:   Brief response, Mr. Benson?

4                   MR. BENSON:   Brief response, Your Honor.

5                   With respect to the misrepresentations or the  
6           lies or the pattern of deceit or trickery, I'll just  
7           point the Court to page 24 and 25 of the transcript.  
8           Where the -- and also counsel -- one moment, Your  
9           Honor.  At the bottom of page 24, they ask questions  
10          about, you know that your -- you know that leaves  
11          your fingerprint, you understand that.  And they go  
12          on and talk about fingerprints, implying that there's  
13          fingerprints on the scene.

14                  They bring up DNA on 24, bottom of 24 and the  
15          top of page 25, they ask a question, all right, well  
16          how did -- how apostrophe D -- how'd your, answer, I  
17          don't know, question, bodily fluids as it were, I  
18          don't know, question, get in this store?  Answer, I  
19          don't even know, I don't even know what -- and then  
20          he goes on with his response.

21                  That's one particular point where they ask him,  
22          they imply to him, they tell him that his DNA is in  
23          that store.  Just because there is a question mark at  
24          the end, the clear and simple implication there is  
25          that they have Marvin's bodily fluids in that store

1 and in conjunction with -- and that should be clear  
2 to the Court, I think.

3 But as far as the pattern of deceit or trickery,  
4 all these questions, whether you want to call them  
5 lies or you want to call them misrepresentations or  
6 you want to call them trickery or deceit, all of this  
7 goes into the circumstances that Marvin was facing at  
8 the time.

9 And just finally, I would end with I would ask  
10 Your Honor to reconsider in light of Burrell, because  
11 we are pretrial, and this is not a situation where we  
12 have Omnibus hearings and then you come to the trial  
13 time and you ask a different judge, you know, to do  
14 something different. This is a situation where Judge  
15 Connolly isn't here for me to ask him to reconsider  
16 the Supreme Court case law, so it's a different  
17 situation in these contexts, I would submit. I'm not  
18 forum shopping, I'm simply bringing up a point of law  
19 or a case that should have been considered or would  
20 have been considered. Had I been in front of Judge  
21 Connolly I would ask the same thing.

22 We're not presenting any other evidence, we're  
23 not presenting any other witnesses, and I do believe  
24 that many trial court judges would consider this if  
25 it was their case and the Supreme Court comes down

1 with a decision which is relevant. At least they  
2 would consider that decision, and then they may  
3 change the decision or they may keep it. Just so  
4 happens in this case it's a first degree murder  
5 trial. Two to three weeks after he blocked for a  
6 case and Judge Connolly couldn't be here to  
7 reconsider his own ruling, or at least entertain my  
8 request for him to reconsider his own ruling.

9 THE COURT: I will take that matter under  
10 advisement. I'll read the Burrell case. We will get  
11 the jury up and get them started on their  
12 questionnaires and then I will get counsel's phone  
13 numbers and call counsel when I'm ready to make a  
14 ruling on the motion. Is there any other matters we  
15 have to consider before we have the jury panel  
16 brought up in this case?

17 MR. FURNSTAHL: I just want to put on the  
18 record, I think I gave court and counsel a copy of my  
19 exhibit list. And then in addition we had some  
20 discussions in chambers and I just want to put this  
21 on the record that I have given counsel notice that,  
22 depending upon how the case goes, we may be  
23 requesting that the statements of Isiah Harper and  
24 Timothy Clinton -- Clifton, I'm sorry. Let me just  
25 double check his name. Timothy Clifton,

1 C-L-I-F-T-O-N, that those statements be admitted  
2 under the residual hearsay exceptions.

3 THE COURT: Mr. Benson.

4 MR. BENSON: Yes, Your Honor. I would just  
5 add that in chambers we did discuss that. We  
6 discussed as well that I'm making a motion to  
7 preclude the testimony of Isiah Harper, a witness in  
8 this case, and I gave the Court a copy of State v.  
9 Dexter and State v. Thames, T-H-A-M-E-S, and counsel  
10 has a copy as well and we are going to address that  
11 at some point this week, I'm sure.

12 What I would ask though is that we have an  
13 answer to that, or this Isiah Harper issue before  
14 opening statements. It's a serious matter, and I  
15 think obviously if the Court were going to entertain  
16 the motion to exclude Isiah Harper from testifying,  
17 that's something we should know before opening  
18 statements.

19 I provided the Court a copy of some cases. I  
20 would provide at this time counsel and the Court just  
21 a segment of a transcript which the Court already  
22 has, and it's -- the cover page and then two  
23 additional pages which deal with what, last October,  
24 what the State believed to be the state of the  
25 testimony of Isiah Harper.

1           And from our conversations, I'll put this on the  
2 record as well, I provided notice to opposing  
3 counsel, we, being the defense, spoke to Isiah Harper  
4 on Friday, August 19th, and in that conversation he  
5 indicated that he was at home at the time -- he was  
6 home with his mom at the time of the incident and  
7 that the police made him say everything he has said  
8 to this point. That's the gist of it. I've given  
9 discovery to the State, but I think in all -- any  
10 way, shape, or form at this time there's a serious  
11 question as to what Mr. Harper would say when he got  
12 on that stand, and that is an issue for the Court to  
13 determine at a later point when the State has a  
14 chance to respond.

15           THE COURT: And Mr. Furnstahl, it's my  
16 understanding that you are going to take a look at  
17 those cases and I'll hear argument on that issue  
18 sometime during jury selection, is that right?

19           MR. FURNSTAHL: Yes, sir.

20           THE COURT: I agree that both of these  
21 issues need to be ruled on and will be ruled on  
22 before we have openings statements.

23           MR. BENSON: Thank you.

24           THE CLERK: Your Honor, you wanted to  
25 address start times?

1 THE COURT: Oh, yes. We did not address  
2 actual times for this week in jury selection, and  
3 counsel, I think with the exception of one day I have  
4 not scheduled any 8:30 hearings in order to -- we  
5 could start at 8:30 if counsel is available to do  
6 that or has any preferences.

7 MR. FURNSTAHL: Nine is a real nice number  
8 for me.

9 THE COURT: All right. We can start at  
10 nine. If it looks like we are not going as fast as  
11 we should to get this jury selected by the end of  
12 this week, then we will start earlier.

13 MR. FURNSTAHL: Understood.

14 MR. BENSON: That's fine, Your Honor.

15 THE COURT: All right. Now we'll take a  
16 brief recess just to go down and get the jury because  
17 it's going to take a little bit of time to get them.  
18 Counsel may remain here. As soon as we get the jury  
19 we'll get the questionnaires to them and I'm going to  
20 give them the brief instruction and read them the  
21 indictment and then we'll give them the jury  
22 instruction -- or the jury questionnaire, I mean, and  
23 then we are going to have them taken to another  
24 courtroom where they can sit and fill out the  
25 questionnaire until they are done and then we will

advise them as to how many are to come back tomorrow morning and tomorrow afternoon, et cetera, and we'll get phone numbers from them in case there is any issue in terms of changing the schedule with the number of jurors we need.

MR. FURNSTAHL: Judge, do you instruct them that we don't talk to them and we're not being rude and that kind of thing?

THE COURT: I will.

MR. FURNSTAHL: Thanks.

THE COURT: Anything else we have to put on the record before we do that?

MR. BENSON: No, Your Honor.

MR. FURNSTAHL: I don't believe so.

THE CLERK: Judge, do you want the start  
time in the afternoon at 1:30 or two?

THE COURT: 1:30.

(Court is in recess while jury is brought up.)

THE COURT: All right. We're back on the record on the State v. Marvin Haynes, Jr., and as I have explained to counsel, the computers have crashed this morning and are not yet up so we were able to gather 50 jurors by hand from the jury office with their names on little slips of paper. We have

1 deposited those slips of paper in a box and drawn out  
2 the jurors in random order, and it's amazing we still  
3 have one of those boxes around from the time when we  
4 didn't have computers, but counsel was present when  
5 we drew out the names and made a list of random -- of  
6 the jurors drawn, and I would like on the record if  
7 counsel sees any objection to proceeding in that  
8 fashion on that matter, and we'll start with Mr.  
9 Benson.

10 MR. BENSON: No objection, Your Honor.

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

13 THE COURT: Secondly, the jury office,  
14 being in the confused state it is today because of  
15 everything being down, did not realize that one of  
16 the jurors they sent us had a slip from her doctor  
17 saying she's six months pregnant, she's bleeding, and  
18 she's not supposed to be working more than two hours  
19 a day, so with agreement of counsel I also sent her  
20 home. Is that a problem for either counsel?

21 MR. FURNSTAHL: Not by the State, Judge.

22 MR. BENSON: No, Your Honor.

23 THE COURT: That being the case, I believe  
24 we are now ready to bring the panel in and get them  
25 started on their questionnaires after a brief



1 introduction.

2 MR. FURNSTAHL: Judge, who was that juror  
3 that was struck for cause?

4 THE COURT: That was sent home?

5 MR. FURNSTAHL: Yes.

6 THE COURT: It was --

7 THE CLERK: Jocelyn Hammond.

8 THE COURT: What number is that on the  
9 list?

10 THE CLERK: Number 18 on the random list.

11 THE COURT: You may bring in our jury  
12 panel. I don't think there are 50 seats in the back.  
13 You'll have to have some of them up here, too.

14 (The jurors are brought in at  
15 11:45 a.m.)

16 THE COURT: Good morning, members of the  
17 jury panel. This is a criminal case, and an  
18 indictment has been filed with this Court which  
19 alleges that on or about May 16, 2004, in Hennepin  
20 County, Minnesota, Marvin Haynes, Jr., while using a  
21 firearm, caused the death of Harry Sherer, a human  
22 being, with intent to affect of death of Harry Sherer  
23 while attempting to commit the crime of aggravated  
24 robbery. Count two, that on or about May 16, 2004,  
25 in Hennepin County, Minnesota, Marvin Haynes, Jr.,

1 while using or possessing a firearm, assaulted  
2 Cynthia McDermid. And count three, that on or about  
3 May 16, 2004, in Hennepin County, Minnesota, Marvin  
4 Haynes, Jr., while armed with a firearm, attempted to  
5 take personal property from the person or in the  
6 presence of Cynthia McDermid, knowing that he was not  
7 entitled to the property, and used and/or threatened  
8 the imminent use of force against Cynthia McDermid to  
9 overcome her resistance or powers of resistance, or  
10 to compel acquiescence in the taking or carrying away  
11 of the property.

12 Are you on the jury panel, ma'am?

13 JUROR: Yes.

14 THE COURT: Why don't you just stand there  
15 for a minute. There is a chair here. Come on up  
16 here and have a chair in front of the bar.

17 Now, to this indictment the defendant, Marvin  
18 Haynes, Jr., has pled not guilty. This plea denies  
19 the charge and places upon the State of Minnesota the  
20 burden of proving the defendant's guilt beyond a  
21 reasonable doubt.

22 The State is represented by Michael Furnstahl.  
23 Please rise, Mr. Furnstahl.

24 MR. FURNSTAHL: Good morning.

25 THE COURT: The defendant is represented by

1 Kassius Benson. Please rise, Mr. Benson.

2 MR. BENSON: Hello.

3 THE COURT: Would the defendant please  
4 rise?

5 (Defendant complies.)

6 THE COURT: Some general rules of law apply  
7 in a criminal case. I will give you those rules now.

8 In the questioning that is going to take place  
9 in the next few days, you may be asked whether you  
10 will accept and follow the rules of law, and you  
11 should have these instructions in mind when you  
12 answer those questions.

13 An indictment is not evidence. It creates no  
14 inference or presumption of guilt. No member of the  
15 jury should in any way be prejudiced against the  
16 defendant because an indictment has been filed  
17 against the defendant, because the defendant may have  
18 been arrested, or because the defendant is on trial.  
19 The defendant is presumed innocent.

20 In order for you to find the defendant guilty,  
21 the State must prove guilt. The defendant does not  
22 have to prove innocence. The presumption of  
23 innocence remains with the defendant unless and until  
24 the defendant has been proven guilty beyond a  
25 reasonable doubt by evidence admitted in this trial.

Now, you are going to be given a questionnaire in a few minutes, and attached to the questionnaire is a list of persons who may be called as witnesses. Remember or jot down anybody on that list that you may know or to whom you may be related. When you are called as a prospective juror, you should then inform me of your knowledge of or relationship to those persons.

To ensure both the defendant and the State receive a fair trial by an impartial jury, it will be necessary for me and for counsel for each party to ask you certain questions that you must answer under oath. Please do not take any offense at any questions you are asked. Your contribution to this important and serious matter is best assured by your honest answers to those questions.

Some of you who are called to be questioned will be excused from serving on the jury. If you are excused, it does not mean that anyone doubts you are a fair person.

Members of the jury panel, will you all stand  
and raise your right hands to be sworn, please.

(Jurors are duly sworn.)

THE COURT: Be seated.

Now, we've had a few technical difficulties this

1 morning. The computers are down, which you probably  
2 found out in the jury room downstairs, so we have  
3 generated a random list from the jury pool that we  
4 have and the clerk is going to read the names, and if  
5 your name is mispronounced will you please tell us  
6 how to pronounce your name, and then once the list  
7 has been read we are going to give you a  
8 questionnaire, and once you complete that  
9 questionnaire we are going to take you to another  
10 courtroom so you have some room to spread out and  
11 complete the questionnaire.

12 Once you do that the clerk will take the  
13 questionnaire from you, it will be copied so the  
14 attorneys have a copy and the Court has a copy,  
15 you'll be given a date and a time to come back for  
16 your questioning, and then that questioning will  
17 occur during this week. And you won't all be here on  
18 the same day, but you'll be told where and when to  
19 come.

20 The clerk will read the names from the random  
21 list, and if we mispronounce your name please tell us  
22 how to pronounce it.

23 Go ahead.

24 MR. FURNSTAHL: Your Honor, can we approach  
25 for a second?

1 THE COURT: You may.

2 (Off-the record discussion at  
3 the bench out of hearing of the jury panel.)

4 THE COURT: When you are given your  
5 questionnaire, I would like you to write your number  
6 on your questionnaire, so please remember your  
7 number. The clerk is going to read your name and the  
8 random number that was assigned when your name was  
9 drawn, so please remember your number and just write  
10 that on your questionnaire, okay?

11 Go ahead.

12 THE CLERK: Yetemwork Habte, number one.

13 THE COURT: You can remain seated. You are  
14 number one, okay?

15 THE CLERK: Beverly Hemseth, number two.

16 MS. HEMMESCH: It's Hemmesch.

17 THE COURT: Thank you.

18 THE CLERK: Delvern Husfeldt, number three.

19 MR. HUSFELDT: Number three.

20 THE COURT: Thank you.

21 THE CLERK: Betty Luther, four; Kimberly  
22 Habben, five; Derek Hagberg, six; Amy Nory, seven.

23 MS. NORRY: It's Nory.

24 THE CLERK: Nory? Thomas Stadtnerr, eight;  
25 John Guertin, nine; Lowell Smith, ten; Anthony

1 Sorenson, 11; Robert Aspholm, 12; Lori walker, 13;  
2 Laura Elliot, 14; Felicia Harrison, 15; James Olson,  
3 16; Larry Smith, 17; Jocelyn Hammonds is 18.

4 THE COURT: Ms. Hammonds has been excused  
5 for medical reasons.

6 THE CLERK: Laurie Schlueter-Hynes, 19.

7 MS. SCHLUETER-HYNES: Schlueter-Hynes.

8 THE CLERK: Schlueter? Dunia Lobo, 20.

9 MS. LOBO: Dunia.

10 THE CLERK: Douglas Wall, 21; Kasaundra  
11 Klate, 22.

12 MS. KLATKE: It's Kasaundra Klatke.

13 THE CLERK: Shekela Wanyama, 23.

14 MS. WANYAMA: It's Wanyama.

15 THE COURT: Thank you.

16 THE CLERK: Janice Mack, 24.

17 MS. MACH: Janice Mach.

18 THE CLERK: Kathleen Jacobs, 25; Marc Tutt,  
19 26; Daniel Jansen, 27; Mark Stevenson, 28; Mary  
20 Lahti, 29; Jeffrey Spector, 30; Cecilee Faster, 31;  
21 David Docktor, 32; Jon Larson, 33; Jonathan  
22 Steinmetz, 34; Tony Walker, 35; Justin Piehowski, 36;  
23 Joann Gruesner, 37; Tari Nelson, 38.

24 MS. NELSON: It's Tari.

25 THE CLERK: Tari? Michael Filiatrault, 39.

1 MR. FILIATRAULT: It's Filiatrault.

2 THE CLERK: Vathana Vorasarn, 40; Mary  
3 Sommers, 41.

4 MS. SOMMERS: Sommers.

5 THE CLERK: Michael Wilson, 42.

6 THE COURT: Wait, wait. Where is Mr.  
7 Wilson? Okay. Thank you.

8 THE CLERK: Mark Carlson, 43; Andrew  
9 Rodels, 44.

10 MR. RODILES: Rodiles.

11 THE CLERK: Judith Sarff, 45. Judith, can  
12 you raise your hand again?

13 THE COURT: Thank you.

14 THE CLERK: Katie-ann Cassidy, 46; Leonard  
15 Addington, 47; David Runland, 48.

16 MR. RUHLAND: Ruhland.

17 THE CLERK: John Peterson, 49; Lori  
18 Schnurr, 50.

19 THE COURT: Members of the jury panel, you  
20 are going to -- the clerk is going to shortly take  
21 you to another courtroom and hand out the  
22 questionnaires and she will ensure that your number  
23 is on them when she collects them. Once you have  
24 completed your questionnaire and have given it to the  
25 clerk, she will tell you what day you are to come



1 back on and what time.

2 I want to give you a couple -- one additional  
3 piece of information, and that is this: Do not let  
4 any outsiders influence you, do not discuss this case  
5 with other jury members during this trial. You will  
6 have plenty of time to do that at the end of the  
7 trial once you have all the evidence. If anyone  
8 tries to discuss this case with you outside the  
9 courtroom, you are to report this to me.

10 Do not read or listen to news reports about this  
11 case. Do not do your own investigation. Keep an  
12 open mind until you have heard or seen all the  
13 evidence. Remember, you cannot consider anything you  
14 hear or learn about this case outside this courtroom.

15 I also want to advise you, the attorneys have  
16 similar rules that they have to go by, so when you  
17 see them they are not going to talk to you. It's not  
18 because they are trying to be unfriendly, it's simply  
19 because they have to also ensure that they don't say  
20 anything to you about this case, all right?

21 Counsel, is there anything else we need to put  
22 on the record before the jury is excused to do the  
23 questionnaires?

24 MR. FURNSTAHL: No, Your Honor.

25 MR. BENSON: No, Your Honor.

1 THE COURT: The clerk will take you to  
2 another courtroom, and members of the jury, you are  
3 excused. When you complete your questionnaire you  
4 will be told when to come back.

5 Thank you.

6 (Jurors leave the courtroom.)

7 THE COURT: All right. Counsel, you want  
8 to reconvene at three o'clock? And I'll be prepared  
9 to give you the ruling on the motion that I do have,  
10 and hopefully we'll have the questionnaires copied  
11 sometime between now and then. All right?

12 MR. BENSON: That's fine.

13 THE COURT: But on the record at  
14 three o'clock.

15 MR. BENSON: Thank you.

16 (Recess. The following  
17 proceedings occur at 3:05 p.m.)

18 THE COURT: All right. We're back on the  
19 record outside the presence of the jury panel, and I  
20 have read this case and I reviewed the transcript  
21 again, and with regard to the defense request to  
22 reconsider Judge Connolly's ruling that the  
23 defendant's custodial statement was a knowing,  
24 intelligent and voluntary statement, we're looking at  
25 whether or not this really amounts to extraordinary

1           circumstances or there was a change in the law by  
2           this new Burrell case which the Court has now read.

3           This case came out since the Omnibus hearing,  
4           and it's State v. Burrell, and the Supreme Court does  
5           refine somewhat their thinking on the effects of the  
6           defendant's waiver by his repeated request for  
7           parental presence. The court goes on to say they are  
8           not really changing the law but that the parental  
9           presence is one factor the court looks at in the  
10          totality of the circumstances when reviewing whether  
11          the waiver was knowing, intelligent, and voluntary.  
12          Burrell kind of seems like an extreme case when the  
13          defendant made 13 separate requests, I think it was,  
14          three before the Miranda warning and ten times  
15          afterwards for his mother, and it is fairly fact  
16          driven.

17          Here when I look at the statement, the defendant  
18          made mention of his mother two times, once on page  
19          four when he asks -- when he was being asked if he  
20          understand he could have an attorney, and then 27  
21          pages later on page 31, he said did you let my mom  
22          know what is going on, where then the interrogator  
23          asked him do you want me to call her and he said yes.  
24          The officer leaves a couple lines later to make a  
25          phone call, and about three pages later defendant

1           then says he does not want to talk any more and  
2           that's the end of the interrogation.

3           I don't find that these two mentionings of his  
4           mother rise to the level of an unequivocal request  
5           for her presence, but even if I did, I think if you  
6           look at the effect in terms of the totality of the  
7           circumstances and whether or not this is an  
8           extraordinary circumstance that would compel me to  
9           overrule the law of the case and the prior rulings by  
10          the Omnibus judge, I don't think I can find that. I  
11          don't think it's extraordinary circumstances such  
12          that I should change the law of the case made in the  
13          Omnibus hearing by Judge Connolly so I'll let that  
14          ruling stand.

15          I did want to briefly address these other cases  
16          that counsel had provided because it's an interesting  
17          -- I'm still reading some additional case law on  
18          this. I don't know if you are prepared to address  
19          that issue yet?

20                       MR. FURNSTAHL: Are you talking about  
21          Thames?

22                       THE COURT: Yeah, the Dexter case and the  
23          Thames case or Tames case.

24                       MR. FURNSTAHL: I'm prepared to talk about  
25          those.

1 THE COURT: All right. Well, let Mr.  
2 Benson go first then on that issue.

3 MR. BENSON: Your Honor, bear with me as  
4 well.

5 Your Honor, we did move to exclude the testimony  
6 of Isiah Harper based upon Dexter and Thames. In  
7 Dexter, the Court is aware, the court excluded or  
8 prevented the State from calling a witness when it  
9 seemed that their only purpose for doing so was to  
10 impeach that witness and get in otherwise  
11 inadmissible statements.

12 In this case, we have Isiah Harper who has said  
13 two different things. However, as of the time of the  
14 last trial, which was in October 2004, Isiah Harper  
15 has indicated in the transcript that I provided to  
16 Your Honor, Isiah Harper told the State that he was  
17 either going to assert his fifth amendment right or  
18 he was, you know, basically not going to testify as  
19 he had testified at the grand jury.

20 I believe in that transcript that I provided to  
21 the Court and should be part of the record, even  
22 opposing counsel indicated that he had no -- or  
23 basically he didn't know what Mr. Harper was going to  
24 say or he had no belief that Mr. Harper was going to  
25 testify as they would have expected.

1           And given that, Your Honor, as we sit here right  
2 now, plus the statement that we took on August 19th  
3 in which Isiah Harper said the same thing, that he's  
4 either going to plead the fifth or that he was at  
5 home during the time of the incident with his mom and  
6 that the police made him say what he said to the  
7 grand jury and made him say what he said in the prior  
8 statement, but given those factors there can be no  
9 good faith position by the State that Isiah Harper  
10 when he's thrown up on the stand is going to testify  
11 to what he testified to in the grand jury or in the  
12 prior statement, so we're left with the Dexter  
13 situation in that regard.

14           And under Dexter and also Thames which had a  
15 different result, I would submit to the Court that  
16 Isiah Harper should not be allowed to be presented as  
17 a witness. The State has mentioned that it may seek  
18 to admit the grand jury -- or is seeking to admit the  
19 grand jury testimony as a prior sworn statement. I  
20 don't think that that changes this Court's analysis.

21           With respect to the issue of whether Isiah  
22 Harper can be called as a witness, the State wants to  
23 bring in his prior sworn statement and his prior  
24 statement to the Minneapolis police. As we stand  
25 here right now, he gets up and testifies, we don't

1 believe that's coming out of his mouth. To start  
2 with, the statements are to impeach. Under that  
3 context Dexter would say that witness can't be  
4 called, because while you can't impeach one witness,  
5 your own witness, you can't do it, you can't say we  
6 put a witness up for the purpose of impeaching when  
7 there's no other issue that's at issue before the  
8 Court.

9 With respect to the grand jury testimony though,  
10 that would be allowed in some circumstances. If the  
11 witness is available for cross-examination at trial,  
12 then the State would move in and maybe impeach  
13 something or maybe bring in a prior sworn statement  
14 and defense counsel could impeach that witness as far  
15 as the circumstances of the prior sworn statement as  
16 far as the circumstances in this case.

17 However here, that's the second analysis this  
18 Court needs to make, because once -- at this point in  
19 my mind the witness is unavailable to the State in  
20 the sense that what they want to put him up for, he's  
21 not likely to testify to. We don't know for sure,  
22 but as far as his last statements he's not going to  
23 testify consistent with the grand jury. So at this  
24 point he's unavailable for those issues within the  
25 grand jury.

1           And being unavailable, we don't even get to the  
2           issue dealing with the prior sworn statement because,  
3           for example, if that witness is unavailable, the  
4           State could not bring in the prior grand jury  
5           testimony under Crawford v. Washington because that  
6           was a testimonial statement and there was no chance  
7           of cross-examination.

8           So I believe that the first issue the Court  
9           needs to deal with is what, if anything, Isiah Harper  
10          is going to say, and then what, if anything, the  
11          State believes he will say and then, you know, what  
12          they want to get out of him as far as this  
13          impeachment, and those are the issues which are the  
14          Dexter issues and those are the first issues we deal  
15          with before you get to whether you are going to  
16          impeach or offer a prior inconsistent statement as  
17          substantive evidence, is first whether the State has  
18          a right to call this witness.

19                 THE COURT: Mr. Furnstahl.

20                 MR. FURNSTAHL: Respectfully I disagree  
21          with my colleague on a couple of points, and there  
22          are a couple of points that I would say are a  
23          misstatement of the law.

24                 First of all with respect to the Dexter and  
25          Thames cases, these are accurate representations of



1 the black letter law and they stand for a situation  
2 that is different from what I'm trying to do here.  
3 They stand for a situation where the prosecutor  
4 cannot get a hearsay statement in for substantive  
5 purposes but tries to leak in the back door by  
6 getting it in only during the course of impeachment  
7 of a witness. That's not what I'm trying to do here,  
8 and Thames makes that clear.

9 Here's the rule. It says, quote, a prosecutor  
10 may not misuse Rule 607 to expose the jury to hearsay  
11 under the guise of impeachment when the sole purpose  
12 in calling the witness is to introduce the witness's  
13 prior statement. That's for impeachment purposes  
14 only. If I want to introduce the witness's prior  
15 statement for substantive reasons, then Thames or  
16 Thames, whatever it's called, and the Dexter rule do  
17 not apply, and that's what I'm trying to do here.  
18 That's one misstatement of the law, or one statement  
19 of the law that I disagree with with respect to what  
20 counsel represented the law is.

21 Just so you are clear, Judge, there are two  
22 hearsay statements of the witness Isiah Harper we are  
23 trying to introduce and one hearsay statement of the  
24 witness Timothy Clifton we are trying to introduce.

25 With respect to Isiah Harper, he has given a

1 statement to the Minneapolis police department that,  
2 depending upon what happens, and I don't know what  
3 he's going to do in the trial, but assuming the worst  
4 scenario for the State and he refuses to testify,  
5 then the statement that he gave to the police, we're  
6 seeking to introduce that under the residual hearsay  
7 exception to the hearsay rule. 805.24, I think it  
8 is.

9 With respect to his testimony at the grand jury,  
10 we're seeking to introduce that under the prior  
11 inconsistent exclusion to the hearsay rule, and I  
12 wish -- if I could borrow counsel's. Let me just  
13 give you the cites, Judge. I apologize. Actually I  
14 should have had a memorandum on this but my calendar  
15 has been such lately that it just hasn't been  
16 possible.

17 The residual hearsay exception is 803(24).  
18 That's for the statement that he gave to the  
19 Minneapolis police department. The prior  
20 inconsistent statement is under 801(d)(1)(A). That  
21 allows for prior inconsistent statements to be  
22 admitted for substantive reasons.

23 With respect to the witness Timothy Clifton, we  
24 are asking that those statements, depending upon how  
25 this goes, that those statements be admitted under

1 the residual hearsay exception. So long as I'm not  
2 trying to introduce these statements purely to  
3 impeach the witness, if I'm trying to introduce them  
4 for substantive reasons, then the rule of Dexter and  
5 Thames does not apply. Then the analysis, I guess  
6 then we start with the Crawford analysis, and counsel  
7 said that --

8 THE COURT: Before you go to Crawford,  
9 let's talk about that a little bit. I got a couple  
10 questions, because let's say you bring in, you know,  
11 Clifton, who -- did Clifton testify in front of the  
12 grand jury?

13 MR. FURNSTAHL: He did not.

14 THE COURT: Okay. So you just have a prior  
15 statement of Clifton.

16 MR. FURNSTAHL: That's correct.

17 THE COURT: And he decides -- are you going  
18 to bring his statement in as substantive evidence by  
19 calling him as a witness, first of all?

20 MR. FURNSTAHL: Correct. We have to, we  
21 have to abide by Crawford by calling him as a  
22 witness.

23 THE COURT: And so you are going to give  
24 him an opportunity to explain or deny what he said  
25 before.

1 MR. FURNSTAHL: Right.

2 THE COURT: Okay. And then, you are then  
3 going to cross-examine him with the prior  
4 inconsistent statement?

5 MR. FURNSTAHL: Well, no. You recall I  
6 touched on this briefly in our pretrial in chambers  
7 and I had indicated to you that Clifton is a little  
8 bit different situation than Isiah Harper because I  
9 have infor -- I have a basis to think that he might  
10 not say what he told us initially in which -- and  
11 then you have to make a decision as to whether or not  
12 his statement comes in for substantive purposes,  
13 assuming those facts to be true. And if you were to  
14 decide that no, those statements do not have indicia  
15 of reliability, then I think it would be problematic  
16 if we put him on and then I impeached him and then  
17 you decided that the statements were to be  
18 problematic.

19 I would think with respect to the witness  
20 Clifton we might want to do an in camera outside the  
21 presence of the jury to find out what his position is  
22 going to be, and if he decides he's not going to  
23 testify in accordance with his statement then look at  
24 the hearsay analysis, in which case -- and if you  
25 decide that it is, does have indicia of reliability,

1           then we can proceed and I have met what is required  
2           of me under Crawford by having him present.

3                       THE COURT:   Okay.   Then with regard to the  
4           other individual, Mr. Harper, do you concede that you  
5           are now on notice that Mr. Harper is not going to  
6           testify consistent with his prior statements, or that  
7           he's going to come in here and take the fifth  
8           amendment?

9                       MR. FURNSTAHL:   I concede that I have been  
10          given that information but I don't necessarily know  
11          that to be true, and I say that for this reason,  
12          Judge, not because I'm trying to be difficult, but  
13          his mother -- I did the grand jury on this, as you  
14          know, and in talking to him briefly before the grand  
15          jury testimony, his mother was jumping up and down  
16          about how he didn't know anything, how he was at  
17          home, all this -- the cops forced him to do this, all  
18          this other stuff that you've also been privy to, and  
19          then he comes into the grand jury and then after a  
20          few questions he decides that telling the truth is  
21          the better procedure to go.

22                      So I'm not, I don't know that he might not do  
23          that in this situation here, so, you know, I have a  
24          good faith reason to believe that and I'm surprised  
25          that my language was as strong as it was in the prior

1           hearing, but there's a basis, a good faith basis here  
2           to believe here that he is going to testify  
3           truthfully. And even -- and irrespective of that, I  
4           think it's pretty clear that -- we're getting ahead  
5           of ourselves, I guess -- but I think it's pretty  
6           clear that if he doesn't, his grand jury testimony is  
7           going to be, is admissible anyways, at least by my  
8           reading of the rule.

9                       THE COURT: Okay. Sorry to interrupt you.  
10           Have you got any more to say?

11                      MR. FURNSTAHL: Well then, assuming we --  
12           so I think we have to proceed two different ways  
13           depending upon which witness it is, and that if the  
14           witness, in order to comply with Crawford the witness  
15           has to be physically available because I would agree  
16           that all the hearsay that we seek to introduce is  
17           testimonial as that term is defined by the United  
18           States Supreme Court in Crawford, so we have to make  
19           them physically available. And both -- well, Mr.  
20           Harper has been subpoenaed, he was personally served.  
21           His mother called our office today and acknowledged  
22           that he was served. I don't think there's any  
23           question that he is, unless something strange happens  
24           I think that he is going to be available to comply  
25           with the Crawford rule.

1           Mr. Clifton is incarcerated in prison in  
2           Faribault and I have prepared a writ and that has  
3           been executed for, they are going to execute that  
4           next week to have him, his physical presence  
5           available, so I do not anticipate any problem with  
6           respect to the Crawford rule.

7           The gist of it then is applying the two rules  
8           that I've mentioned, the prior inconsistent statement  
9           for substantive reasons and the residual hearsay  
10          exception.

11          But the other point I wanted to make is that  
12          counsel said that Isiah Harper is not available  
13          because of the fact that he has indicated that he  
14          will not testify consistent with his grand jury  
15          testimony. And I think that's a, that misapplies the  
16          unavailability rule. Just because someone doesn't  
17          say something consistent with what they testified to  
18          before does not mean they are unavailable. They are  
19          unavailable under Crawford if they are physically  
20          unavailable. And then there's a problem with respect  
21          to the evidence I try to introduce if the statement  
22          that was taken was the testimonial statement. But  
23          the fact that he has, a witness might have a  
24          different perspective on the truth at trial as  
25          opposed to sometime in the past, does not mean that

1           they are unavailable.

2           Other than that, I think that's all I have,  
3           Judge, unless you have any -- oh, one of the things I  
4           want to say, Judge, just housekeeping because I know  
5           we want this thing to move along and by doing this  
6           I'm not suggesting that there are any -- that the  
7           Court is getting ahead of itself, but one of the  
8           things that, and we discussed this at the last trial,  
9           one of the logistical issues that we would have if in  
10          fact you decide that any of these statements to the  
11          police are admissible, is that there are some  
12          statements in there that clearly are inadmissible  
13          evidence. For example, there is some questions of  
14          the witnesses as to whether or not this defendant is  
15          a member of a street gang. I would concede that that  
16          kind of information is not admissible.

17          I have provided -- I have made copies of both  
18          the statements and redacted those areas that I think  
19          would clearly not be admissible should you rule that  
20          those statements are admissible under the residual  
21          hearsay exception. I provided a copy to counsel. I  
22          know counsel said that he wants the Court to address  
23          the admissibility of this stuff before we do opening  
24          statements and I think that would be a logical thing  
25          to do, and I'm presenting this now because we have



1 the ability to excise -- what I would envision doing  
2 is to be playing the tape of the witness's statements  
3 along with showing through an overhead the transcript  
4 of the statements, and if I have enough time I can  
5 have our people in our audio-visual room redact those  
6 portions so it doesn't sound like anything was  
7 intentionally redacted. If we have enough time.

8 That's why I wanted to present those two  
9 statements to you now. Maybe we can start thinking  
10 about that. I recognize that's a side issue.

11 THE COURT: All right. Mr. Benson.

12 MR. BENSON: Your Honor, I'll start from  
13 the back. Actually as far as whether something  
14 sounds like it wasn't redacted, we're kind of ahead  
15 of ourselves, but I believe that if it's redacted,  
16 it's redacted, and whether it's a tape or it's a  
17 piece of paper, if the Court redacts something the  
18 jury should get it with the redacted form. It  
19 shouldn't be that these are fluid statements that  
20 this person has given and he's talked from A to B and  
21 given the perception, for example, like it's a  
22 consistent statement when there is other things that  
23 aren't there. But that's an aside and I'm ahead of  
24 myself there.

25 With respect to the State's arguments, actually

1 I would also provide the Court, just so the Court has  
2 a complete -- do you have a copy of this?

3 MR. FURNSTAHL: Sure.

4 MR. BENSON: A copy of a statement that Tim  
5 Clifton gave to us last year before the last trial,  
6 and it creates a situation of reliability of the  
7 statement he gave to the police. In any event, that  
8 is something the Court would have to consider if you  
9 got to that issue.

10 But I would ask the Court to seriously consider  
11 the court decisions in Dexter, and the reason for  
12 that is that as we stand right now, these witnesses  
13 and every -- the way it looks at least with Mr.  
14 Harper from his last statements to both parties, and  
15 that's reflected in the transcript as well as the  
16 statement that he gave us, is that he's going to not  
17 testify consistently and that's something that has to  
18 be dealt with, no matter how the State wants to try  
19 and bring it in. I think they have issues whether  
20 they want to bring it in substantively under the  
21 catch-all exception, and we can deal with that at  
22 that time.

23 Now, the State indicates that maybe with Timothy  
24 Clifton we should do something in camera or outside  
25 the presence of the jury. I would submit that

1 something like that would be even more important with  
2 Isiah Harper because -- for a number of reasons.  
3 One, we're dealing with whether his grand jury  
4 testimony comes in, we're dealing with whether his  
5 other statement to the police come in, and if Isiah  
6 Harper is, one, going to assert his fifth amendment  
7 privilege we're in one position, and at that point he  
8 is unavailable and all of this is out, the grand jury  
9 as well because we don't have the right to  
10 cross-examination. We are in a straight Crawford  
11 issue because he's asserting his fifth amendment  
12 privilege.

13 If he's not asserting his fifth amendment  
14 privilege and he gets on the stand and testifies that  
15 he was at home or that he didn't say what he said,  
16 the police made him say it and he doesn't vouch for  
17 what he had said before in the grand jury or that  
18 police statement, then at that point we know to some  
19 extent we are in that Dexter situation and whether  
20 the State should be able to call him at trial, or we  
21 can argue about whether they fall under the  
22 substantive categories. I understand the State's  
23 distinction.

24 I believe though that this is an issue under  
25 State v. Dexter and that's. -- if there's going to be

1 an in camera inspection, which may be the best thing,  
2 I know courts have done that in this courthouse  
3 before because it's a legitimate issue to find out  
4 what he's to testify to because we are doing some  
5 hypothetical thinking, and I'm basing it on the last  
6 statements that he gave to both the State and to  
7 myself.

8 THE COURT: Do counsel feel like there's  
9 any additional, besides the cases, I started looking  
10 at additional cases here besides Dexter and Thames to  
11 see if there were any additional rulings by Minnesota  
12 courts on this issue, in particular if there's some  
13 evidence the prosecutor has that Mr. Harper won't say  
14 the same thing he said to the grand jury and/or take  
15 the fifth amendment at trial, if counsel feels like  
16 they can come up with any additional information I  
17 can give you, you know, I'm not going to decide this  
18 today, obviously. I'm going to keep looking at this  
19 stuff so I can give you a day to get a memorandum in  
20 if you want to submit one on that issue if you think  
21 you have something.

22 MR. FURNSTAHL: I've got some cases that  
23 I'll be looking at tonight, Judge, and, you know, I  
24 think that there's a host of logistical issues that  
25 arise as a result of these two evidentiary questions.

1           Counsel just mentioned what happens if Harper  
2           were to take the fifth amendment. I know there's  
3           some case law that suggests that that should not be  
4           done in front of a jury in which case you might be in  
5           a position of trying to get him a lawyer and so on  
6           and so forth. So these are all things that I think  
7           the Court made me think about now and come up with  
8           worst case scenarios.

9           If I can make a couple of other comments in  
10          respect to counsel's last statements. First of all  
11          about his position on the redaction, I mean, if  
12          counsel wants something along those lines, it might  
13          be appropriate for the Court to tell the jury that  
14          there were portions of the statements that were  
15          redacted and that they are not to speculate about the  
16          redaction. If there's something out there and  
17          there's a half page missing or something like that,  
18          well of course the jury is going to speculate about  
19          what they are being kept from. That's the last thing  
20          we want them to do. We tell them they have to base  
21          their decision only on the evidence and not on  
22          speculation.

23          The other point I wanted to make is about the  
24          other Clifton statement that counsel gave you. The  
25          case law that you are going to be looking at, Judge,

1 is Idaho v. Wright, a U.S. Supreme Court case, and  
2 before we leave I'll have the cite for you, but that  
3 was the first one that discussed using the residual  
4 hearsay exception for substantive purposes, and that  
5 was a situation where hearsay statements of a victim  
6 of child sexual abuse were admitted under the  
7 residual hearsay exception.

8 The reason I mention that is because if I recall  
9 the case law correctly, they say that you do not look  
10 outside the statement to determine whether or not it  
11 has indicia of reliability that the constitution  
12 requires in order for it to be admissible.

13 So while I have no objection to your looking at  
14 the other Clifton statement, I mean it just makes  
15 sense that you know all the facts about this, if I  
16 remember the case law correctly that should not play  
17 a part in whether or not those statements are  
18 admissible. You just look at the statement that we  
19 are seeking to admit and not outside that to  
20 determine the indicia of reliability.

21 If you give me a minute, I'll find the citation.  
22 Here it is. Idaho v. Wright, W-R-I-G-H-T, 497 U.S.  
23 805, 111 L.Ed.2d 638, and 110 S.Ct. 3139. That's  
24 really the case that kind of gets the ball rolling on  
25 the residual hearsay exception, and that's been

1           adopted in Minnesota.

2                   THE COURT: So counsel, do you want to have  
3 until tomorrow at close of business to get a  
4 memorandum on this issue? Would that be enough time?

5                   MR. BENSON: Yes, Your Honor.

6                   MR. FURNSTAHL: Going to be tough for me,  
7 reading the jury questionnaires tonight.

8                   THE COURT: Well, let's see. Tomorrow is  
9 Tuesday. We could go to Wednesday just so we have  
10 enough time to make a ruling before we do openings.

11                   MR. FURNSTAHL: Sure. Does the Court  
12 anticipate that we would start with openings and  
13 evidence on Monday?

14                   THE COURT: That's what I'm hoping. If we  
15 get the jury done by Friday at noon we then come back  
16 Monday morning and start opening statements.

17                   MR. FURNSTAHL: I think that's what we did  
18 the last time and I think we are kind of in tune to  
19 doing that as well.

20                   THE COURT: Okay.

21                   MR. BENSON: That's fine.

22                   THE COURT: Well, Wednesday then at 4:30  
23 for any additional argument, memorandum of law on the  
24 issue raised by Dexter and Thames, and in particular  
25 what if Mr. Harper takes the fifth amendment.

1 MR. BENSON: Your Honor --

2 THE COURT: Yeah.

3 MR. BENSON: I would add with respect to  
4 the fifth amendment -- maybe I should stop talking.

5 THE COURT: Do you need a glass of water or  
6 something?

7 MR. BENSON: No, I'm just sick.

8 Especially the fifth amendment, you could call  
9 either the, I suppose the PD's office or their  
10 conflicts panel, because we had this issue last time,  
11 not with asserting the fifth amendment privilege, but  
12 Isiah Harper was brought in on a warrant. I think  
13 you recall he was brought in on the prosecutor's  
14 certificate because they weren't keeping in contact  
15 before the trial so there was a concern. And the  
16 only reason I mentioned that agency is because I  
17 believe one of them may have been represented by an  
18 attorney there. I don't know if there's a conflict  
19 or not, but there were three individuals, Isiah  
20 Harper, Anthony Todd and Jeremy Davenport, all three  
21 were represented by public defender attorneys at  
22 least for that limited purpose when they were in  
23 court last time. They were all released and told to  
24 come to court later.

25 But if that is something logistically, as Mr.



1           Furnstahl was talking, I think that's just an issue  
2           that obviously is going to need to be revised that he  
3           needs a lawyer, and neither myself nor Mr. Furnstahl  
4           can do that.

5                       MR. FURNSTAHL:  What that was, Judge, just  
6           so you are aware, they were subpoenaed for the first  
7           trial and they didn't contact us so they were  
8           arrested on a bench warrant and brought before Judge  
9           Connolly and I think they were declared material  
10          witnesses and released on their own recognizance with  
11          the order that they appear for trial, and that's the  
12          reason why they got -- we had a very short pro forma  
13          hearing wherein we were not requesting any bail or  
14          anything like that, just some assurance from them  
15          that they would appear, and their attorneys indicated  
16          to the Court that they represented that they had  
17          talked to their clients and the clients were going to  
18          appear and so that was what we did in that situation.

19                     If I remember right, part of the problem I think  
20          in that was that telephone numbers kept getting  
21          disconnected and changed and so forth, so.

22                     THE COURT:  All right.  Counsel have copies  
23          of the questionnaires to look at, and we'll have the  
24          first seven here in the morning at nine o'clock.

25                     Anything else?

1 MR. FURNSTAHL: No, sir.

2 MR. BENSON: No, Your Honor.

3 THE COURT: Okay. We are recessed until  
4 nine o'clock tomorrow.

5 (Whereupon, the proceedings  
6 conclude for this day.)

7 \* \* \*

8 STATE OF MINNESOTA)

9 ) ss.

REPORTER'S CERTIFICATE

COUNTY OF HENNEPIN)

10 I, Jolyn R. Lund, Official Court Reporter, do  
11 hereby certify that the above and foregoing is a true and  
12 accurate transcription of my original stenographic notes  
13 in said matter.

14 Date:

\_\_\_\_\_  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

D.C. File No. 04035635  
S.Ct. File A05-2444

MARVIN HAYNES, JR.,  
Appellant/Defendant.

REPORTER: Jolyn R. Lund

1 (Whereupon the following  
2 proceedings occur.)

3 THE COURT: Counsel, our first juror is not  
4 here. Juror number one is not here. We left a phone  
5 message for her, but do you want to start with juror  
6 number two?

7 MR. FURNSTAHL: That would be fine, Judge.

8 MR. BENSON: Will one be stricken?

9 THE COURT: No, I don't think so. We'll  
10 see why she's not here, first.

11 MR. BENSON: That's fine, Your Honor.

12 THE COURT: Is that okay with you? When  
13 she gets here we'll go back to her.

14 MR. FURNSTAHL: She'll still be considered  
15 the first juror then?

16 THE COURT: Right. Bring in juror number  
17 two.

18 MR. FURNSTAHL: Do you want to make a  
19 record on the cause strikes?

20 THE COURT: Yes, let's do that.

21 Counsel has agreed that two of the jurors could  
22 be excused for cause without calling them for  
23 additional questioning based on their answers to the  
24 questionnaire, and that was juror number seven, Amy  
25 Nori, and juror number 12, Robert Aspholm. Is that

1 correct, counsel?

2 MR. FURNSTAHL: Yes, Judge.

3 MR. BENSON: It is, Your Honor.

4 THE COURT: All right. We'll go ahead and  
5 get juror number two.

6 (Ms. Hemmesch is brought  
7 into the courtroom.)

8 THE COURT: Good morning.

9 MS. HEMMESCH: Good morning.

10 THE COURT: Would you stay standing for one  
11 minute and raise your right hand to be sworn?

12 (Ms. Hemmesch is sworn.)

13 THE COURT: Go ahead and have a seat.

14 First of all, let me ask you an obvious  
15 question. I see you have a back pillow.

16 MS. HEMMESCH: Yes.

17 THE COURT: You have a back problem?

18 MS. HEMMESCH: I have some lower back  
19 concerns.

20 THE COURT: Okay. Are you able to sit for  
21 a couple hours at a time?

22 MS. HEMMESCH: Yes, sir.

23 THE COURT: As long as you are able to get  
24 a break?

25 MS. HEMMESCH: Um-hum.

1 THE COURT: That won't bother you?

2 MS. HEMMESCH: No.

3 THE COURT: Anything else about being in a  
4 two-week trial that would be difficult for you?

5 MS. HEMMESCH: I don't think so.

6 THE COURT: Okay. Mr. Benson is suffering  
7 from a loss of his voice today so I'm going to allow  
8 him to come closer, we don't have any microphones in  
9 this courtroom, so you can hear his questions. Right  
10 now he doesn't have much volume on his voice.

11 Mr. Benson, you may proceed.

12 MR. BENSON: Thank you, Your Honor.

13 BY MR. BENSON:

14 Q Good morning, Ms. Hemmesch.

15 A Good morning.

16 Q Once again I apologize for my voice.

17 A That's fine.

18 Q In your questionnaire, you indicated that you  
19 were a member of the CAP Agency. What is that?

20 A I'm not a member, I just do volunteer work with  
21 them.

22 Q What do they do?

23 A It's a community action program. I volunteer  
24 time. I have a part-time job also that I do taxes and I  
25 go and help women who are like with, either in women's

1       shelters or can't afford to do their taxes, I go volunteer  
2       time with that, and I also work within my own at our work,  
3       we work closely, one of our volunteer programs is with the  
4       CAP Agency so I help collect -- we do an annual silent  
5       auction at our work and so we bring in items to auction  
6       off and I work with them also.

7           Q       And how long have you done that?

8           A       Probably for the last three or four years.

9           Q       Also in your questionnaire you indicated that  
10       your brother is a Stearns County sheriff?

11          A       Deputy sheriff, yes.

12          Q       Okay. And how long has he had that position?

13          A       He was a police officer in Mitchell, South  
14       Dakota until, I'm not certain exactly the years. He's  
15       been in St. Cloud for at least five years. I'm not  
16       certain exactly how many.

17          Q       Do you talk to him about like his job and the  
18       people he comes in contact with?

19          A       Minimally. I mean, he has two children that we  
20       talk more about. Yes, there has been conversations of it  
21       but not of any great details.

22          Q       Okay. Is there anything about those  
23       conversations that may impact the way you view evidence in  
24       this case or a person charged with a crime here?

25          A       I don't think so, sir.

1           Q     Okay. You also indicated that you called for  
2 police assistance on a prior occasion?

3           A     Yes. I was, I managed -- I was general manager  
4 of different bars and restaurants. One of them was, I  
5 managed Earl Brown Bowl in Brooklyn Center from, for about  
6 six years until -- 1990? And there were times that I  
7 would have to call the police for assistance with some  
8 type of a problem either out in the bowling lanes or in  
9 the bar area, and so -- and we also did, we worked closely  
10 with another bowling center and ours, we worked closely  
11 with the police department and we helped collect money to  
12 get a canine dog for one of their officers.

13          Q     Okay. With respect to the incidents that  
14 happened at the bowling alley, did they involve like  
15 fights or people --

16          A     Yes. Usually it was disorderly conduct,  
17 something like that, and they would ask if somebody had  
18 done damage either to another person or to property, if we  
19 were willing to press charges, and I would work with them  
20 (inaudible).

21          Q     Okay. Given your contacts with police officers,  
22 here in this case obviously there are going to be police  
23 officers that testify. Any concerns that you would give a  
24 police officer greater weight as far as their testimony,  
25 greater weight than say a civilian or an average person?



1           A     No. I think I'm very fair-minded.

2           Q     Can you agree that some police officers make  
3 mistakes?

4           A     Yes.

5           Q     Just like an average person can make mistakes?

6           A     Yes. They are human.

7           Q     Okay. All right. You also indicated in your  
8 questionnaire you had a concern for the criminal justice  
9 system. The main example you gave was dealing with rape  
10 complainants. Can you elaborate on that?

11          A     Back when I was, when I was going to St. Cloud  
12 State I was a prelaw, poli-sci major with a speech  
13 communication minor. One of the things I did was that I  
14 went to the Stearns County courthouse and I observed some  
15 cases, and I remember distinctly a case that involved a  
16 rape and it, it surprised me. It was the first time I  
17 really realized that they were allowed to just bring up  
18 everything about the woman's background and a number of  
19 years before, and the gentleman was only allowed to be  
20 addressed to the incident, and that just seemed unfair.

21          Q     Okay. Do you think that there might have been  
22 reasons for that, legal reasons for that?

23          A     Yes, there could be legal reasons for that.

24          Q     And the reason I ask that is this: During this  
25 trial the Court will give you instructions of law and

1       you'll get evidence, that what you are to consider will be  
2       evidence that's in this trial in the form of testimony or  
3       exhibits.

4             A       Um-hum.

5             Q       Okay? The judge decides what evidence comes in.  
6       Given your remarks as far as that rape trial situation, do  
7       you have any concerns that you might not be able to either  
8       follow the Court's instructions or have a concern for what  
9       wasn't in evidence?

10            A       Well, first and foremost I believe that I will  
11       only be given information that I, that he wants me to  
12       know, and so being a witness to that other trial, I knew  
13       of more information than what I'm probably going to be  
14       given in this and so I will only have in front of me the  
15       information that you guys want me to have.

16            Q       Okay. All right. I believe you also indicated  
17       that your significant other was threatened with a gun?

18            A       Yes. Patrick, when he lived out in California  
19       he worked at a convenience store and he, in an attempt to  
20       be robbed a gunshot went over off over his head, but that  
21       was the only incident.

22            Q       Was anybody caught in that incident or  
23       prosecuted?

24            A       I don't think so. I don't know. I don't think  
25       so.

1           Q     Okay. You've heard a little bit, you've heard  
2 about this case from the Court. You understand there is a  
3 charge of attempted aggravated robbery?

4           A     I did.

5           Q     And how does that experience with your  
6 significant other, how does that play into the way you  
7 view evidence in this case?

8           A     Well, I believe every incident is individual  
9 unto itself and so that was that situation. Another  
10 situation is a totally different situation.

11          Q     Okay. When the judge read the charges in this  
12 case, one of which included attempted aggravated robbery,  
13 did your -- Patrick, did Patrick's situation pop into your  
14 mind?

15          A     No, not at all. It only came in when I was  
16 filling out the questionnaire.

17          Q     Okay. And you also indicated there are certain  
18 areas of the city that you wouldn't want to go. Tell me  
19 that again?

20          A     That's more of what people just seem to tell me,  
21 to, you know, stay clear of, and I don't even know where  
22 some of these areas are, to be honest with you. I am not,  
23 you know, I come downtown to go to the Twins games or to  
24 go to the State Theater or Orpheum. Downtown is not an  
25 area that I come to very often, so. But yes, I have heard

1       that there is areas I should stay clear of but I can't  
2       tell where they are.

3               Q       Okay. Finally, I think you indicated that you  
4       might have a work conflict or a concern?

5               A       Well, only because my work, I am -- I do all the  
6       budgets and a lot of different things that the first part  
7       of the month tends to be -- my first two weeks of the  
8       month tend to be more time deadlines and things like that  
9       I need to meet where the second half of the month it's  
10      more capable of being able to come and go, you know. So I  
11      don't know, as far as, you know, if it would be in the  
12      first part of the month, my job is more specific and I  
13      don't have other people who have necessarily been trained  
14      in what I do. And so yes, I have a concern if it would be  
15      extending to where I would not be available in the first  
16      part of the month exactly what they would do.

17              Q       Okay. All right.

18                      MR. BENSON: Your Honor, we would excuse  
19      Ms. Hemmesch.

20                      THE COURT: All right. You are excused.  
21      Would you please check in with the jury office  
22      downstairs, ma'am?

23                      MS. HEMMESCH: Okay.

24                                      (Ms. Hemmesch exits the  
25      courtroom.)

1 MR. BENSON: May I have a moment, Your  
2 Honor?

3 THE COURT: You may.

4 (Off-the-record discussion.)

5 THE COURT: She's not here?

6 THE CLERK: No.

7 THE COURT: All right. We'll take juror  
8 number three.

9 (Mr. Husfeldt enters courtroom.)

10 THE COURT: Is it Mr. Husfeldt?

11 MR. HUSFELDT: Husfeldt.

12 THE COURT: Would you remain standing for  
13 one minute, sir, and raise your right hand to be  
14 sworn.

15 (Mr. Husfeldt is sworn.)

16 THE COURT: Go ahead and have a chair, Mr.  
17 Husfeldt. We have your questionnaire. Is there  
18 anything that you've thought of since you filled this  
19 questionnaire out that you wanted to say before we  
20 start the questioning?

21 MR. HUSFELDT: No, I don't believe so. It  
22 should be fine.

23 THE COURT: Mr. Benson is suffering from  
24 laryngitis today so his voice is not much there so  
25 he's going to probably come closer to you so you can

1           hear him and the court reporter can hear what he's  
2           having to say.

3                       MR. FURNSTAHL: Judge, can I have just a  
4           moment with Mr. Benson?

5                       THE COURT: Yes.

6                                       (Off-the-record discussion.)

7                       MR. BENSON: Thank you, Your Honor.

8 BY MR. BENSON:

9           Q       Mr. Husfeldt?

10          A       Yes.

11          Q       Once again I apologize for my voice. It's part  
12       of the problem with talking too much, I guess.

13               I want to follow-up on a couple things in your  
14       questionnaire and I have some general questions for you.  
15       You indicated that your home had been robbed or  
16       burglarized?

17          A       I'm sorry?

18          Q       You had indicated that your home had been  
19       robbed?

20          A       Yes, it has. Was.

21          Q       Can you tell me about that circumstance?

22          A       It was back in the, probably late '70s and we  
23       were away in the evening and we came home and the door had  
24       been kicked in and some items were taken from the home.  
25       The television set and some personal items.

1 Q Okay. Did that occur in Minnesota?

2 A Pardon?

3 Q Did it occur in Minnesota?

4 A Yes. In Crystal, the house I live in now.

5 Q You called the police?

6 A Yes.

7 Q All right. And what did you think about their  
8 response?

9 A They responded fair. Nothing was ever recovered  
10 or anything, but.

11 Q And I take it no one was prosecuted?

12 A No.

13 Q Okay. All right. When you heard that this  
14 case, one, it involved a charge of first degree murder but  
15 also involved an allegation of attempted robbery, did your  
16 situation pop into your mind?

17 A No. It was so long ago that --

18 Q What was your reaction when you heard the nature  
19 of the charge?

20 A I guess any time you hear news like that you  
21 feel uncomfortable about it and sad about it, that type of  
22 thing.

23 Q That's understandable.

24 A Yeah.

25 Q Is there anything -- you heard the nature of

1       this charge, you looked over at the table, you saw my  
2       client, I'm sure he looked out across the courtroom, did  
3       that charge itself give you any impression of my client,  
4       Mr. Haynes?

5             A       I don't think so.

6             Q       You did indicate that you may have heard news  
7       reports or saw something in the paper about this incident  
8       last year?

9             A       Yes.

10            Q       As you've had time overnight, has any of that  
11       come back to you?

12            A       No, not really. Just when the thing was brought  
13       up yesterday it flashed back that I had heard about it on  
14       the news, read about it in the paper, but the details I  
15       don't remember.

16            Q       Okay. And does that -- I suppose the fact that  
17       this was in the paper, at least you remember that it was  
18       in the paper, on the radio or something, or TV, does that  
19       impact the way you would view this case as opposed to if  
20       you were involved in another case?

21            A       No, no, I don't think so. No. Just read the  
22       newspaper for the news, basically.

23            Q       Okay. And also, you indicated as well you have  
24       a possible work or business conflict, is that accurate?

25            A       I have a what?



1 Q You had a work or business conflict?

2 A Yes. Yes. I'm a manager of a business and I'm  
3 uncomfortable about being away from it for too long.

4 Q The time period that was given in the  
5 questionnaire was about two weeks. Is that going to be  
6 too long, in your assessment?

7 A I would like to say no, but I would feel  
8 uncomfortable with it.

9 Q Are you uncomfortable to the extent that -- let  
10 me ask you this. When you leave at the end of the day, do  
11 you go and take care of work?

12 A Yes.

13 Q When you leave your jury service?

14 A Yes, I would.

15 Q And in doing that -- which is understandable --  
16 is that going to detract from your ability to focus on  
17 this case and the evidence that comes in?

18 A I don't think so. It will interfere with it,  
19 it's just that it would be an additional obligation on my  
20 part to have to work extra hours or something. I have to  
21 be in phone contact. Maybe I don't have to be, I think I  
22 have to be in phone contact with our work.

23 Q All right. So if you are selected and you have  
24 to be here you would be able to do your service?

25 A Yes.

1 Q And the rest of it you would deal with as well?

2 A (Nods head.)

3 Q All right. In general, since you've had to call  
4 police before, what are your general thoughts of police  
5 officers?

6 A I'm sorry?

7 Q What are your general thoughts as far as --  
8 let's break it down. General thoughts about the  
9 credibility of police officers?

10 A The credibility of police officers. I feel they  
11 are doing a good duty and I, I respect them. And any  
12 involvement I've had with them has been satisfactory  
13 situations, so I guess I don't have anything disrespectful  
14 to say about that.

15 Q That's understandable. Do you believe that, or  
16 can you agree that police officers, some of them, can make  
17 mistakes like other people?

18 A They are human beings.

19 Q Yeah.

20 A Yes.

21 Q Exactly. Now, during this trial you are going  
22 to have some police officers testify, you'll have some  
23 civilian witnesses testify, and you are going to be asked  
24 to take, you know, stock of or make a judgment about the  
25 credibility of each witness in this case. Is there

1 anything about the fact that a police officer is a police  
2 officer, wears a badge, wears a uniform, that causes you  
3 to believe that they would be more likely to tell the  
4 truth when they get on the stand than a civilian such as  
5 anyone else?

6 A No, no, definitely not.

7 Q All right.

8 A You are under oath, you should be telling the  
9 truth.

10 Q All right. Do you think that, aside from the  
11 police officers, just witnesses in general, could you  
12 foresee a possibility at a trial where someone gets up on  
13 that stand and doesn't tell the truth?

14 A I wouldn't think they would.

15 Q Okay. Are you open to the possibility?

16 A No, I don't think so.

17 Q Okay. Let's explore this a little bit. Let me  
18 ask it this way. If there's a dispute and one witness  
19 gets up and says -- actually a dispute, one witness gets  
20 up and says -- Witness A gets up and says Witness B did  
21 it, Witness B gets up and says Witness A did it, there's a  
22 conflict in testimony, how would you think about working  
23 that out in your mind given that you think that everyone  
24 would tell the truth when they get up there?

25 A I guess depending upon the circumstances, if it

1 was a visual interpretation or a quick view of some type,  
2 it might be someone's interpretation may be different than  
3 someone else's, but I think basically people are honest  
4 and tell the truth to the best of their ability.

5 Q And have you had, or, actually, tell me about a  
6 situation, either your work or your personal life, where  
7 you've had to make a serious credibility determination?

8 A Oh, yes.

9 Q Can you tell me about one?

10 A I guess probably more so in an employee  
11 situation where there was a dishonesty question, some  
12 items were missing from work and I confronted the  
13 individual and there was a denial, and with further  
14 investigation and comments from other employees it was  
15 pretty much determined that this person's credibility was  
16 not reliable and we had to dismiss him because of that.

17 Q All right. And how long ago was that?

18 A About three years ago, yeah.

19 Q Okay. And as you sit here now, are you  
20 comfortable with that decision that you made?

21 A Yes. I think everything pointed in that  
22 direction. You know, someone just not being responsible  
23 for their actions.

24 Q All right. Tell me the most important -- or the  
25 toughest decision that you have had to make in your life?

1 A Decision?

2 Q Yeah, decision.

3 A That's a hard question. Probably disciplining  
4 my children. Certain implications, certain situations  
5 where some situation may have evolved where they needed to  
6 be disciplined, not let to do something because of  
7 something they had done, and because you still have  
8 respect for them and love them, you still feel it's the  
9 best thing for them not to do it so you prevent them from  
10 doing it. I guess that's probably the hardest thing.

11 Q Okay. And do you have any questions whatsoever  
12 about the rules of law that the judge gave you, that State  
13 of Minnesota has the burden of proof in any criminal case?

14 A I think I understand that, yeah. I don't have  
15 any questions on that.

16 Q Okay. Do you think that's fair that the State  
17 has the burden of proving someone guilty?

18 A Yes.

19 Q All right. As you sit here right now and you  
20 look at Mr. Haynes, Marvin Haynes sitting there, do you  
21 see an innocent person?

22 A Did he what?

23 Q Do you see an innocent person?

24 MR. FURNSTAHL: Judge, I'm going to object  
25 to that question.

1 THE COURT: What's the objection?

2 MR. FURNSTAHL: I think the question is a  
3 bit unfair and it assumes some understanding of the  
4 law of presumption of innocence.

5 THE COURT: It is. Maybe you can rephrase  
6 the question a little bit, Mr. Benson. I think it  
7 might be a little bit misleading.

8 MR. BENSON: Can we approach?

9 THE COURT: You may.

10 (Off-the record discussion at  
11 the bench out of hearing of MS. ELLIOT.)

12 MR. BENSON: May I proceed, Your Honor?

13 THE COURT: You may.

14 BY MR. BENSON:

15 Q Sir, as you sit here and you look at Marvin  
16 Haynes, do you see an innocent person?

17 A Um, I guess the way I would interpret that, the  
18 way I would answer that is that a person is assumed  
19 innocent until proven guilty. I guess the part that would  
20 bother me is that he or anyone else accused of something  
21 is not accused of it for -- out of random picking someone  
22 off the street, and I don't think I'm prejudging someone  
23 but this assumption thing you assume they are innocent but  
24 you are not sure.

25 Q Okay. And with the assuming of the innocence,

1 in part is that the judge's instruction? Or do you think  
2 it's fair to assume or presume someone innocent?

3 A Yes.

4 Q Can you tell me in your own words why that is?

5 A I'm sorry?

6 Q Can you tell me in your own words why you think  
7 it's fair that we should presume people innocent?

8 MR. FURNSTAHL: I'm going to object on the  
9 grounds that it asks the juror to comment on the law.

10 THE COURT: Overruled. He can answer.

11 MR. HUSFELDT: Please repeat the question  
12 again.

13 BY MR. BENSON:

14 Q Can you tell me why you feel in your own words  
15 that it's fair to presume someone innocent when they are  
16 facing a criminal charge?

17 A Well, I guess it goes back to the bases that our  
18 country is founded on that you don't have vigilantes doing  
19 our justice, so I just feel that they are entitled to a  
20 fair trial. Someone is entitled to a fair trial.

21 Q Sir, if you are selected as a juror in this  
22 case, do you feel that you would give Marvin Haynes a fair  
23 trial?

24 A I would hope I could.

25 Q Okay. Do you have any concerns about, based on

1 everything we've talked about, do you have any concerns  
2 about your ability to do so?

3 A I don't think so.

4 Q Okay. Do you have any concerns about working  
5 with ultimately 11 other people to make a decision of  
6 whether the State of Minnesota has proven its case? Do  
7 you have any problem with working with 11 other  
8 individuals?

9 A No.

10 Q All right. Do you want to be a juror in this  
11 case?

12 A No.

13 Q Okay. And can you tell me, unless you've stated  
14 before, why that is?

15 A Because it would interfere with my work. Maybe  
16 I'm a little bit selfish in that respect but I'm  
17 approaching retirement age and I've got some things I've  
18 got to get done with Labor Day weekend coming up, got  
19 plans. Very selfish reasons, I guess, but that would be  
20 my reasoning.

21 Q Okay. Thank you, sir.

22 MR. BENSON: Your Honor, we would exercise  
23 a peremptory here.

24 THE COURT: All right. Mr. Husfeldt you'll  
25 be excused. If you would get your belongings and



1 check back in with the jury office downstairs. Thank  
2 you very much.

3 MR. HUSFELDT: You are welcome.

4 (Mr. Husfeldt exits courtroom.)

5 MR. FURNSTAHL: Judge, the next juror, could  
6 you ask her about question 89?

7 THE COURT: Okay.

8 MR. FURNSTAHL: And 75.

9 (Ms. Luther enters  
10 courtroom and is sworn.)

11 THE COURT: It's Ms. Luther, right?

12 MR. HUSFELDT: Yeah.

13 THE COURT: And your father is an attorney,  
14 right?

15 MS. LUTHER: Yes, he is.

16 THE COURT: What kind of law does he  
17 practice?

18 MS. LUTHER: He's self-employed and I think  
19 just whatever his clients bring him. Some criminal  
20 cases, some civil stuff.

21 THE COURT: What's the name of his firm?

22 MS. LUTHER: He doesn't have a law firm,  
23 it's just private practice.

24 THE COURT: Is he all by himself?

25 MS. LUTHER: He has another attorney that

1 shares the office with him. Do you want his name?

2 THE COURT: Yes.

3 MS. LUTHER: Sean Rice.

4 THE COURT: Okay. Where is his office  
5 located?

6 MS. LUTHER: It's in the Bremer Bank  
7 Building near Target and Knollwood Mall off of  
8 Highway 7.

9 THE COURT: So have you talked to your  
10 father about some of the kinds of cases he's handled  
11 in the past?

12 MS. LUTHER: Yes, sometimes.

13 THE COURT: And he does do some criminal  
14 work?

15 MS. LUTHER: Yeah. I think he's mentioned  
16 like DWIs and things like that.

17 THE COURT: Okay. Let me ask you this.  
18 You answered a question here that says you are moving  
19 to Chicago next week to begin graduate school.

20 MS. LUTHER: Right.

21 THE COURT: University of Chicago, is that  
22 right?

23 MS. LUTHER: Yeah.

24 THE COURT: And it says if you're not there  
25 by September 2nd you'll lose your apartment.

1 MS. LUTHER: Yeah. I mean, I can always  
2 call them, I guess, but I'm supposed to be there on  
3 that date to sign the lease and pick up the keys and  
4 everything.

5 THE COURT: Do you have a roommate?

6 MS. LUTHER: No. It's just myself in the  
7 apartment.

8 THE COURT: And you start school on the  
9 5th, 6th I suppose, huh?

10 MS. LUTHER: School starts on the 20th  
11 actually. It's just that's when the apartment is  
12 assigned.

13 THE COURT: If you call them and tell them  
14 you are a juror in a court case and you'll be there  
15 but you can't get there until the 4th or 5th or  
16 whatever, would that be an issue for you?

17 MS. LUTHER: Well, as far as what they will  
18 say I don't know, to be honest. I guess the other  
19 issue for me is that my dad was supposed to be  
20 driving me down and helping me move in and, I mean, I  
21 don't know what his schedule is if he could then do  
22 it the next weekend.

23 THE COURT: You were supposed to do that  
24 Labor Day weekend?

25 MS. LUTHER: Right.

1                   THE COURT: Now, this case will probably be  
2 done hopefully before Labor Day weekend, but  
3 obviously the jury has to deliberate and come to a  
4 decision and we don't know how long that's going to  
5 take. Hopefully that won't cause you any hardship in  
6 terms of rescheduling and maybe calling your  
7 landlord, but do you think you could set that part  
8 aside and make your phones calls and concentrate on  
9 this case if you are asked to serve on it?

10                  MS. LUTHER: Um, I mean if that's what has  
11 to happen then I guess that's fine. I realize this  
12 is my civic duty. I don't know, it's a university  
13 owned apartment and I don't know what their policy is  
14 if I call and say, I mean I would imagine if I have,  
15 you know, some sort of proof that I was on the jury  
16 and I could only get there by a certain date, I mean,  
17 I would like to think they weren't going to make me  
18 lose my apartment but I don't really know, to be  
19 honest. I'm sorry. I wish I could answer your  
20 question better. I just don't know.

21                  THE COURT: All right. There's a question  
22 on here too that says that the defendant in this case  
23 is 16 and a half years old, and what reaction do you  
24 have to someone that age that can be charged with  
25 first degree murder. And you said you are really not

1           sure how you feel about that.

2           Are you not sure how you feel about somebody,  
3           our criminal justice system handling somebody that  
4           age as an adult for first degree murder, or what is  
5           it that you meant by that answer?

6                       MS. LUTHER: I think I just meant that I  
7           don't know. I guess I can see that on the one hand  
8           it's a very serious crime but on the other hand, you  
9           know, it's someone who is still very young, so I  
10          don't know how to balance those two things in my  
11          mind.

12                      THE COURT: Okay. Have you talked to your  
13          father about the law, criminal law at all?

14                      MS. LUTHER: I suppose a little bit, yeah.

15                      THE COURT: Do you think that you can just  
16          set aside whatever you know or you think you know  
17          about the law and follow whatever law I give you in  
18          this case whether you agree with it or disagree with  
19          it?

20                      MS. LUTHER: Yeah, I think so. Yeah.

21                      THE COURT: Mr. Benson has laryngitis so  
22          his voice is very small today so I'm going to have  
23          him get closer to you so you can try to hear his  
24          questions, okay?

25                      MS. LUTHER: Okay. That's fine.

1 THE COURT: Go ahead, Mr. Benson.

2 MR. BENSON: Thank you, Your Honor.

3 BY MR. BENSON:

4 Q Good morning.

5 A Good morning.

6 Q Ms. Luther, Cesar Chavez high school, where is  
7 that? Is that in D.C.?

8 A Yeah. It's Washington, D.C.

9 Q Which part of town?

10 A It's near 14th And Florida Avenues which is sort  
11 of considered the U street area. I don't know if you are  
12 familiar --

13 Q U Street (inaudible)?

14 A Exactly. Exactly.

15 Q And how did you choose to get out there? How  
16 did that work out?

17 A Um, I was looking for teaching jobs and I had  
18 friends living in Washington, D.C. so that ended up being  
19 the one that worked out, so.

20 Q Okay. And was it your interning when you went  
21 to Harvard to teach high school?

22 A Well, probably not right away when I got there  
23 my freshman year but by my senior year I was looking for  
24 teaching jobs for after graduation.

25 Q Okay. And what are you studying with your

1 master's program?

2 A It's actually a Ph.D. program.

3 Q I'm sorry.

4 A In history.

5 Q All right. So how long does that last?

6 A They say it will last eight years, about.

7 Q Okay. During that eight years, are you focusing  
8 just on a Ph.D. program or do you intend to be teaching as  
9 well at the university?

10 A I think I would like to try to teach as well.  
11 I'm not sure if it would be a part-time thing while I'm  
12 still in graduate school, the dissertation stage or  
13 possibly take time off of graduate school to teach. I  
14 really enjoy teaching high school so I would like to  
15 continue to do it in some capacity but I'm not exactly  
16 sure how that would work.

17 Q How would you describe your experience in the  
18 teaching at Cesar Chavez?

19 A It was really great. I really love teaching.  
20 It was a really challenging experience. I learned a lot  
21 about high school students, and I guess, I mean I guess  
22 you could say inner city high school students, at least in  
23 Washington D.C., and a lot of challenges that they made  
24 and the challenges of teaching in general.

25 Q Okay. Do you think any of those challenges

1 would interfere with your ability to teach, like any of  
2 those challenges that you have discussed, talked about?

3 A Interfere with my ability to teach? To teach  
4 them, oh yeah, definitely. I mean students would --  
5 getting them to do homework was a real challenge. Getting  
6 students to come to school was a huge challenge. And I  
7 think a lot of things going on in their lives also made it  
8 hard for students to pay attention in class or ask for  
9 help after school, for example if they needed extra help  
10 with the material. So definitely that was a big part of  
11 the challenge. I mean, it made teaching challenging. I  
12 don't know if it -- I mean, I guess it did interfere  
13 because it made it a challenge but I wouldn't say that I  
14 couldn't teach as a result, if that makes sense.

15 Q Okay. So why did you decide to leave? Was that  
16 a two-year program or after two years you decided to get  
17 your Ph.D.?

18 A Yeah. After two years I wanted to continue my  
19 studies in graduate school but it was a difficult  
20 decision, so. Yeah.

21 Q Okay. All right. Other than your schedule as  
22 far as the September 2nd apartment issue, is there  
23 anything about this case itself, the nature of it, the  
24 charge, it's a first degree murder charge, is there  
25 anything about that that causes you concern about sitting



1 as a juror on this case?

2 A No. I don't think so.

3 Q Okay. When you were teaching, was there ever a  
4 situation of, I suppose, did you ever witness like a  
5 violent situation at the school or weapons at the school  
6 or anything like that?

7 A No, no.

8 Q All right. Is there anything in your personal  
9 life that you believe -- not your personal life but your,  
10 like your teaching life, personal life in general, that  
11 you believe would impact the way you view evidence when it  
12 comes in in this case?

13 A Um --

14 Q I can be more specific.

15 A Yeah, could you please?

16 Q I don't think you've indicated that there's been  
17 any threat to your personal safety in your life?

18 A No.

19 Q Obviously in this case there is going to be an  
20 allegation that Mr. Haynes did something of a violent  
21 nature to somebody?

22 A Right.

23 Q Okay. Is there anything like either you, a  
24 close friend or family member that has been threatened or  
25 felt in fear of their safety that could impact the way you

1 listen to a witness on the stand?

2 A I don't think so. I mean, I mean certainly I  
3 think everyone has been in somewhat scary situations but I  
4 can't think of anything that would impact listening to a  
5 witness.

6 Q Have you ever had to call the police?

7 A Um, yes, once. I was babysitting for my cousins  
8 at my grandparents' house and the alarm went off and I  
9 thought someone was trying to break in, and it turned out  
10 my grandparents had turned on the alarm as they were  
11 leaving and it has like motion detectors inside the house  
12 so it wasn't anything in the end but I did call the  
13 police, so.

14 Q All right. You are satisfied with their  
15 response, the police response, or?

16 A It was pretty slow, I guess to be honest, but I  
17 was less impressed with the 911 response to be honest than  
18 the police response, I guess I could say.

19 Q All right. Okay. Is there anything that you  
20 thought about overnight that you wanted to add to your  
21 questionnaire?

22 A Um, I don't think so. I mean, I guess I would  
23 just like to say again I mean I realize that, you know,  
24 you want to select a jury and I certainly don't want to  
25 make it difficult in your jury selection process, but I

1 don't know exactly what's going to happen with my going to  
2 graduate school situation if I'm selected for the jury. I  
3 guess if I am I would make the best of it and see what  
4 would happen but if there is anything that can be done I  
5 think I would really appreciate it. It's not that I'm not  
6 wanting to help or be on the jury, it sounds very  
7 interesting and everything, but that's all.

8 Q Okay. One moment.

9 A Sure.

10 MR. BENSON: Can we approach?

11 THE COURT: You may.

12 (Off-the-record discussion.)

13 THE COURT: Ms. Luther, we'll excuse you  
14 from this jury and I'll have you check back in with  
15 the jury office downstairs.

16 MS. LUTHER: Okay. Thank you. I  
17 appreciate it. I'm really sorry.

18 THE COURT: That's all right.

19 (Ms. Luther exits courtroom)

20 MR. FURNSTAHL: Are we going to do juror  
21 number one now?

22 THE COURT: We are.

23 MR. FURNSTAHL: Talk to her about the  
24 language barrier?

25 THE COURT: We'll find out.

1 THE CLERK: Are you ready for number one?

2 THE COURT: We are.

3 (Ms. Habte enters courtroom.)

4 THE COURT: Good morning.

5 MS. HABTE: Good morning.

6 THE COURT: Would you raise your right hand  
7 to be sworn please?

8 (Ms. Habte is sworn.)

9 THE COURT: Go ahead and have a chair.  
10 Would you pronounce your name for me?

11 MS. HABTE: Yetemwork.

12 THE COURT: Yetemwork?

13 MS. HABTE: Yetemwork.

14 THE COURT: Now, you were confused this  
15 morning and went downstairs to the jury room, is that  
16 right?

17 MS. HABTE: Yes. Since eight o'clock I was  
18 there. Sorry.

19 THE COURT: So you were here; you were just  
20 downstairs?

21 MS. HABTE: Yeah, I was here.

22 THE COURT: All right. Now, you grew up in  
23 Ethiopia but you speak English fine, is that right?

24 MS. HABTE: Yes, I do.

25 THE COURT: Do you have any trouble

1 understanding the English language?

2 MS. HABTE: Unless it's some kind of words  
3 but I think I do fine. I understand fine.

4 THE COURT: Okay. All right. Have you  
5 thought about your answers to this questionnaire  
6 since you left here yesterday?

7 MS. HABTE: A little.

8 THE COURT: Is there anything that you feel  
9 you need to add? And in particular you didn't answer  
10 question 89 about this is going to last two weeks,  
11 this trial, approximately.

12 MS. HABTE: Yeah. The reason I didn't  
13 because my child in daycare will be closed the end of  
14 August, the daycare will be, they are cleaning the  
15 end of August and before the school open. I didn't  
16 have anybody else to watch him so that's the reason I  
17 didn't answer, but.

18 THE COURT: Okay. So when you say the end  
19 of August --

20 MS. HABTE: Which is next week from Monday  
21 to --

22 THE COURT: Next Monday, the 29th?

23 MS. HABTE: Yeah. I think next Monday.

24 THE COURT: So they are going to be closed  
25 for a week.

1 MS. HABTE: They are going to be closed and  
2 when the school open they open together so after that  
3 the daycare start working.

4 THE COURT: Okay. So right now you don't  
5 have anybody to watch your son?

6 MS. HABTE: Right now the daycare is open.

7 THE COURT: But I mean for next week.

8 MS. HABTE: For next week I didn't arrange  
9 anybody.

10 THE COURT: Do you think you can find  
11 somebody?

12 MS. HABTE: I will try to find somebody.

13 THE COURT: Okay. What about your work  
14 situation, is that a problem for you?

15 MS. HABTE: They have, I mean when I ask  
16 the staffing office and when the jury called you they  
17 let you go and I didn't hear any problem.

18 THE COURT: Do they pay you while you are  
19 on jury duty?

20 MS. HABTE: I didn't talk to them yet but I  
21 will.

22 THE COURT: Okay. Anything about what you  
23 know so far about this case that would make it  
24 difficult for you to be a juror on this case?

25 MS. HABTE: No.

1 THE COURT: Mr. Benson has laryngitis so  
2 he's not able to talk very loud today so I'm going to  
3 have him come closer so you can hear his questions,  
4 okay?

5 MS. HABTE: Okay.

6 THE COURT: Go ahead, Mr. Benson.

7 MR. BENSON: Thank you, Your Honor.

8 BY MR. BENSON:

9 Q Good morning.

10 A Good morning.

11 Q You indicated you had called 911, you had called  
12 the emergency line 911 on a prior occasion?

13 A Um-hum.

14 Q Okay. And why did you do that?

15 A I am a single mom. I live, me and my son, he's  
16 ten years old and it's a building like two, three stories  
17 and sometimes there is noises like somebody knocking on  
18 your door and I kind of get nervous so I call 911.

19 Q Okay. How often have you called 911?

20 A Any time like we're uncomfortable, my son  
21 couldn't sleep because he have to go to school the next  
22 morning so, but not recently because I talk to the  
23 landlord and it's been more than a year.

24 Q Okay. The last time that you called 911, what  
25 was your feeling as far as the police response?

1           A     I was nervous and they came in, they look around  
2     and they told me I am on the second floor so if there is  
3     something as long as the door is locked I will be okay so  
4     I was calm and we went back to bed.

5           Q     Okay. All right. And so when they looked  
6     around they didn't find anybody?

7           A     They didn't find anybody but I don't know, some  
8     people like, you know, their kids go to bed very late. Me  
9     and my son go to bed early because I am not driving, I  
10    catch a bus so we have to get up in the morning. I have  
11    to drop him at the daycare so maybe people running, I  
12    don't know, I didn't see anybody but I was nervous.

13          Q     Okay. You also in your questionnaire, I believe  
14    you left blank a response about what you thought about  
15    Marvin Haynes, Marvin being 16 and a half or somebody that  
16    young being charged with first degree murder. Did you  
17    leave that -- I believe you left it blank. Can you tell  
18    me right now what your thoughts are about someone who is  
19    16 or 17 being charged with first degree murder?

20          A     This is my first time in this kind of position  
21    and I didn't know what to answer, really. Yeah. That's  
22    why I left it.

23          Q     Okay. Well, just tell me what are your  
24    thoughts, not Mr. Haynes in particular but just in general  
25    of a juvenile or 16-year-old being charged with an adult



1 crime?

2 A I really don't know what to say because it's  
3 kind of, I'm a mother, I have a ten-year-old which he's  
4 going to be 16 any time, and I don't even know what, if  
5 he's in the position. I don't know even know what to  
6 think because, I don't know what to answer for that  
7 question. I'm sorry.

8 Q Okay. Okay. Well, do you feel that your  
9 uncertainty in that response would impact the way you view  
10 evidence in this case?

11 A I really don't know. I can't answer that  
12 question either.

13 Q All right. When the judge gives you  
14 instructions, you know, at the end of the case, you and  
15 the other jurors will have to go and deliberate about this  
16 case and make a decision of whether the State of Minnesota  
17 has proven its case, all right? Is the fact that Marvin  
18 Haynes is a juvenile, is that going to affect you one way  
19 or another as far as how you make a decision?

20 A I don't know. The case didn't begin and I think  
21 it's a long -- I don't know. I cannot answer that  
22 question really right now.

23 Q Okay. You also, I think you left blank that  
24 you, whether you wanted to be a juror or not. Do you want  
25 to be a juror?

1           A     I love to but I just, I mean I want to be, I  
2     want to have that experience and I want to know more, of  
3     course. As a mother and as a citizen.

4           Q     Okay. And then I want to just follow-up on  
5     something that the judge asked you about. As far as  
6     following like what I'm saying, the language, is there any  
7     language barrier as far as following what I'm saying other  
8     than the level of my voice right now or what the judge is  
9     saying today or yesterday that you've been unable to  
10    follow and understood everything that was being said?

11          A     Yeah, I think I did, yes. That's why, I mean  
12    the reason -- okay, maybe this morning I made a mistake  
13    probably like I know I had to be here at nine o'clock but  
14    I went straight where I came the first time and then I  
15    don't know I have to come up, I don't know why I did that  
16    but I understand.

17          Q     Okay. I think lastly in your questionnaire you  
18    indicated that you lived in Maryland before this?

19          A     Yes, I was in Maryland.

20          Q     Where at? What city?

21          A     Hyattsville.

22          Q     Prince George's County?

23          A     Prince George's County.

24          Q     What do you think of Prince George's County as  
25    compared to Hennepin County?

1           A     I have never been in this kind of position. I  
2     don't know. In what way?

3           Q     No, no, set aside the courtroom right now in  
4     this jury selection. I'm just asking you how did you like  
5     Prince George's County in Maryland versus living in  
6     Hennepin County here?

7           A     For me everything is, for me it's nice. It's  
8     different from my country. I don't see a big difference  
9     or, I know this is a place that you can become anybody you  
10    want to become whether in Maryland or Minneapolis. That's  
11    all I know, really.

12          Q     Thank you, ma'am. Is it Habte?

13          A     Habte.

14                   MR. BENSON: Your Honor, I will accept Ms.  
15    Habte.

16                   THE COURT: Mr. Furnstahl.

17    BY MR. FURNSTAHL:

18          Q     Good morning.

19          A     Good morning.

20          Q     Now it's my turn to ask some questions if I  
21    might, okay?

22          A     All right.

23          Q     I wanted to talk to you about the situation with  
24    your son. Do you have any family or other relatives in  
25    Minneapolis?

1           A     Yeah, not in Minneapolis. I have a sister in  
2     St. Paul and I have a sister in Burnsville.

3           Q     Where?

4           A     Burnsville.

5           Q     Bellville?

6           A     Burnsville.

7           Q     How far away that?

8           A     They are far away. I mean we are far. I live  
9     close to downtown Minneapolis.

10          Q     Okay.

11          A     They live St. Paul and Burnsville. It's kind of  
12     far.

13          Q     Did you say that you don't drive, you don't have  
14     a car?

15          A     I don't have a car, yeah.

16          Q     Okay. So you don't have to worry about the gas  
17     prices then. If you are asked -- now, you said next week  
18     there's going to be a problem with your son's daycare,  
19     correct?

20          A     Yeah.

21          Q     What are you going to do if you are asked to be  
22     on this jury and you are supposed to be here next week,  
23     what will you be able to do as far as taking care of your  
24     son?

25          A     I really don't know yet. I have to look for a

1 person to be there, I mean to take care of him for me at  
2 least for a week.

3 Q Uh-huh. Do you think you can find somebody?

4 A I'm looking. I'm trying to find somebody but  
5 right now I didn't get a chance to.

6 Q Are you looking for another babysitter, or would  
7 one of your sisters help you out?

8 A My sisters work. That's a problem. They work.

9 Q So --

10 A So.

11 Q You'll have to find somebody other than --

12 A My family, yeah.

13 Q Okay. Do you have any idea what you are going  
14 to do?

15 A I don't know because I didn't know if I will be  
16 selected or not, so.

17 Q Sure. In a way these questions are a little bit  
18 unfair because we ask you to predict things when you don't  
19 know what, beforehand, what kinds of questions we are  
20 going to ask you, so I apologize for that, but this is our  
21 only opportunity to find out if you are a good fit for  
22 this particular case as opposed to another case. Do you  
23 understand what I'm saying?

24 A Yeah.

25 Q Do you have any questions about anything that

1       either myself or the defense counsel or the Court has said  
2       so far?

3           A       No.

4           Q       All right. But if, if you are selected to be on  
5       this jury, what we would anticipate is this, that if you  
6       are selected to be on this jury you could go home and go  
7       about your business and come back on Monday and they would  
8       start the trial and we expect that testimony to last the  
9       bulk of next week, and then the jury deliberates to make a  
10      decision, they retire to make a decision and that lasts as  
11      long as it takes. Okay? And that is totally up to you.  
12      If you are not able to get a babysitter for your son what  
13      are you going to be doing?

14          A       I just have to tell the Court that I couldn't  
15      find anybody else.

16          Q       Because you can't leave your son alone, can you?

17          A       He's ten years old and it's --

18          Q       Could you leave him alone?

19          A       I never left him alone.

20          Q       I just need to find out, you know.

21          A       No.

22          Q       So you if you weren't able to find somebody and  
23      you were asked to be here that would cause a real problem  
24      for you, I take it?

25          A       Yeah.

1           Q     All right. And even though the judge told you  
2     you have to concentrate on the evidence that you hear and  
3     the testimony and so forth, would you be worried about  
4     your son?

5           A     Can you repeat the question, please?

6           Q     Sure. If you are asked to be on this jury, the  
7     judge is going to tell you that you have to pay attention  
8     and listen to what the witnesses are saying, all right?  
9     Now, if you are not able to get a babysitter for your son,  
10    would you be worried about your son so you are not able to  
11    listen to the evidence?

12          A     Any more would be, I think --

13          Q     Sure. I just need to hear. It sounds like this  
14    could be a real hardship for you in getting a babysitter?

15          A     I ask him, this is my second time being called  
16    for a jury and that was the reason I ask for postpone and  
17    I postpone.

18          Q     I see.

19          A     Other than that I have no problem to be in the  
20    court but that was the only problem.

21          Q     Do you have any friends or anybody that you've  
22    already talked to about the possibility of your son  
23    staying with them?

24          A     I can't, I can't. First of all, I don't even  
25    know if I am going to be selected and I cannot say go and

1 ask people.

2 Q Okay. How about if you were, if you are asked  
3 to be on this jury, now the chances are good if you are  
4 asked to be on this jury and you are back there deciding  
5 the case, and it becomes, it comes to the end of the day  
6 the judge might require the jurors to spend a night in a  
7 hotel. Would you be able to be away from your son  
8 overnight?

9 A I mean, if I don't find anybody how would I? I  
10 mean --

11 Q Let's say that even if you were able to find  
12 someone, would you be able to be away from your son?

13 A If I knew he's safe.

14 Q Okay.

15 A Yeah.

16 Q Okay.

17 MR. FURNSTAHL: Can we approach, Judge?

18 THE COURT: You may.

19 (Off-the record discussion at the  
20 bench out of hearing of Ms. Habte.)

21 THE COURT: Ma'am, just trying to clarify  
22 this a little bit. If I ask you to serve on a jury  
23 in this case and come back here next week and be here  
24 all week, can you find daycare?

25 MS. HABTE: I will look for someone. I



1 don't know. I'm not sure.

2 THE COURT: You are not sure.

3 MS. HABTE: Yeah. I'm not sure. I mean, I  
4 don't want to say this and then come back with an  
5 answer that isn't but I have to look for a person  
6 first.

7 THE COURT: Were you planning on taking off  
8 work next week to stay with your son?

9 MS. HABTE: No.

10 THE COURT: Okay.

11 MS. HABTE: No, I did not because I got  
12 called in the jury and I did not.

13 THE COURT: Well, if I ask you to come back  
14 here and serve on this jury next week, we are going  
15 to assume that you can find somebody to take care of  
16 your son.

17 MS. HABTE: I will look.

18 THE COURT: Okay.

19 MS. HABTE: I will look for somebody.

20 THE COURT: Mr. Furnstahl, any additional  
21 questions?

22 MR. FURNSTAHL: Just a couple, Judge.

23 BY MR. FURNSTAHL:

24 Q Ma'am, do you have any experience as to whether  
25 or not you'll be successful in being able to find

1       somebody? Do you know?

2           A       I have a couple of people in mind which I never  
3       ask.

4           Q       Have you ever asked them?

5           A       No, because I didn't know.

6           Q       Do you think that they will take your son if  
7       needed, or?

8           A       I think so.

9           Q       Okay. How about even if it's overnight?

10          A       I don't know. I didn't ask so I will ask.

11          Q       Okay. You said you have a couple of people?

12          A       Yeah. My sister work but the one in St. Paul,  
13       she work until 3:30 so in the morning if he is with  
14       somebody else, in the afternoon she can pick him up and he  
15       can be with her. I will ask. She lives in St. Paul.

16          Q       Does she drive?

17          A       She drives, yeah.

18          Q       Okay. Okay.

19                   MR. FURNSTAHL: Nothing further on that  
20       issue.

21                   THE COURT: Okay. With regard to cause I  
22       don't think we have it.

23                   MR. FURNSTAHL: Okay. State will exercise  
24       a peremptory.

25                   THE COURT: All right.

1 MR. FURNSTAHL: Thank you, ma'am.

2 THE COURT: Ma'am, I'll excuse you but I'll  
3 ask you to go back down to the jury office and check  
4 in with them, but you are excused from this jury.

5 MS. HABTE: From?

6 THE COURT: From this jury, so you go back  
7 downstairs. Thank you very much.

8 (Ms. Habte exits courtroom.)  
9 Short recess.)

10 THE CLERK: Ready for number five?

11 THE COURT: Ms. Habben.

12 (Ms. Habben enters courtroom.)

13 THE COURT: Is it Habben? Is that how you  
14 pronounce it?

15 MS. HABBEN: Habben, yup.

16 (Ms. Habben is sworn.)

17 THE COURT: Go ahead and have a chair. I  
18 read your questionnaire last night. Have you thought  
19 of anything that you want to add to your answers?

20 MS. HABBEN: Off the top of my head, no.

21 THE COURT: Okay. I have one question for  
22 you, and that is you answered a couple times that you  
23 would like to see more cases heard by judges only and  
24 no jurors. Tell me why you feel that way.

25 MS. HABBEN: I'm trying to think of the

1 case that was just recently in the news. That boy  
2 out in, it was a school shooting, and I know --

3 THE COURT: Up in Racori.

4 MS. HABBEN: Yeah. And he was heard just  
5 in front of a judge and I thought you know, it just  
6 saved a lot of people time and to me it just made  
7 more sense, you know. Everybody was right here, they  
8 didn't have to bring in a whole of bunch of people  
9 and he was just there, the decision was being made by  
10 one sole person.

11 THE COURT: Is that based on your feelings  
12 for efficiency or why do you say that?

13 MS. HABBEN: I think it's probably just  
14 efficiency but then I didn't really like what had  
15 happened in that case either. And I don't know if  
16 there would have been too many people that knew too  
17 much about the case that they would have had enough  
18 people to get a fair, a fair jury.

19 THE COURT: All right. Let me just ask you  
20 this. Now, on that case for example, we're looking  
21 at a law with regard to whether or not a juvenile is  
22 prosecuted as an adult, as an extended juvenile  
23 jurisdiction designation and the judge makes that  
24 decision. Now, can you set aside whatever you think  
25 you know or whatever you know about the law and

1 follow whatever law I give you in this case whether  
2 or not you agree with it?

3 MS. HABBEN: Yes.

4 THE COURT: Okay. Now let me ask you this  
5 also about your mom. You said your mom was starting  
6 chemo, right?

7 MS. HABBEN: I'll tell you the story. She  
8 had breast cancer five and a half years ago and had a  
9 mastectomy and she was cancer free for that time, and  
10 last summer we found out it came back in her lungs  
11 and in her bones so since last August I believe she  
12 goes to chemotherapy every three weeks, every three  
13 months she has a cat scan, and I know she has a cat  
14 scan scheduled next Tuesday and she has chemo  
15 scheduled next Thursday and usually one of us kids  
16 always goes along. There is three in my family and  
17 we always try and go along because it, it's a couple  
18 hours. She's sitting there and she's going to have  
19 to do this for the rest of her life.

20 THE COURT: Is one of your other family  
21 members able to take her next week?

22 MS. HABTE: You know, we haven't even  
23 discussed it, to be honest with you.

24 THE COURT: All right. All right. Mr.  
25 Benson this morning is suffering from laryngitis so

1           he is not able to project his voice very loud so I'm  
2           going to have him come close to you to ask you some  
3           questions this morning.

4                   MS. HABBEN: Okay.

5                   THE COURT: Go ahead, Mr. Benson.

6                   MR. BENSON: Thank you, Your Honor.

7 BY MR. BENSON:

8           Q       Morning. I have a few questions for you. You  
9           think that somebody, would somebody possibly be able to  
10          sit with your mother next week?

11          A       I would have to find out but, you know, it's  
12          something I wouldn't rule out. I would have to contact my  
13          brother or my sister.

14          Q       You indicated that there were -- you might have  
15          some concerns with like details or graphic photos?

16          A       Um-hum.

17          Q       Can you elaborate on that a little bit?

18          A       I've never been one that, you know, likes scary  
19          or gory movies or even when they show something graphic  
20          like on Oprah or just on the news I have to turn away.

21          Q       Okay.

22          A       I have a weak stomach.

23          Q       If you were to see something which you would  
24          determine to be graphic such as a crime scene photo or  
25          autopsy photo, is the, I suppose the disturbing feeling

1 that you have when you see things like that, will that  
2 detract from the way you listen to the rest of the  
3 evidence?

4 A It might. I mean, I think I would constantly  
5 see that in my head over and over, you know. I may go  
6 home and see it in a dream, you know, like when I watch a  
7 scary movie or see something like that that's what  
8 happens. I see it at night. I wake up.

9 Q If on one day of evidence, one day when evidence  
10 is being taken, testimony is being taken you were to see  
11 for example like an autopsy photo or something like that?

12 A Okay.

13 Q Do you think that that would still be in your  
14 mind the next day when you are trying to listen to a  
15 witness on the stand?

16 A Yeah.

17 Q All right. And you know this from just your  
18 past experiences?

19 A Um-hum.

20 Q In that regard do you think it's -- is it fair  
21 to say that would interfere with your listening to the  
22 evidence?

23 A Yeah.

24 Q Is there any way you can think as you sit here  
25 now that you would be able to overcome that in the next

1       few days?

2           A       I don't know, really, to be honest with you.

3                   MR. BENSON: Can I approach?

4                   THE COURT: You may.

5                               (Off-the record discussion at the  
6       bench out of hearing of Ms. Habben.)

7       BY MR. BENSON:

8           Q       Ma'am, you also indicated that you were a  
9       witness to a robbery?

10          A       Um-hum. But we didn't actually see the robbery.  
11       We saw -- I'll let you continue with your question.

12          Q       No, please go ahead.

13          A       We were riding our bikes to the mall, a little  
14       grocery store, mom and pop store, and we saw two kids come  
15       running from the store. At that time we didn't know what  
16       had happened and we were only like not even a block away.  
17       I mean, half a block away. And we got to the parking lot  
18       of the store and the clerk was out in the parking lot  
19       crying, she had the phone in her hands and she said did  
20       you see them and I said did you just get robbed, because  
21       we've known there has been robberies there before and I  
22       said yeah. I ran to the corner, saw the car they were in  
23       so I stood there with her and waited for the cops to come,  
24       had to give a description of what I saw.

25          Q       Okay. And how long ago was this?



1           A     July, it was over July fourth week.

2           Q     This year?

3           A     Yeah.

4           Q     Okay. When you heard that this charge involved  
5 an allegation of attempted robbery, did that incident pop  
6 into your head?

7           A     Immediately. Because it had been so recent.

8           Q     Okay. How do you think that your experience,  
9 knowing nothing else about the case, your experience in  
10 July sitting with the person that had been the victim of a  
11 robbery, how do you think that's going to affect the way  
12 you hear, view, or perceive evidence in this case?

13          A     I guess I would think of what happened, I mean  
14 nothing happened to the woman, the clerk at that store,  
15 but I could see how shaken up she was so I could maybe,  
16 you know, somehow relate how she might be feeling or they  
17 might be feeling. I don't know.

18          Q     Okay. And if a witness comes up and testifies  
19 about being the victim of the incident, being the victim a  
20 robbery, do you feel that based upon your experience you  
21 might have a greater sympathy for that person just as far  
22 as what they went through?

23          A     Probably, yeah.

24          Q     That's understood. But do you think that that  
25 sympathy would in any way, shape, or form, you know, kind

1 of give added credibility to that person or make you more  
2 likely to believe everything that that person said?

3 A Believe that person?

4 Q Yes.

5 A I guess you would, I guess I would have to hear  
6 everything else in the case.

7 Q Okay.

8 A I mean I would feel sympathetic for that person.

9 Q Yeah, of course.

10 A But, you know.

11 Q Let me ask you this way. As you hear, when you  
12 hear testimony in this case, do you have any thoughts in  
13 your mind that this incident that you were fairly close to  
14 although you weren't the victim, in July, fairly close to,  
15 you thought that you will be thinking about that as well  
16 while the evidence is coming in in this case?

17 A Yeah.

18 Q How would you go about compartmentalizing what  
19 happened in July to what's going on in this courtroom?

20 A What do you mean?

21 Q Well, you understand that, or you will  
22 understand that what you are making a determination of is  
23 the evidence that the State presents?

24 A Right.

25 Q The evidence that's in this, within this

1 courtroom, either the witnesses on the stand or exhibits  
2 that are entered, things of that nature. These outside  
3 forces, well, they can't be totally, we are not expecting  
4 to erase your memory but at the same time there must be  
5 some way to keep that out of the decisions that you make  
6 in this courtroom. Do you think you can do that?

7 A I don't know. I mean, being that it was just in  
8 July, you know, and I had my ten-year-old son with me and,  
9 you know, we weren't that much involved with it but even  
10 seeing how bad he was shaken up, I mean he was very upset  
11 the rest of the night. I mean more so than me but, you  
12 know, I think maybe I would be thinking more about how he  
13 felt as well as that victim.

14 Q Okay.

15 A While stuff was coming out here.

16 Q Okay. And I don't want to put words into your  
17 mouth so you can answer yes or no or however you want to  
18 answer.

19 A Okay.

20 Q From what I'm hearing, you are saying that your  
21 experience in July involving that other robbery may have  
22 an impact with the way you hear evidence in this case?

23 MR. FURNSTAHL: Judge, I'm going to object  
24 to the form of the question as it's a little bit  
25 misleading as to what she can and cannot do with

1 prior experiences.

2 THE COURT: The question, I mean, that's  
3 overruled. You can answer that question.

4 MS. HABBEN: Probably.

5 BY MR. BENSON:

6 Q Okay. All right.

7 MR. BENSON: May I approach, Your Honor?

8 THE COURT: You may.

9 MR. BENSON: Thank you.

10 (Off-the-record discussion at  
11 the bench.)

12 THE COURT: Go ahead, Mr. Furnstahl.

13 MR. FURNSTAHL: Thank you.

14 BY MR. FURNSTAHL:

15 Q Ma'am, I have a couple questions for you.

16 A Okay.

17 Q Okay. And it's about the experience that you  
18 had in July.

19 A Okay.

20 Q Okay? Can you appreciate that we don't want 12  
21 robots sitting in judgment of this case, we want 12 human  
22 beings?

23 A Correct.

24 Q So we ask you to bring in your common sense when  
25 you are asked to evaluate the evidence. Can you

1 appreciate that?

2 A Um-hum.

3 Q And also your life experiences, and you have a  
4 life experience that has some relevance to this case given  
5 the charge that has been, that you've heard about,  
6 correct?

7 A Yes.

8 Q Now, if you, if because of that incident that  
9 you and your son experienced in July, you were to come in  
10 here with a mindset that something has to be done about  
11 these people that rob stores, can you appreciate that that  
12 would be an inappropriate use of that experience?

13 A Yes.

14 Q Is that the kind of attitude that you are going  
15 to have if you are asked to be on this jury?

16 A I guess I would have to.

17 Q All right.

18 A I mean, I would have to work at putting it out  
19 of my head, yeah.

20 Q All right. Now, the question is, can you put it  
21 out of your head or are you going to have a mindset that  
22 something has to be done? Don't worry about if your  
23 answer is going to offend anybody, just tell us from your  
24 heart.

25 A Yes, I know that something has to be done.

1           Q     All right. So you think that you won't be able  
2 to put that aside and you can't be fair in this case, is  
3 that what you are telling us?

4           A     I just think it's been too son.

5           Q     Thank you, ma'am.

6                     THE COURT: You are excused, ma'am, and you  
7 can check back in with the jury office downstairs,  
8 okay?

9                     MS. HABBEN: All right.

10                    THE COURT: Thank you.

11                                 (Ms. Habben exits. Mr.  
12 Hagberg enters.)

13                    THE COURT: Is it Hagberg? Is that how you  
14 pronounce it?

15                    MR. HAGBERG: Correct.

16   (Mr. Hagberg is sworn.)

17                    THE COURT: Go ahead and have a chair.

18                    MR. HAGBERG: Thank you.

19                    THE COURT: Mr. Hagberg, have you thought  
20 about your answers to these questions since you  
21 filled out this questionnaire yesterday?

22                    MR. HAGBERG: Yes, I have.

23                    THE COURT: Anything you thought about that  
24 you would like to add to your answers or correct?

25                    MR. HAGBERG: Um, there was a few more

1 things I wanted to add I think in the experiences  
2 with people and other races. I think it was that  
3 part of it.

4 THE COURT: Okay. Go ahead.

5 MR. HAGBERG: I've actually had better  
6 times with a few friends that are of other races,  
7 just had some good incidences with a social worker at  
8 school and things like that that helped me get  
9 through some things that was pretty helpful. And I  
10 forgot to add that and I was a little disappointed  
11 because they were a lot of help.

12 THE COURT: Anything else you can think of?

13 MR. HAGBERG: Um, not really. That was  
14 something I wanted to add.

15 THE COURT: Okay. Now, Mr. Benson is going  
16 to ask you questions first and he is suffering from  
17 laryngitis today so he isn't able to talk real loud  
18 so I'm going to have him approach and make sure you  
19 can hear his questions and the court reporter who is  
20 taking down all your answers to his questions can  
21 hear as well.

22 BY MR. BENSON:

23 Q Mr. Hagberg, you indicated that there's too much  
24 wasted time in the system?

25 A I was a little nervous putting that down but I

1       also got in some trouble when I was younger and I had --  
2       it took forever to get in and get it taken care of and I  
3       was like, you know, I know I messed up and I know I did  
4       some things that I probably shouldn't have and I was  
5       really hoping for something, something that I did, I wish  
6       it went a little bit faster. It took a few months to get  
7       to where I hoped to be at, you know, within a month maybe,  
8       you know.

9               Q       Okay.

10              A       That was my concern.

11              Q       Was that experience what you referred to in the  
12       questionnaire?

13              A       Yes.

14              Q       And was that in Hennepin County?

15              A       Yes, correct.

16              Q       Can you tell me about that experience?

17              A       I was, I think I was 16 or 17 years old and I  
18       had a couple bad habits and hung out with the wrong crowd  
19       and I stole a stereo and some wheels off of a car and I  
20       learned the hard way, but my boss came and from the  
21       facility where all the things were taken from and helped  
22       me work out a type of a work program or a way to work out  
23       all the things that I did wrong off and I even spent some  
24       time detailing all the police cars and all kinds of other  
25       things, I mean this was a lot of work but it definitely



1       kicked me right in the pants and told me how to straighten  
2       up, so.

3           Q       Okay. One of your remarks, one of your last  
4       remarks in your questionnaire said you are prejudiced  
5       against people that do not have jobs and pay taxes?

6           A       Correct.

7           Q       Can you elaborate on that?

8           A       My family that I grew up with they didn't really  
9       have jobs and they didn't really have a lot of motivation,  
10      and the second I could get a job I went out and got one  
11      and I've had one ever since. My parents still don't have  
12      jobs, they are not really that outgoing and it's really  
13      disappointing. I don't talk to them much and it's just  
14      kind of something that, you know, whenever I hear that  
15      these folks or they just aren't really making the effort,  
16      I mean there is plenty of jobs to be had and it's really  
17      something that kind of bothers me.

18          Q       Then your remark if they did the crime they  
19      should do the time, can you elaborate on that for me?

20          A       I mean, I had, I definitely with the small  
21      things that I did that weren't very good, I definitely put  
22      in some time and effort and I deserved everything that I  
23      had coming to me because I really did, I mean I caused a  
24      lot of trouble. I did at that time and I deserved it.

25          Q       Okay. Has your experience either in the system,

1 your background, or like, you know, your opinions, have  
2 they created any kind of idea in your mind about whether  
3 or not Marvin Haynes has committed that offense or not?

4 A I don't know. I really don't know. I think, I  
5 agree I think it's innocent until he's proven guilty. I  
6 have no idea what happened, what really went on, but I'm  
7 curious to see the facts. I mean, I think he's innocent  
8 until proven guilty.

9 Q Okay. Tell me the toughest decision that you  
10 have had to make?

11 A Getting married, buying a home, you know,  
12 quitting drugs and drinking and things like that. Getting  
13 on the straight and narrow.

14 Q Okay.

15 MR. BENSON: Thank you.

16 Your Honor, we'll excuse Mr. Hagberg.

17 THE COURT: Mr. Hagberg, I'll ask you to  
18 check in with the jury office back downstairs and let  
19 them know that you are excused from this jury. Thank  
20 you very much.

21 MR. HAGBERG: Super. Thank you.

22 (Mr. Hagberg exits courtroom.)

23 Noon recess. The following proceedings occur at  
24 1:35 p.m.)

25 THE COURT: All right. We are ready for

1 Mr. Stadtherr. Stadtherr?

2 (Mr. Stadtherr enters the  
3 courtroom.)

4 THE COURT: Good afternoon. You want to  
5 raise your right hand and be sworn today?

6 (Mr. Stadtherr is sworn.)

7 THE COURT: Is it Stadtherr?

8 MR. STADTHERR: Stad-therr.

9 THE COURT: Stadtler?

10 MR. STADTHERR: Stad-therr.

11 THE COURT: Spell your last name for me.

12 MR. STADTHERR: S-T-A-D-T-H-E-R-R.

13 THE COURT: We want to make sure we've got  
14 the right spelling when you are on the list. Have  
15 you had a chance to think about your answers to these  
16 questions on the questionnaire since yesterday?

17 MR. STADTHERR: I answered one that I'm  
18 related to a police officer. I now know his name,  
19 his last name that was on there.

20 THE COURT: Okay.

21 MR. STADTHERR: It's Matt Klinary (ph.),  
22 and I do not know which --

23 THE COURT: Police department.

24 MR. STADTHERR: -- police department. It's  
25 one of the western burbs.

1 THE COURT: How are you related to him?

2 MR. STADTHERR: My niece's husband.

3 THE COURT: Okay. Anything else that you  
4 thought of that you want to add to any of your  
5 answers?

6 MR. STADTHERR: There was another one in  
7 there about knowing someone who had been a, related  
8 to someone that was a victim of a crime. I can't  
9 remember the exact question, but I do have a coworker  
10 whose brother was killed in a convenience store  
11 robbery.

12 THE COURT: Your coworker's brother. Was  
13 that here in the Minneapolis area?

14 MR. STADTHERR: It was on West 7th Street,  
15 St. Paul, a couple years back.

16 THE COURT: Couple years ago? Was somebody  
17 charged in that incident?

18 MR. STADTHERR: I do believe someone was  
19 but I don't know the particulars on it.

20 THE COURT: You didn't follow it?

21 MR. STADTHERR: No, I didn't.

22 THE COURT: Okay. Anything else you  
23 thought of?

24 MR. STADTHERR: Not that I can think of.

25 THE COURT: Okay. Mr. Benson has

1 laryngitis so he's going to approach you closer so  
2 you can hear his questions. He doesn't have a lot of  
3 voice today, okay?

4 MR. STADTHERR: Okay.

5 THE COURT: Go ahead, Mr. Benson.

6 MR. BENSON: Thank you, Your Honor.

7 BY MR. BENSON:

8 Q Good afternoon, sir. How long ago was the  
9 robbery involving your coworker's brother?

10 A I would guess three years maybe. I don't  
11 remember the exact date.

12 Q Okay. And what impact, if any, do you think  
13 that that would have when you listen to a case such as  
14 this one where there is an allegation of an attempted  
15 robbery?

16 A I'm not sure how much impact it would have. I  
17 mean it's, I'm --

18 Q Are you removed enough from that situation?

19 A I think so.

20 Q Okay. You also indicated you had a vacation  
21 that was scheduled for the first two weeks of September?

22 A Right.

23 Q Where are you going and when did you leave?

24 A We're going to leave right after Labor Day and  
25 we are going to Apostle Islands.

1 Q Where?

2 A Apostle Islands.

3 Q Okay.

4 A Northern Wisconsin.

5 Q Okay. And what arrangements have you made, you  
6 know, thus far with respect to that trip?

7 A We don't have reservations that we would be  
8 losing money on or anything.

9 Q Okay.

10 A September was why we picked it. Most people are  
11 through with vacation and it's easier to get in places.

12 Q Okay. Is this a yearly vacation or something  
13 that you --

14 A Usually the same time every year is when we take  
15 our vacation.

16 Q Okay.

17 A Our kids are grown so we try to go when people  
18 with kids are back to school.

19 Q Okay. We anticipate, as you see in the  
20 questionnaire this trial, that at least the testimony  
21 portion to go through late next week. The jury  
22 deliberations, that is going to be up to the jury. Do you  
23 have any concern that basically if you had to cancel some  
24 of your vacation plans or go later that would interfere  
25 with the, you know, your deliberations or the amount of

1 time you give to this case?

2 A I don't think so.

3 Q All right. I'm sorry, how long were you  
4 scheduled to be on vacation?

5 A Two weeks.

6 Q All right. Can you tell about, you said your  
7 in-laws had a home that was broken into?

8 A That was quite a few years ago, I would guess  
9 probably 15 or more.

10 Q Was it in Hennepin County?

11 A Ramsey County.

12 Q Ramsey County. Okay. Do you know if the police  
13 were called? If it was --

14 A Police were called. I don't even remember what  
15 was missing or anything.

16 Q Okay. All right. It sounds like the  
17 relationship to you, the person who is related who is a  
18 police officer, there will be police officers testifying  
19 in this trial. Do you have any concerns whatsoever that  
20 you may give a police officer or their testimony more  
21 weight because they are a police officer?

22 A I probably would, not because I'm related to one  
23 or anything but just because they are a person of  
24 authority.

25 Q Okay. Okay. So let's put it this way. If a

1 police officer were to take the stand and tell you  
2 something, would you be more inclined to believe the  
3 police officer is more likely to tell the truth than a  
4 civilian witness if they took the stand?

5 A I would think so.

6 MR. BENSON: Approach, Your Honor?

7 THE COURT: You may.

8 MR. FURNSTAHL: May I inquire?

9 THE COURT: Why don't you approach first?

10 MR. FURNSTAHL: Okay.

11 (Off-the record discussion at the  
12 bench out of hearing of Mr. Stadtherr.)

13 BY MR. BENSON:

14 Q Sir, if you were instructed by the Court that  
15 you are to take -- there's going to be a number of factors  
16 that that you are to consider in determining credibility  
17 of a witness, the fact that someone is a police officer or  
18 wears that badge or wears that uniform, that is not  
19 something that should be considered, you know, in and of  
20 itself that that person has more credibility. Could you  
21 follow the Court's instruction if you were to receive such  
22 an instruction?

23 A I think I could, yes.

24 Q Then I suppose just in short you would be able  
25 to set aside your own opinion as far as a police officer



1 being more trustworthy under oath and follow the Court's  
2 instruction, whatever that may be?

3 A I think I could, yes.

4 Q All right. Thank you.

5 MR. BENSON: One moment.

6 Your Honor, I'll excuse Mr. Stadtherr.

7 THE COURT: All right. Mr. Stadtherr, you  
8 are excused from this case. If you would please  
9 check in with the jury office downstairs. Thank you  
10 very much.

11 (Mr. Stadtherr exits. Mr. Guertin enters.)

12 THE COURT: Mr. Guertin, good afternoon.

13 MR. GUERTIN: Good afternoon.

14 THE COURT: Would you raise your right hand  
15 to be sworn please.

16 (Mr. Guertin is sworn.)

17 THE COURT: Go ahead and have a chair.

18 Mr. Guertin, is there anything that you answered  
19 on this questionnaire yesterday that you thought  
20 about and want to add to or change?

21 MR. GUERTIN: No, sir. No, Your Honor.

22 THE COURT: All right. How long ago was  
23 the incident where your sister was robbed?

24 MR. GUERTIN: Oh, I would say it was at  
25 least between eight and ten years ago.

1 THE COURT: Okay. Was anyone hurt in that  
2 incident?

3 MR. GUERTIN: Not that I know of.

4 THE COURT: Okay. All right. Mr. Benson  
5 is going to ask you some questions first and he's  
6 going to come close because he has laryngitis and  
7 does not have much of a voice today.

8 MR. GUERTIN: Okay.

9 THE COURT: Go ahead, Mr. Benson.

10 MR. BENSON: Thank you, Your Honor.

11 BY MR. BENSON:

12 Q Good afternoon.

13 A Good afternoon.

14 Q As far as the McDonalds' incident, the robbery,  
15 was anybody caught that you know of?

16 A Not that I know of, sir.

17 Q And it was your sister was actually --

18 A It was my sister. She was there.

19 Q Have you talked to her about that?

20 A Very briefly. She didn't go much into it. She  
21 just said they came in, they robbed, and they left. I  
22 believe they didn't, they weren't caught, so.

23 Q Was it by gunpoint?

24 A Yes, I believe.

25 Q Does she still talk about it today or anything?

1           A     No, no, I haven't heard much about it for  
2     awhile.

3           Q     Okay. And was that McDonald's in the Twin  
4     Cities?

5           A     Yes. It was in Osseo, Maple Grove.

6           Q     Okay. You also indicated that you have a friend  
7     that was, had a, like was surrounded with police officers?

8           A     He was, we were not -- he and a friend were  
9     leaving a concert from First Avenue, he was at the concert  
10    also and I had already made it to my car, and I can't  
11    remember the story, it was, you know, a few years ago, but  
12    he told me that the cops just came running from behind him  
13    and tackled him and kind of pushed him around a little bit  
14    and told him we saw you on camera doing this and he  
15    clearly hadn't, from what he told me, and so, and then --  
16    and I don't know what ended up with that either.

17          Q     Does that incident as it relate to you kind of  
18    skew the way you look at police officers?

19          A     Not really. I mean I look at it as everybody  
20    can make a mistake on their job and that's, you know, just  
21    a mistake someone made, so.

22          Q     You also indicated that you worked at a skate  
23    park?

24          A     Yup. I used to run a skate park at my church.

25          Q     How long ago was it broken into?

1           A     That was, including this summer, three summers  
2     ago and it was just some equipment was stolen from a park.

3           Q     Okay. And you came in after?

4           A     I came in the next day and noticed that it had  
5     been, you know, stolen and I called the police and made  
6     the report.

7           Q     Okay. All right. Satisfied at the response of  
8     the police officers?

9           A     He pretty much said, you know, we can't do  
10    nothing unless we see it, because we don't have cameras or  
11    anything. I don't have any evidence of it even being  
12    there in the first place, so.

13          Q     Okay. Couple things. You said that you lose  
14    focus easily?

15          A     Yeah. I just, I have ADD and that's something,  
16    you know, I've had my whole life but it's just kind of,  
17    you know, if stuff changes I can keep focused but that's,  
18    yeah.

19          Q     I want to go back to your sister for a moment.  
20    Did she have to give a description to the police?

21          A     I'm sure she did, yeah.

22          Q     Did you talk to her about that?

23          A     No.

24          Q     Do you ever talk to her about what she  
25    remembered?

1           A     She did tell me that they had masks so that's  
2 why she didn't see a face.

3           Q     All right. Couple more questions. What kind of  
4 band are you in?

5           A     I'm in kind of a rock funk band. Do a lot of  
6 covers and originals.

7           Q     And I saw you watch American Idol?

8           A     Yeah.

9           Q     Is that, there's this thing called the Rock Star  
10 and such thing. Have you seen that?

11          A     Yes. I saw the previews but I've never watched  
12 it.

13          Q     I'm just wondering if you like that better than  
14 American Idol.

15                Finally as you sit here right now and look at Mr.  
16 Haynes, look at Marvin, do you see him as an innocent  
17 person?

18          A     Yes.

19          Q     Can you hold the State to its burden of proof?

20          A     Pardon me?

21          Q     Can you hold the State to its burden of proof in  
22 this case?

23          A     Can I hold the State --

24          Q     Can you allow Mr. Haynes to maintain his  
25 innocence until and unless the State proves him guilty?

1 A Yes, definitely.

2 Q Any doubt in your mind?

3 A No. No.

4 MR. BENSON: We'll accept this juror, Your  
5 Honor.

6 THE COURT: Mr. Furnstahl.

7 MR. FURNSTAHL: Thank you.

8 BY MR. FURNSTAHL:

9 Q Good afternoon.

10 A Hey.

11 Q You are ADD. I appreciate you volunteering  
12 that. Tell me about how that might affect your ability to  
13 listen to the evidence in this case?

14 A I think it's more just my eyes wander, you know.  
15 I watch a lot, whatever is moving I start to watch it and  
16 so, I mean I've learned to control it. I'm 27. I've  
17 dealt with it since second grade, so.

18 Q Okay.

19 A But sometimes it does get the upper hand.

20 Q Do you take medication for it, or nothing?

21 A Not any more, no.

22 Q Are there certain things that might trigger when  
23 it's affecting you more than other times?

24 A If I don't get sleep, so I'll make sure I get  
25 sleep.

1           Q     Okay. You have an uncle that's a police  
2 officer?

3           A     Yes, sir.

4           Q     Do you have much contact with him?

5           A     Yes, very much. He's retired actually.

6           Q     Did he tell you about his career as a law  
7 enforcement officer?

8           A     Not a lot. He doesn't like to talk about it.  
9 He's very private about that job.

10          Q     Okay.

11          A     I'll correct myself. Only thing he does say is  
12 he completely, he will he never touch a firearm again  
13 because of the job.

14          Q     Why's that?

15          A     He doesn't like them. And he never gave me a  
16 reason why because that's what he told me when he retired,  
17 so.

18          Q     Okay. Now, there's a question here, have you  
19 formed any opinions as a result of your knowledge of any  
20 facts of this case. You said yes, "I will be hard because  
21 he is young." Did you mean "it will be hard?"

22          A     Yeah. I'm sorry. It will be hard.

23          Q     Tell me, elaborate on that for me if you would,  
24 please.

25          A     Well, you know, when we were introduced to him

1       yesterday and I read his age, and not thinking in my head  
2       if he's guilty or not, but just saying if I have to make  
3       that decision that's going to be pretty tough on myself,  
4       you know.

5               Q       Okay.

6               A       Knowing he's a minor.

7               Q       You were asked do you want to be a juror in this  
8       case. You answered both yes and no.

9               A       Um-hum.

10              Q       Did you answer the no because of the reason you  
11       just described?

12              A       Exactly, yes.

13              Q       Tell me how hard that's going to be for you.

14              A       Um, that's hard to answer. I mean, I've never  
15       been through this process.

16              Q       Since -- it's kind of unfair because we ask you  
17       questions in a vacuum.

18              A       Yeah.

19              Q       And we ask you to make predictions about  
20       yourself. But can you appreciate this is our only  
21       opportunity to decide if you are a good fit for this case  
22       as opposed to some other case?

23              A       I think it's something that, you know, I will  
24       think about for the rest of my life and I'm not sure if it  
25       will be something that burdens me, you know, but I will



1 definitely not forget it, that decision that I made, that  
2 I will make.

3 Q I'm assuming one of the things that will stick  
4 in your mind is the effect your decision might have on the  
5 defendant?

6 A Yes, sir.

7 Q If the judge were to instruct you that you  
8 cannot consider sympathy or the effect of your decision on  
9 anybody, are you going to be able -- and I need to know  
10 from your heart of hearts here -- are you going to be able  
11 to follow that instruction, or do you think you are going  
12 to have a problem?

13 A I will be able to follow it. It will be hard  
14 but I will be able to follow it, yes.

15 Q Okay. You mentioned that there's a couple areas  
16 in Minneapolis that you prefer not to go. Have you had  
17 any experience in those areas, or just something that you  
18 heard from the news?

19 A No, I had a friend that lived off of Dowling and  
20 we would go hang out at her house a lot, and there was a  
21 couple times just, you know, walking across the street,  
22 you know, we would be yelled at and, you know, kind of  
23 trying to be scared off or whatever.

24 Q Uh-huh.

25 A And there was one evening where her car got

1 stomped on.

2 Q Okay.

3 A And, you know, it was just right outside her  
4 house, and so.

5 Q Okay. Thank you, sir.

6 MR. FURNSTAHL: Your Honor, the State will  
7 exercise a peremptory.

8 THE COURT: All right. Mr. Guertin, you  
9 are excused from this case. If you would go back  
10 downstairs and check in with the jury office before  
11 you go anywhere else. Okay?

12 MR. GUERTIN: Okay. Thank you.

13 THE COURT: Thank you very much.

14 (Mr. Guertin exits courtroom.)

15 THE COURT: You were talking over the  
16 witness's answer on this last one. Just make sure  
17 you let him answer before you ask the next question.

18 (Mr. Smith enters courtroom.)

19 THE COURT: Good afternoon, Mr. Smith.  
20 Step right up there.

21 MR. SMITH: Okay. Thank you.

22 THE COURT: Go ahead and set your water  
23 down and raise your right hand to be sworn today.

24 (Mr. Smith is sworn.)

25 THE COURT: Go ahead and have a chair.

1 MR. SMITH: Thank you.

2 THE COURT: Mr. Smith, we have your answers  
3 to the questionnaire you were given yesterday.

4 MR. SMITH: Yes, sir.

5 THE COURT: Anything that you thought of  
6 since answering these questions yesterday that you  
7 would like to add or change to your answers to these  
8 questions?

9 MR. SMITH: Nothing that I can think of  
10 other than as far as the duration of the trial, I do  
11 have a trip scheduled out of the country, scheduled  
12 to start on September 17th. It's not a life or death  
13 trip but it's, it's part of a president's club trip  
14 that I qualify for.

15 THE COURT: YPO? Or what's the name of the  
16 organization?

17 MR. SMITH: Well, I'm with a company called  
18 BI and it's our president's club trip.

19 THE COURT: I see. Well, I can practically  
20 guarantee you that this should not interfere with  
21 that.

22 MR. SMITH: Okay. All right.

23 THE COURT: But the attorneys think that  
24 they will be done with the case next week.

25 MR. SMITH: Okay.

1 THE COURT: Then it will up to the jury to  
2 deliberate and make a decision. That part we have no  
3 control over.

4 MR. SMITH: That's fine. Thank you.

5 THE COURT: Mr. Benson is go going to ask  
6 you some questions now and he has laryngitis so you  
7 are going to have to bear with him a little bit  
8 because he doesn't have a lot of voice left today.

9 MR. SMITH: All right.

10 BY MR. BENSON:

11 Q Good afternoon, sir.

12 A Good afternoon to you as well.

13 Q You indicated you were a foreman on a jury  
14 before?

15 A Yes, sir.

16 Q How long ago was that?

17 A I think that was about six or seven years ago.

18 Q Was it a state case or a federal case?

19 A Well, it was a -- it was in these, it was in  
20 this level of courtroom here, yes.

21 Q Okay. What did you think of that experience?

22 A I was one of those 65 percent that they say  
23 didn't really want to do this kind of stuff and then  
24 afterwards I thought the process was -- I enjoyed it,  
25 frankly. When I got my jury summons for this visit I

1 thought good, I can be part of this, part of the process.

2 Q Okay.

3 A I think it's good.

4 Q Okay. You indicated in your questionnaire that  
5 you would want the same thing if you were on trial.

6 A Exactly.

7 Q Can you just elaborate on that a little bit?

8 A Well, just, I appreciated the process that you  
9 are presumed innocent until proven guilty and -- by your  
10 peers, and I thought the way the lawyers went about their  
11 process of bringing witnesses and asking questions, I  
12 thought that was all fair and I just want, if something  
13 ever did happen to me I would want to be able to have that  
14 same fairness accorded to me.

15 Q Okay. What do you think your experience as a  
16 foreman, how would it effect the way you participate in  
17 the jury in this case?

18 A Well, part of my, maybe it's a complicated  
19 answer, but part of my job is I have a team of 17 people  
20 that I lead. They are all very dynamic, intriguing  
21 individuals, they are all thoroughbreds, and so my job  
22 everyday is trying to elicit the best facts and  
23 information I can out of the people that I support so I  
24 can make good decisions. And as part of being a jury  
25 foreman, the experience that I had on the last one was we

1       went around the table and had everybody speak their  
2       opinion, or at least that's what I had them do before we  
3       did a vote and so that everybody had a fair voice in what  
4       was going on. And that's kind of what I do on my job  
5       everyday so to me it's, that's how I already operate on a  
6       day-to-day basis. So does that answer your question?

7           Q     Yeah, that answers it. You're retired army, is  
8       that right?

9           A     I'm not retired, no, I just, I was honorably  
10      discharged. I only spent two years in the army, right.

11          Q     Okay. You are a travel agent now?

12          A     Yes, sir.

13          Q     And have you done that, like that position for  
14      your entire career?

15          A     Pretty much. I've been in the group travel  
16      business and traveled around the world for 35 years, so.  
17      Been to many countries, seen many cultures.

18          Q     With the case that you were on, it was drug  
19      dealing and prostitution?

20          A     Exactly, yes.

21          Q     Do you foresee any problem with the case of this  
22      magnitude or this nature, first degree murder, any  
23      concerns about listening to this type of evidence on this  
24      type of a charge?

25          A     I don't think I have a problem with that, no.

1 Q Okay. I think I know your answer, but as you  
2 sit here do you feel that you can give Marvin Haynes a  
3 fair trial?

4 A I think so. I think everybody is due a fair  
5 trial. Absolutely. He -- society owes him that, humanity  
6 owes him that.

7 Q Okay. Thank you, sir.

8 A Thank you.

9 MR. BENSON: Your Honor, we'll accept this  
10 juror.

11 THE COURT: Okay. Mr. Furnstahl.

12 BY MR. FURNSTAHL:

13 Q Good afternoon.

14 A Good afternoon.

15 Q What is the president's club that you referenced  
16 before?

17 A My company is called BI, and we handle group  
18 travel and meetings and incentive programs for Fortune 500  
19 companies, and part of my personal goals in my company is  
20 to sell a certain volume worth of business and if you  
21 achieve that then you get to go on what we call our  
22 president's club trip for BI salespeople, and we have two  
23 hundred people going on an Alaskan cruise starting  
24 September 17th and I earned the trip and so my spouse and  
25 I are going on this trip and the company pays for it, so.

1 Me and my peers are going on this program. And we did  
2 handle, I have handled Young President's Organization,  
3 YPO, in the past, so I'm very familiar with that  
4 organization as well.

5 Q What's that?

6 A YPO, Young President's Organization. It's an  
7 organization of, I think the age criteria is you can't be  
8 over 35 years old and you are a president of organizations  
9 and they have council meetings that they go on and stuff,  
10 so my company handles the air and their hotel rooms and  
11 food and beverage and meeting space, those kinds of  
12 things.

13 Q Okay. Let me ask you about your prior jury  
14 experience.

15 A Yes, sir.

16 Q You said that you enjoyed it a lot, correct?

17 A I appreciated the process. I don't know, you  
18 know, "enjoyment," I guess everybody has a different  
19 meaning for the word "enjoyment" but I, I was enthralled  
20 by it. I was compelled to listen and I was very intrigued  
21 by it. I was excited about getting in here and sitting in  
22 that chair and listening to the proceedings and being part  
23 of it.

24 Q What was enthralling about it?

25 A Just seeing the process that the lawyers went



1 through to make sure that the facts were coming out as  
2 best as possible for either the prosecution or the  
3 defense.

4 Q Okay. You said that case -- was it one case  
5 that you were on?

6 A Yeah, it was one case.

7 Q Okay. And it had to do with drug dealing and  
8 prostitution?

9 A There were multiple charges for the same  
10 individual, yes.

11 Q I see. Were there, so were there multiple young  
12 women coming in testifying about the prostitution aspect  
13 of the case?

14 A No. The basic facts of the case is there was a  
15 young man who, who at the same time he was offering up a  
16 lady to an undercover police officer.

17 Q I see.

18 A Who also offered to sell him some cocaine.

19 Q I see.

20 A Crack. Excuse me.

21 Q Go ahead. I'm sorry.

22 A And so that, so the witnesses for the  
23 prosecution were predominantly undercover officers that  
24 were either on radios or they observed the event from  
25 another car close by, that kind of stuff.

1           Q     You mentioned that they were on radios. Were  
2 some of these conversations with the defendant in that  
3 case, were they tape-recorded?

4           A     I don't remember their being tape-recorded. I  
5 know they were on some type of a radio phone that was in  
6 their cars.

7           Q     Okay.

8           A     Um, I don't remember, I don't specifically  
9 remember that there was any tape-recording done.

10          Q     Was this a situation where the credibility or  
11 believability of the officers were questioned?

12          A     Yes. The credibility, the believability was  
13 questioned by the defense attorney. The believability of  
14 the witness officer that was in a car that was 50 feet  
15 away, I guess you would call it a stakeout type of car, he  
16 was incredibly credible in his testimony. That was very  
17 difficult for the defense to shoot any holes in what he  
18 was saying.

19          Q     Okay. Now, you understand that every person has  
20 a fifth amendment right not to incriminate themselves,  
21 correct?

22          A     Exactly.

23          Q     I want to ask you a question about whether or  
24 not the defendant testified in that case, but from that I  
25 don't want you to assume that this defendant is required

1 to testify. Do you understand where I'm going?

2 A I understand that.

3 Q Any question about that? Because that's very  
4 important.

5 A I have no question, I fully understand his fifth  
6 amendment rights.

7 Q Okay. Did the defendant in that case testify?

8 A No.

9 Q Okay. When you were deliberating in that case,  
10 did you have some concerns about the effect that your  
11 decision would have on the defendant in that case?

12 A I think they told us that that was not an issue  
13 that we should think about and so we didn't discuss that.

14 Q Okay.

15 A I don't remember it being part of our discussion  
16 at any point in time.

17 Q How about you personally?

18 A Me personally?

19 Q Yeah.

20 A I think in those kind of terms about that, I  
21 guess it had to all do with the admonishments that the  
22 judge had given us about the law, making decisions as they  
23 related to the law.

24 Q All right. So it sounds like that you very  
25 closely adhered to the judge's instructions in that case?

1 A Yes.

2 Q All right.

3 A I believe we did.

4 Q Okay. Now, I'm assuming in that case that the  
5 judge instructed you something along the lines that you  
6 have to base your decision solely on the evidence and  
7 can't be concerned about the effect that your decision has  
8 on anything or base your decision on sympathy and so  
9 forth?

10 A I believe that's what I -- in essence what you  
11 just said is basically what I remember, yes.

12 Q Okay. Now, in this case, a concern I have is  
13 the youthful appearance of the defendant. You know from  
14 your questionnaire that he's 16 and a half years old?

15 A Correct.

16 Q What affect will his age and/or his appearance  
17 have on your ability to base a decision on the evidence  
18 should you be called to be a juror in this case?

19 A Well, I think that all falls under the same  
20 category that I don't think you can take that into  
21 consideration. I would presume that if he's in an adult  
22 court then he's treated as an adult.

23 Q Okay. All right. You mentioned that you're  
24 currently supervising 17 people?

25 A Yes, sir.

1           Q     And part of your responsibilities include  
2 hiring, firing and/or disciplining?

3           A     Yes, sir.

4           Q     Have you had a situation in the past where  
5 you've had to either discipline or fire someone?

6           A     Yes, sir.

7           Q     How did you feel about that?

8           A     I felt that in the end result, although it's not  
9 a fun process, in the end result it was the best thing for  
10 the individual and our company that, that our relationship  
11 be terminated.

12          Q     Okay. You mentioned that you had a couple minor  
13 speeding tickets?

14          A     Yes, sir.

15          Q     I take it nothing about those situations is  
16 going to affect your ability to be fair to both sides?

17          A     I earned the tickets.

18          Q     You also said that -- and counsel touched on  
19 this -- you said in response to one of the questions, you  
20 said I consider it a duty to serve and hope for a similar  
21 treatment if I'm ever charged for a crime?

22          A     Yes, sir.

23          Q     Could you elaborate on what you meant on the  
24 latter part of that statement about how you would hope for  
25 similar treatment if you were charged with a crime?

1           A     Well, like I, like maybe I was trying to  
2     communicate I appreciate our system of, our judicial  
3     system, and I guess it was more of a statement about me  
4     appreciating our judicial system.

5           Q     Okay.

6           A     And I can't elaborate more than that. It's not  
7     like I have any impending litigation going against me or  
8     something like that.

9           Q     What I was wondering is whether or not you were  
10    kind of putting yourself in the defendant's position as  
11    opposed to just having appreciation for the process.

12          A     It's an appreciation for the process. Like I  
13    said earlier, I mean, I look forward, as I do with my job,  
14    I look forward to going to my job, I look forward to  
15    coming in and sitting in that seat and being part of the  
16    process and playing a role in our society.

17          Q     Okay. Mr. Smith, did you have any reaction when  
18    you found out this time when you came in that this was a  
19    murder case, first degree murder case?

20          A     No, I had no reaction one way or the other. I  
21    figure when -- actually my first reaction when they  
22    announced that there were going to be 50 jurors or panel  
23    members, I thought well this is probably a fairly big  
24    trial, it's probably a fairly high level trial and that,  
25    being that it's a murder case, that confirmed it.

1 Q Okay.

2 A So I really wasn't surprised when you guys said  
3 what it was. I was surprised by the panel members when  
4 they announced there would be 50. It was even in the jury  
5 room all of a sudden there was a lot of murmuring going  
6 on, what's all that about. I think that's kind of normal.

7 Q Yeah. Is there anything about the prospect of  
8 being a juror on a first degree murder case that is  
9 intimidating or overwhelming to you in any way, shape, or  
10 form?

11 A I think again it's all about the law and doing  
12 the right thing. And I think you, like everyday on my job  
13 I think everyday we have to step up and do the right thing  
14 and so I guess on one hand I feel privileged that I have  
15 maybe the opportunity to step up and do the right thing.

16 Q Okay.

17 A Whatever that right thing is.

18 Q All right. You'll base your decision on the  
19 evidence and let the chips fall where they may.

20 A Yes, sir.

21 Q Okay. Have you had much contact with north  
22 Minneapolis?

23 A Not a lot. Some. I mean, I used to travel  
24 those areas when I was younger. I haven't a lot. Now I  
25 live up in Maple Grove. We get downtown occasionally. I

1 get -- we dine occasionally along Hennepin Avenue and  
2 places along there, so.

3 Q All right. Do you have an impression about what  
4 the neighborhoods in north Minneapolis are like based upon  
5 either your knowledge of it or what's been presented in  
6 the media?

7 A Well, my impression is that it's maybe more of a  
8 social -- excuse me, more of an economically challenged  
9 area.

10 Q Okay.

11 A My daughter is, she just earned her master's in  
12 urban development from Mankato State. She's been on  
13 mission trips to Chicago and in Minneapolis because she  
14 wants to do something to help in those areas, so I have a  
15 feeling for it from that respect that, you know, we  
16 perhaps all can maybe do a little more to help on those  
17 kinds of things. But that's my basic impression is it's  
18 an economic issue that is something that we maybe in time  
19 can deal with.

20 Q Do you have any judgmental feelings towards  
21 people that come from a different socioeconomic background  
22 than yourself?

23 A No, I don't think so. When I was in the army, a  
24 number of my friends in the army were black. My  
25 son-in-law is Mexican. There are a number of members of



1 the company that I work it -- BI has a, we have a  
2 diversity policy where we try all we can to do to hire  
3 minorities. My bowling team, I have a young man from  
4 India is on my team, there's a lady who is black that's on  
5 my bowling team. We all have a good time so I have no  
6 problem with that.

7 Q Okay. So you can appreciate how important that  
8 quality is in a forum like this?

9 A Yeah. Has to be.

10 Q Okay. And do you think that -- well, if you  
11 were to witness a crime, if you were to witness it, what  
12 would you do?

13 A I don't think I understand the question.

14 Q Well, what I'm wondering is would you call the  
15 police?

16 A Well, I would hope so.

17 Q Why would you call the police?

18 A If I witnessed a crime?

19 Q If you witnessed a crime, yes. If you were  
20 driving down the street and saw somebody sticking up  
21 another person, what would you do?

22 A I would probably call the police. I would like  
23 call 911 because there's an emergency going on.

24 Q You would want to take steps to make sure that  
25 you are not in danger, but you would --

1           A     Well, there's -- it's not something that I  
2     should try to personally do something about. I would  
3     think that people that are trained in how to do that would  
4     be your first call for help.

5           Q     Okay. Now, do you recognize that some people  
6     might not have the same reaction as you? That is to say  
7     they might not call the police or do something to help?

8           A     Fear for their own life perhaps.

9           Q     Could there be other reasons?

10          A     I suppose there's all kinds of hypothetical  
11     reasons. A relative, you know.

12          Q     Okay.

13          A     I suppose there's any number of those.

14          Q     Okay.

15          A     But I certainly can understand other people may  
16     have reasons why they would not get involved.

17          Q     Okay. Do you know anybody, and this has nothing  
18     to do with this case, do you know anybody who has ever  
19     been the victim of say, for example, a domestic assault?

20          A     There was, I guess that's one answer I probably  
21     didn't, I probably didn't put on my survey when I thought  
22     about it later and I didn't think about it when you asked  
23     me here just a few moments ago. One of the ladies who  
24     worked for me maybe 25 years ago, her husband abused her  
25     and she would come to work once in awhile and she would

1 have a scar or a bruise or something.

2 Q Have you ever heard of, and just using that as  
3 an example, it's got nothing to do with this case, but  
4 have you ever heard of a situation, for example a domestic  
5 assault case, where the alleged victim has recanted a  
6 statement they had given to the police?

7 A Specifically one like that?

8 Q Yes.

9 A I can imagine it happening, but I don't  
10 specifically remember that at any juncture, no.

11 Q You mentioned you could imagine that happening.  
12 Given that kind of a scenario where you can imagine that  
13 happening, do you have any kind of opinions or feelings  
14 about people who make a statement and later recant?

15 A Okay. Now you are asking me to guess.

16 Q Um-hum.

17 A I'm, I'm guessing that okay, if somebody felt  
18 that, okay, well I'll, instead of saying something bad  
19 about this person who has hit me, maybe I caused him to  
20 hit me and therefore I'm part of the problem so I'm not  
21 going to say anything.

22 Q Or maybe --

23 A Or I'll recant what I said now that I have  
24 remorse about saying something bad about somebody, now I'm  
25 going to take it back and say no I'm not. I can see how

1        maybe that can happen.

2            Q        What I'm wondering is this. Looking at the kind  
3        of person you are, if you are faced with a situation where  
4        you have somebody who says something and then later on  
5        they recant and you are asked to decide which of those two  
6        statements is the truth, do you think you are the type of  
7        person that can search for the truth and figure out what  
8        the truth is in those two statements?

9            A        Well, in my workplace I have a number of people  
10       that I have to sometimes figure out what it is that they  
11       mean versus what it is that they are saying. I have to  
12       make decisions everyday on a number of things and so I, I  
13       dig for as many facts as I can get to ultimately try to  
14       come up with the right decision. And sometimes, sometimes  
15       unfortunately the best thing you've got to go on is your  
16       gut.

17           Q        All right. In your prior jury experience, did  
18       you rely on your common sense to make the kinds of  
19       decisions that you had to make there?

20           A        I think it served me well in how we actually  
21       functioned and worked the jury. Or, excuse me, not  
22       worked, but how we, how we -- I had everybody say what it  
23       was that, you know, tell me what your thoughts are, and  
24       then when it got around to me and I was, I kind of did it  
25       like I do with my team, I reserve my comments for last and

1 I said well basically here's what I'm hearing all you say  
2 and here's what my thoughts are that tie into that, I  
3 think this fact supports this, that fact supports that,  
4 what this officer said, yada-yada. I think I'm able to do  
5 that.

6 Q Okay. What I'm hearing from you, Mr. Smith, is  
7 that you are confident that you can be a fair juror to  
8 both sides. Is that a correct statement?

9 A I desire to be a fair juror to both sides.  
10 That's the way our system is built. Like I said earlier,  
11 I would want that for myself.

12 Q If at the close of the evidence you were not  
13 satisfied that I proved this case, the verdict then is not  
14 guilty, correct?

15 A Correct.

16 Q But if at the close of the evidence you are  
17 satisfied that the State has proved its case, can you  
18 convict on a charge of first degree murder?

19 A Yes.

20 Q Is there any doubt in your mind, sir?

21 A No doubt.

22 Q Thank you, sir.

23 MR. FURNSTAHL: Your Honor, we accept Mr.  
24 Smith.

25 THE COURT: Okay, Mr. Smith, you are going

1 to serve on this jury. I'm going to excuse you now  
2 and I'll have you come back here Monday morning to  
3 this courtroom at about five to nine, and remain in  
4 the hallway until the clerk comes out to get you,  
5 okay?

6 MR. SMITH: So Monday, do I need to report  
7 back down to the jury pool?

8 THE COURT: No, you do not.

9 MR. SMITH: So I'm off until Monday?

10 THE COURT: You are.

11 MR. SMITH: Okay. All right. Thank you.

12 THE COURT: Thank you.

13 MR. SMITH: Thank you very much, gentlemen.

14 (Mr. Smith exits courtroom.

15 Mr. Sorensen enters.)

16 THE COURT: Good afternoon, Mr. Sorensen.

17 MR. SORENSEN: Good afternoon.

18 THE COURT: How are you?

19 MR. SÖRENSEN: Good.

20 (Juror is sworn.)

21 THE COURT: Go ahead and have a seat. Mr.  
22 Sorenson, we have the questionnaire that you filled  
23 out yesterday. Is there anything that you thought of  
24 overnight that you would like to add or change to the  
25 answers you made on there?

1 MR. SORENSEN: No.

2 THE COURT: No? Okay. Now, Mr. Benson is  
3 going to ask you some questions first on this case  
4 and he has laryngitis so he's got a fairly soft voice  
5 today so he's going to do the best he can so you can  
6 hear him, all right?

7 MR. SORENSEN: Yup.

8 THE COURT: Go ahead, Mr. Benson.

9 MR. BENSON: Thank you, Your Honor.

10 BY MR. BENSON:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Can you elaborate a little bit on what you do?

14 A Yeah. I'm a part-owner, there's four partners  
15 in an executive search firm, kind of mid level. We place  
16 sales reps, sales managers, accounting finances people as  
17 well as IT professionals.

18 Q Okay.

19 A So there's 35 employees. We are headquartered  
20 here so I'm manager of that office. Part-owner.

21 Q Okay. So if you are selected to serve on this  
22 jury, is that going to unduly interfere with your work and  
23 what you do on a daily basis?

24 A No.

25 Q What were your thoughts when you found out that

1       you were selected to be on a panel for a first degree  
2       murder case?

3           A       Um, didn't really have a lot of thoughts either  
4       way. I mean, obviously you get back to the office, people  
5       are asking questions and obviously you can't answer  
6       anything but, you know, I think, you know, it's -- if  
7       picked to do it that's what I'm here to do.

8           Q       Okay. Have you made any -- so after hearing the  
9       charge and -- or like three charges and looking around the  
10      courtroom at Mr. Haynes, have you made any judgments about  
11      the case?

12          A       No.

13          Q       As you sit here right now, you look at Mr.  
14      Haynes, do you see an innocent person?

15          A       Yes.

16          Q       And can you hold the State of Minnesota to its  
17      burden of proof?

18          A       Yes.

19          Q       Okay. And do you think it's fair that the State  
20      bears the burden of proof in a criminal case?

21          A       Yes.

22          Q       Tell me in your own words why that is? Why do  
23      you think that's fair?

24          A       I think the State's got to prove without -- I  
25      mean, there can be a fraction of an inch that somebody is,



1       you know, guilty, and I think it's the State's  
2       responsibility to prove that.

3           Q     Okay. Thank you. And the Court is going to  
4       instruct you on the legal standard beyond a reasonable  
5       doubt, but you can actually hold the State to its burden,  
6       right?

7           A     Yes.

8           Q     All right. This is your first jury service?

9           A     Correct.

10          Q     What do you think about working with 11 other  
11       people to reach a decision in a criminal case?

12          A     I don't see it as an issue.

13          Q     All right. Tell me this: In the context of  
14       decision making, like say there's a range of people,  
15       there's some people that sit pretty much in the background  
16       until such time as they feel like they want to speak or  
17       really feel they need to speak, other people are at the  
18       other end of the range. Like an Alpha person or a person  
19       that takes over a discussion.

20          A     Yeah.

21          Q     Where do you picture yourself within a jury like  
22       that?

23          A     I would say probably top 20 percent.

24          Q     Fair to say that's where you fit yourself in  
25       your actual life?

1           A     Yeah. I would say probably top ten, top five.

2           Q     I believe you have some relationship or  
3 connection to a law enforcement officer?

4           A     I wouldn't say a relationship but the question  
5 asked if you know anybody that's an officer, and I know a  
6 guy I went to high school with, wasn't a friend but I know  
7 he works for the police department.

8           Q     Okay. So have you talked to him about his work  
9 at all?

10          A     No, no. No. I've probably seen him maybe three  
11 times, four times since high school which has been  
12 15 years ago.

13          Q     Okay. During the course of this trial the Court  
14 is going to give you an instruction on, you know, what  
15 factors you look for in determining the credibility of  
16 witnesses.

17          A     Um-hum.

18          Q     And I imagine that something you are going to  
19 use is your own common sense and experiences, but the  
20 judge is going to give you some guidelines or things to  
21 look for. You are going to hear testimony from police  
22 officers, you are going to hear testimony from regular  
23 civilians. Is there any part of you that would gave more  
24 weight to the testimony of a police officer than you would  
25 a normal person or a civilian person?

1 A No.

2 Q Okay. And basically what I'm getting at is the  
3 badge and the uniform and everything else, that doesn't  
4 give someone like greater --

5 A No.

6 Q -- like the greater ability to tell the truth?

7 A Absolutely not.

8 Q And can you foresee or can you think of any  
9 circumstances where a police officer could make a mistake?

10 A Yeah.

11 Q All right. And individual police officers, some  
12 can be more truthful than others, some can be less  
13 truthful, just like a normal person, is that fair to say?

14 A Yes.

15 Q All right. Tell me this: What's the most  
16 important decision you've made in your life? Or the  
17 toughest decision?

18 A Um, probably deciding to have a kid. Just, you  
19 know, just, you know, just being a selfish, you know,  
20 person just knowing that, you know, if you are going to  
21 bring a child in the world that, you know, you have to  
22 think of somebody besides just yourself. Second probably  
23 deciding to tie the knot and get married.

24 Q All right. As you sit here, I think the judge  
25 probably asked you, you didn't fill out too many things in

1 the questionnaire as far as affirmative responses?

2 A Correct.

3 Q As you sit here do you recall anyone close to  
4 you who has ever been personally threatened or physically  
5 threatened?

6 A No.

7 Q Is there -- so as you sit here there's nothing  
8 else, no other information you think that I would need to  
9 make a decision on whether you will be a good juror?

10 A No.

11 Q How did you respond as far as whether you wanted  
12 to be a juror?

13 A I put yes.

14 Q Can you tell me why that is?

15 A I guess, you know, the -- it's more of there was  
16 no in-between. There wasn't a no, there wasn't a yes, I  
17 guess. I would say if chosen that I'm a juror, I think  
18 it's my duty and my responsibility to, you know, go  
19 forward with it so, you know, that's why I put yes.  
20 That's why I didn't put no.

21 Q All right. Thank you, sir.

22 A Yup.

23 MR. BENSON: Your Honor, we'll accept Mr.  
24 Sorenson.

25 THE COURT: Okay. Mr. Furnstahl.

1 BY MR. FURNSTAHL:

2 Q Good afternoon.

3 A Hi.

4 Q You mentioned in your job you have supervisory  
5 responsibilities that includes hiring, firing, and  
6 disciplining?

7 A Yup.

8 Q Have you ever had to fire someone?

9 A I have -- fortunately this is a new company and,  
10 you know, we've been pretty lucky. We've not had to fire  
11 anybody yet.

12 Q Have you disciplined somebody?

13 A Yes.

14 Q How did you feel about doing that?

15 A Fine. I mean, it was basically in our line of  
16 work it's a straight commission job and I think, you know,  
17 you don't get paid unless you perform and if, you know, we  
18 put somebody on a 30-day plan it's for the best of the  
19 employee and the best of the company that if you are not  
20 doing that well and they know it and they have 30 days to  
21 improve or decide to do something else.

22 Q In this case if you are asked to be a juror the  
23 judge will instruct you to base your decision solely and  
24 completely on the evidence and nothing else. Will you be  
25 able to follow that instruction?

1 A Yes.

2 Q You recognize -- there's a question in the  
3 questionnaire, as a matter of fact, do you recognize the  
4 defendant is a person of rather young years?

5 A Um-hum.

6 Q And he looks young, right?

7 A Yup.

8 Q Is that going to be a factor in making your  
9 decision?

10 A No.

11 Q Appreciate how important that is?

12 A Yes.

13 Q In your questionnaire you said that you or your  
14 family is a member of Compassion International?

15 A Correct.

16 Q Is that you, or?

17 A My wife and me, yup.

18 Q What is that?

19 A That's just, it's where we sponsor a child  
20 that's overseas. Basically just give, you know, I think  
21 \$25, \$30 a month just for food, supplies, and whatnot.

22 Q Okay. I see you had some minor speeding  
23 violations and an underage drinking thing?

24 A Correct.

25 Q Nothing about those experiences that's going to

1       affect your ability to be fair?

2           A     No.

3           Q     No grudge about cops or anything like that?

4           A     No.

5           Q     Did you have any particular reaction when you  
6       found out this was a murder case?

7           A     Not really.

8           Q     Nothing about -- if I can fairly well predict --  
9       nothing about the prospect of making a decision in a first  
10      degree murder case that is intimidating or overwhelming to  
11      you?

12          A     To be honest, I didn't really -- before I even  
13      got here, never been here, never knew what to expect, you  
14      know, so I can't say I had really thought about it.

15          Q     Okay. Here's the thing I want to know. I mean,  
16      it's common sense for people to recognize that your  
17      decision in a case like this is going to affect somebody,  
18      but if that gets involved in the decision making process  
19      you might not be basing a decision solely and completely  
20      on the evidence which is what we ask you to do here. So  
21      while it's common that you have those feelings, you have  
22      to recognize them and set them aside, compartmentalize  
23      them, if you will, and base your decision only on the  
24      evidence. Will you be able to do that?

25          A     Yes.

1           Q     And in here there are two judges, the judge of  
2     the facts and the judge of the law.  Wherever we have  
3     disputes or questions about the law we look to Judge  
4     Blaeser to resolve those disputes and we all must abide by  
5     his decision.  Are you willing to follow the judge's  
6     directions on the law?

7           A     Yes.

8           Q     You've heard the phrase "proof beyond a  
9     reasonable doubt" before?

10          A     Yes.

11          Q     I don't want -- I just want a yes or no answer  
12     to this next question, but have you ever heard a  
13     definition or have you started to conceptualize a  
14     definition of that phrase, "proof beyond a reasonable  
15     doubt?"

16          A     Can you rephrase that question again?

17          Q     Sure.  Again I just want a yes or no answer.  
18     Have you ever heard a definition applied to that phrase or  
19     have you started to conceptualize what that means?

20          A     I would say the latter.

21          Q     Okay.  If what you have conceptualized --  
22     understand that's a definition --

23          A     Correct.

24          Q     -- that the judge will give you.  So if your  
25     definition differs from the judge in any way, shape, or



1 form, can you set yours aside and use the judge's  
2 definition?

3 A Yes.

4 Q Appreciate how important that is?

5 A Yes.

6 Q All right. Do you have much -- I don't recall.

7 What did you say, do you have much contact with guns?

8 A No.

9 Q Do you know what a revolver is as opposed to a  
10 semiautomatic?

11 A No.

12 Q Any contact in your life with north Minneapolis?

13 A No.

14 Q Any impression about that area?

15 A No.

16 Q If you saw a crime being committed, what would  
17 you do?

18 A Call 911.

19 Q Why would you do that?

20 A The right thing to do.

21 Q Okay. Do you recognize that not everybody has  
22 the same kind of opinion as you do?

23 A Yes, absolutely.

24 Q What would be some reasons why people might not  
25 want to get involved?

1           A     Scared, too much work, turn their head, easy  
2     thing to do.

3           Q     All right. Have you ever experienced a  
4     startling situation?

5           A     No.

6           Q     Are you open to the prospect that people who  
7     experience a startling situation can accurately recount or  
8     describe what occurred?

9           A     Yes.

10          Q     Do you think, for example, somebody sticking a  
11     gun in your face might have an impression on you? Might  
12     leave an impression?

13          A     Say that again. I'm sorry, I didn't understand  
14     your question.

15          Q     For example, do you think someone sticking a gun  
16     in your face might leave an impression?

17          A     Yes.

18          Q     Have you ever heard of situations where a person  
19     has said something initially and then later recants that  
20     story, changes their mind, tells a different story?

21          A     Yes.

22          Q     Do you think that you are the kind of person  
23     that in a situation like that where you have one  
24     statement, one moment, and then sometime later for  
25     whatever reason you have another statement that's 180

1 degrees different from the first one, are you the kind of  
2 person that thinks you can search for the truth in those  
3 two statements and determine what the truth is?

4 A Yes, absolutely.

5 Q All right. Can you appreciate that that might  
6 be something we ask you to do in this situation?

7 A Yes.

8 Q Would that surprise you?

9 A No.

10 Q What are your feelings about cops, if you have  
11 any feelings?

12 A I think they are -- I really don't. I've got a  
13 few minor tickets and I have no feelings good or bad about  
14 them. Their job is just no different than mine, you know.  
15 It's a career, they get paid to do what they do and my job  
16 is to find people placements and their job is to, you  
17 know, make the streets safe and do their job.

18 Q Are you confident that you can be a fair juror  
19 to both sides?

20 A Yes.

21 Q So if at the close of the evidence you are not  
22 satisfied that I proved the case the verdict is not  
23 guilty, right?

24 A Yes.

25 Q But if at the close of the evidence you are

1 satisfied that I proved this case, can you convict on a  
2 charge of first degree murder?

3 A Yes.

4 Q Any doubt in your mind, sir?

5 A No.

6 MR. FURNSTAHL: We will accept Mr.  
7 Sorenson, Your Honor.

8 THE COURT: Okay. Mr. Sorensen, you will  
9 be seated on this jury. I'm going to excuse you now.  
10 You can go home and I'll have you come back at about  
11 five to nine on Monday morning to this courtroom  
12 outside and remain out there until the clerk comes  
13 out to get you.

14 MR. SORENSON: Okay.

15 (Mr. Sorenson exits the  
16 courtroom. Next is Ms. Walker.)

17 THE COURT: Good afternoon.

18 MS. WALKER: Hi.

19 THE COURT: Would you raise your right hand  
20 to be sworn today.

21 (Ms. Walker is sworn.)

22 THE COURT: Go ahead and have a seat, Ms.  
23 Walker. We have your questionnaire that you filled  
24 out yesterday and in a few minutes the attorneys are  
25 going to be asking you some questions about it and --

1           some additional questions -- but I wanted to ask you  
2           about one of your answers.

3           It has in here that you are scheduled to be out  
4           of town both on business and on personal matters,  
5           right?

6                       MS. WALKER: Yes.

7                       THE COURT: The first trip is listed as  
8           September 9th, is that correct?

9                       MS. WALKER: Yes.

10                      THE COURT: Okay. Now, the attorneys  
11           advised me that they think this case will be done by  
12           the end of next week which --

13                      MS. WALKER: And then next week?

14                      THE COURT: End of next week.

15                      MS. WALKER: Which is September 2nd.

16                      THE COURT: Would be September 2nd, but  
17           obviously then it goes to the jury to deliberate.

18                      MS. WALKER: Okay.

19                      THE COURT: And the jury deliberations,  
20           it's totally up to the jury how long they take.

21                      MS. WALKER: Okay.

22                      THE COURT: Okay? But I don't see that it  
23           should take until September 9th but it is potentially  
24           possible. What is your first trip on September 9th?

25                      MS. WALKER: That one is the personal one.

1 THE COURT: Okay. So if you are seated on  
2 this jury, do you anticipate -- I mean, we really  
3 don't anticipate it's going to go that long but if it  
4 does are you going to be able to adjust your  
5 schedule?

6 MS. WALKER: That one would be a little  
7 harder.

8 THE COURT: Okay. Where are you going on  
9 September 9th?

10 MS. WALKER: Actually just up north in the  
11 Brainerd area.

12 THE COURT: Okay. Now, since answering  
13 these questions on the questionnaire yesterday, have  
14 you thought of anything else you would like to add or  
15 anything you would like to change on here?

16 MS. WALKER: I don't think so.

17 THE COURT: Okay. All right. Now Mr.  
18 Benson is going to ask you some questions first and  
19 he is struggling with laryngitis today so he can't  
20 speak very loud so he's going to come close to make  
21 sure you can hear him.

22 MS. WALKER: Okay.

23 THE COURT: Go ahead, Mr. Benson.

24 MS. WALKER: Oh, you are.

25 BY MR. BENSON:

1           Q     I am. Few questions for you since I'm suffering  
2     from laryngitis. You indicated that you know a Jennifer  
3     Johnson?

4           A     Yes.

5           Q     What's that relationship?

6           A     That relationship is primarily she is the wife  
7     of my daughter's gymnastics coach so I know her probably  
8     more in a personal setting.

9           Q     Okay. And is she a county attorney or is she a  
10    city attorney? Does she work for Hennepin County?

11          A     She's relatively new, so it's probably been the  
12    last year, and you know what, I don't know for sure.

13          Q     Okay.

14          A     I know she works in this building but I don't  
15    know where in the building.

16          Q     All right. You haven't had any conversations  
17    with her about her work?

18          A     No, no, no, no.

19          Q     Just the fact that she's a prosecutor, is that  
20    going to impact the way you view evidence in this case?

21          A     No. And she's not -- I don't believe she is a  
22    prosecutor, so.

23          Q     She just works here?

24          A     She just works in the police department, so.

25          Q     Okay. Okay. You indicated that you had been

1 hit by a drunk driver once and called the police?

2 A I was hit by a drunk driver and actually --

3 Q The police came?

4 A The police came because somebody else actually  
5 called, saw the accident and called the police so that's  
6 how the police came to the accident. My car was totaled  
7 at that point in time. I didn't have a phone so I  
8 couldn't call the police. Somebody else called the  
9 police.

10 Q How long ago was that?

11 A It would have been October of '96, so a number  
12 of years ago, and it occurred in Arizona right before I  
13 moved here.

14 Q Okay. What was the end result of that case?

15 A The end result was I moved literally the next  
16 week from Arizona to Minnesota. I was asked to actually  
17 come back and testify in that case but I didn't because of  
18 my work schedule so it was just settled out of court.

19 Q Okay. And this is your first jury service?

20 A Yes.

21 Q What was your reaction when you came into the  
22 courtroom and found out this was a first degree murder  
23 case?

24 A A little overwhelmed, I guess my best way to  
25 describe it.



1           Q     How about now? You've had a day to kind of  
2 digest the list of charges.

3           A     They are pretty serious charges so I guess it's  
4 the same. I mean, I know it's a serious case and I have  
5 to pay attention if I were to be selected because it's a  
6 serious case.

7           Q     Do you have any concerns about your ability to,  
8 if not set aside the nature of the case, at least not let  
9 the name of the charge or the type of the case affect the  
10 way you view evidence? Does that make sense?

11          A     I think I understand your question and I think I  
12 can weigh out, you know, what are the facts and what the  
13 -- whether it's right or not right or what the facts are.  
14 So I think what kind of case it is doesn't matter.

15          Q     You indicated that you did not want to be a  
16 juror in this case?

17          A     I didn't. Mainly not maybe so much because of  
18 the charge, what the charge was, it probably has more to  
19 do with the overwhelming amount of work I have so that had  
20 more to do with it than the case itself.

21          Q     Okay. If you are selected as a juror, are you  
22 going to be able to focus on this while you are here?

23          A     Well, you don't have a choice so, I would just  
24 have to try to figure out how I can shuffle things around  
25 to make sure that it wouldn't -- somebody else can take

1 care of the things I'm unable to take care of.

2 Q Do you anticipate working at night like after  
3 you finish in court?

4 A Yes.

5 Q All right. You are going to be asked to  
6 determine the credibility of witnesses that come and sit  
7 basically where you are sitting and they are going to give  
8 testimony.

9 A Okay.

10 Q And the judge will give you a number of factors  
11 you can use to determine and you are also going to use  
12 your common sense and your experience. Some of these  
13 witnesses will be law enforcement personnel, some  
14 witnesses will be civilian.

15 A Okay.

16 Q Is there any part of you that would give more  
17 weight to a law enforcement officer when they get on the  
18 stand, take an oath and testify, than you would a civilian  
19 simply because they are a police officer? I can't repeat  
20 it.

21 A I know you can't repeat it. I guess I've never  
22 thought about that. I would like to believe I could  
23 differentiate and not give weight more to one than the  
24 other. I've never been put in the situation so I guess  
25 that's my best way to answer it at the moment.

1           Q     What type of things, or you've had situations I  
2     imagine where you have had to determine if someone is  
3     telling you the truth?

4           A     Yes.

5           Q     Can you give me an example?

6           A     Let's see, kids are always a good one to start  
7     with. You know, I guess the way that I can tell whether  
8     they are telling the truth tends to be tone of the voice  
9     or the body motions in terms of whether or not someone is  
10    telling the truth or not telling the truth. You know,  
11    that doesn't always work but that tends to be some of the  
12    indicators I look at.

13          Q     Okay. Do you use that with people that you  
14    don't -- you were talking about with your children -- do  
15    you use that with people you don't know as well?

16          A     You know, I don't know if I necessarily use it  
17    in terms of for somebody whether I think they are telling  
18    the truth or not, but I'm sure I probably use it in saying  
19    is this somebody I would want to associate with or be  
20    friends with or, so I probably am using some of those  
21    determining factors in determining what kind of a  
22    relationship I may want to have with that person.

23          Q     Can you give me an example of where you've had  
24    to determine if basically somebody is telling the truth  
25    and it's somebody that you don't know? It can be a

1 grocery store or somewhere, doesn't matter. Car dealer.

2 A That's a tough question. I'm trying to think of  
3 a situation of where I was talking to somebody I didn't  
4 know and I was trying to determine whether they were  
5 telling me the truth or not telling me the truth. I'm not  
6 -- nothing is coming to my mind, to be honest.

7 Q Okay. Let me just you ask this way. There is  
8 certainly factors, there's certainly things you may look  
9 for in determining whether somebody is telling you the  
10 truth. I started a discussion asking about law  
11 enforcement versus civilians. Do you think you can use  
12 the same standards and the judges's instructions and apply  
13 it to a law enforcement officer the same way you would a  
14 civilian?

15 A Yes. I do think I can.

16 Q Okay. And as far as the credibility, is it fair  
17 to say you wouldn't give the police officers greater  
18 credibility just because they wear a badge? Is that fair  
19 to say or not fair to say?

20 A Um, you know, I don't know whether I would  
21 weight that more or not. I think a lot would depend upon  
22 how that individual was answering the questions, so  
23 whether they wore the badge or whether they didn't wear  
24 the badge, I think it would end up coming down to how they  
25 were answering the question and whether I would weigh it

1 the same or not.

2 Q Okay. Thanks. As you sit here now, when you  
3 look at Marvin Haynes can you see an innocent person?

4 A Yes.

5 Q Okay. And you've heard and I think you know  
6 that the State of Minnesota has the burden of proof to try  
7 and prove him guilty beyond a reasonable doubt?

8 A Yes.

9 Q Do you think it's fair that the State has that  
10 burden of proof in a criminal case?

11 A Yes. I mean that's -- you are supposed to be  
12 innocent before and then proven guilty as opposed to the  
13 other way around, so.

14 Q And this is a, as we've talked about, a serious  
15 charge?

16 A Yes.

17 Q You indicated that it could be, seemed  
18 overwhelming when you heard it the first time?

19 A Yes.

20 Q I imagine, I'm not sure if you have any concern  
21 with the fact that Marvin appears fairly young, or he is  
22 young?

23 A Um-hum. Yes.

24 Q Now, if you hear the evidence in this case,  
25 given that this is a first degree murder case, and you

1       feel the State has not proven its case beyond a reasonable  
2       doubt, can you vote not guilty?

3           A       If the facts are such that he don't prove it  
4       beyond a reasonable doubt I could -- I would look at the  
5       facts and make my vote accordingly, um-hum.

6           Q       And then on the flip side, if you felt they  
7       proved it, you could find him --

8           A       Yes.

9           Q       All right. Is there any other information you  
10      think that I would need in order to make a decision on  
11      whether you would be a good juror in this case?

12          A       I can't think of anything.

13          Q       Okay. Last question, tell me what the most  
14      important decision that you have had to make in your life,  
15      tell me what that was, or the hardest or the toughest.

16          A       The hardest or the toughest. Probably, thinking  
17      through here, probably having to let someone go who wasn't  
18      performing was one of the harder decisions that I have had  
19      to make.

20          Q       And let me just ask you, why was that in that  
21      particular case?

22          A       Because you know you are affecting somebody's  
23      life so the, that -- how that would impact that person so  
24      that's probably why that was a hard decision in terms of  
25      could be better for them, could be worse for them, but

1       that was probably why it was a hard decision, so, because  
2       you do affect them personally.

3           Q       Thank you.

4                   MR. BENSON: Your Honor, we will accept Ms.  
5       Walker.

6                   THE COURT: All right. Mr. Furnstahl.

7                   MR. FURNSTAHL: Thank you.

8       BY MR. FURNSTAHL:

9           Q       Good afternoon. You talked, just to follow-up  
10       on the last question of counsel, you said that the hardest  
11       decision you've had to make in your life is to fire  
12       somebody?

13          A       Yes.

14          Q       Was that someone in particular or are you  
15       thinking of more than one person?

16          A       No, it was one person in particular.

17          Q       Uh-huh. Was he or she a friend of yours?

18          A       No. It was just a work companion.

19          Q       I don't want to delve too much into the facts  
20       but just give me the highlights. Was it performance  
21       issues about that person?

22          A       The performance issues were pretty much that  
23       they weren't following through on the items that were part  
24       of their responsibility so therefore they were letting a  
25       fair amount of other people down or other people were

1       having to cover for them so it put a greater burden on the  
2       remainder of the organization. So although there was some  
3       coaching, there was some improvement but not enough  
4       improvement, so it came down to either you burden the  
5       whole organization or you let the person go and let them  
6       go pursue something that might be a better fit.

7           Q       The coaching, was that done by you or somebody  
8       else?

9           A       Myself.

10          Q       So you talked to that person about the need to  
11       improve in these areas?

12          A       Yes.

13          Q       How many times had you talked to them? How many  
14       chances did you give them?

15          A       The typical way it ends up working is once you  
16       have the conversation in terms of not performing, giving  
17       them an opportunity to kind of work it out on their own.  
18       The next then is actually putting them on what's called a  
19       performance improvement plan, which it kind of really  
20       highlights out what needs to be done by when, and then  
21       from there it's pretty much then you make a decision, they  
22       are going to make it or they are not going to make it, so  
23       couple times.

24          Q       Okay.

25          A       Couple of where you say be more serious



1 discussions.

2 Q How many times have you had to fire somebody,  
3 you yourself?

4 A I've gotten lucky. I've only had to fire once.  
5 I've had plenty of opportunities to coach where people  
6 have selected on their own to opt out so I haven't  
7 actually had to go to the point of firing them.

8 Q Did you think and rethink your decision after  
9 you made the decision to fire this person?

10 A No. I think once I had what the information was  
11 and we made the decision, I felt okay about the decision.

12 Q Okay. There can sometimes be parallels between  
13 that kind of decision making process and the decision  
14 making process in a situation like this. Can you  
15 appreciate that?

16 A I can.

17 Q All right. And so you recognize, as everybody  
18 does, that whatever decision you make in this case if you  
19 are selected to be on the jury it's going to affect  
20 somebody, correct?

21 A Correct.

22 Q And how is that knowledge going to affect your  
23 ability to make a decision in this case if you are  
24 selected? And I'm talking about the knowledge that your  
25 decision is going to affect somebody.

1           A     I'm hoping, but because I've never been on a  
2 jury, I don't know, that I would look at what the facts  
3 are and base it on the facts and make my decision  
4 accordingly and then I can feel good about whichever  
5 decision is based on the facts.

6           Q     I don't mean to be beating a dead horse, but  
7 when you say "I'm hoping," do you have some concern that  
8 you might not be able to do it? Here's the crux of it.

9           A     Yup.

10          Q     You know the judge will instruct you that you  
11 have to base your decision solely and completely on the  
12 evidence.

13          A     Right.

14          Q     And everybody -- I mean, there's all kinds of  
15 factors that are floating around out there and one of  
16 which is the effect your decision is going to have on the  
17 defendant.

18          A     Correct.

19          Q     And you recognize that he's a young man, right?

20          A     Yes.

21          Q     You know, if there's a verdict of guilty, what  
22 effect it's going to have on him?

23          A     Yes.

24          Q     And what I need to know is can you set that  
25 decision aside and base your decision only on the

1 evidence? Or is that concern that your decision is going  
2 to have on him, is that going to affect your decision  
3 making process?

4 A And in my ability to answer the question is,  
5 I've never had to do that in this serious of a situation,  
6 so that's why I'm having difficulty answering the question  
7 one way or another.

8 Q You understand that this is the only way I can  
9 put that question to you because --

10 A I know.

11 Q -- I've never met you before. This is my only  
12 opportunity to talk to you and I need to find out if this,  
13 this case is a good fit for you or not so you've got to  
14 tell me, you know, because I don't know you. You know  
15 yourself better than I do.

16 A Yes. It would be tough because it is a pretty  
17 serious allegation and if found guilty it has a monumental  
18 affect on his life, so.

19 Q Are you saying you won't be able to follow the  
20 judge's instruction on that?

21 A No, I think I still can follow the judge's  
22 instructions so I'm supposed to be, whatever he tells me  
23 we are supposed to do I think I can still follow that. It  
24 doesn't mean that I won't have a part of me that says I  
25 need to look at the facts, I know I may be affecting

1       somebody else's life if it happens to be guilty versus not  
2       guilty, and I have to be comfortable that I'm listening to  
3       the facts and I'm going by what the facts are, and I just  
4       don't know because I've never been in this situation  
5       before.

6               Q       I understand. Thank you, ma'am.

7                       MR. FURNSTAHL: Your Honor, we'll exercise  
8       a peremptory.

9                       THE COURT: All right. Ms. Walker, you are  
10       excused from this jury and I would ask if you would  
11       please check in with the jury office downstairs.  
12       Thank you very much.

13                      MS. WALKER: Okay.

14                      THE COURT: We'll take our afternoon recess  
15       at this time. Take a recess until 3:15.

16                                       (Ms. Walker exits courtroom.  
17       Short recess. Next is Laura Elliot.)

18                      THE COURT: Good afternoon.

19                      MS. ELLIOT: Good afternoon. Raise your  
20       right hand to be sworn today.

21                                       (Ms. Elliot is sworn.)

22                      THE COURT: Go ahead and be seated. Ms.  
23       Elliot, we have your questionnaire that you filled  
24       out yesterday. First of all, is there anything you  
25       want to add to any of your answers or anything you

1 want to correct on it that you thought of last night?

2 MS. ELLIOT: I don't think so.

3 THE COURT: Okay. Did you have a daycare  
4 issue? Let me see. Did you write on here that you  
5 had some concern -- okay. About getting fluid to  
6 your son.

7 MS. ELLIOT: Right.

8 THE COURT: Now, if you are selected as a  
9 juror to serve on this case, you would be going home  
10 today and coming back on Monday and you would be here  
11 next week, but we would -- obviously we would take a  
12 lunch recess, we would take a recess in the morning,  
13 a recess in the afternoon, and then we anticipate the  
14 case would be completed next week but then the jury  
15 would have deliberation time, and during that time it  
16 is likely that you would have to spend the night in a  
17 hotel with other jurors.

18 MS. ELLIOT: Right. Okay.

19 THE COURT: Would that be an issue with  
20 regard to getting your milk to your son?

21 MS. ELLIOT: I think it would be an issue.  
22 I've been for the last couple of weeks trying to work  
23 with him to get him to take something else knowing  
24 that this was coming and he's been strictly breast  
25 fed up to this point and so, which is partially my

1           fault but, and he's just not really taking liquid  
2           from a cup so we've been trying, you know, when I'm  
3           here during the day trying to take one and he's just  
4           not responding very well to it but, you know, if I  
5           were called I would just obviously have to, you know,  
6           in the next couple of days try to work with him and  
7           try to get him to take something.

8                   THE COURT: Right now who is taking care of  
9           your son?

10                  MS. ELLIOT: My mother-in-law.

11                  THE COURT: Does he take a bottle though?

12                  MS. ELLIOT: He doesn't take a bottle.

13                  THE COURT: So so far you haven't even been  
14           able to get him to take a bottle and that's just been  
15           this week, right?

16                  MS. ELLIOT: Yes. He's taken maybe four  
17           bottles since he was born but that was when he was  
18           very young and then more recently he'll just bite at  
19           it and swat it away so, and that's mostly because we  
20           weren't consistent with it and then now with the cup  
21           he's, he gets angry and he'll swat at it and so he's  
22           just, he's just at the point where it's that  
23           transition time where he's trying to, he's working on  
24           it but he won't take more than about an ounce.

25                  THE COURT: Okay.

1 MS. ELLIOT: Everything else spills.

2 THE COURT: So have you talked to your  
3 pediatrician about it?

4 MS. ELLIOT: Not yet, no.

5 THE COURT: Okay. Let me ask you the  
6 obvious part of that, and that is if you were  
7 selected to serve on this case and you knew you were  
8 going to be here next week during the day, would you  
9 be able to, number one, make arrangements for  
10 somebody to take care of your son, number two, get  
11 him his milk and be comfortable enough so that you  
12 could pay attention to what was going on here without  
13 being distracted and thinking about what's going on  
14 at home?

15 MS. ELLIOT: In terms of getting him care,  
16 we could work that out. My mother-in-law and then if  
17 she couldn't do it there are people in my church that  
18 could probably help. In terms of liquid, I can't say  
19 I wouldn't be concerned. I guess I, I would have to  
20 just go with it and, you know, nurse him before I got  
21 here and then when I got home at night but during the  
22 day if he, you know, wasn't taking a cup that's a  
23 long time for him to go and especially I guess when I  
24 read yesterday in the questionnaire about being  
25 sequestered I was a little concerned about that

1           because that would mean, you know, he can't have  
2           anything so I guess I can't say I wouldn't be -- it  
3           would be work for me to focus, I think. I mean if I  
4           was selected I would try to focus but it would  
5           probably be in the back of my mind, so. And I've  
6           been trying and working really hard knowing that this  
7           is coming and if I felt comfortable then I would say  
8           so, but that's where it's at right now at least, so.

9                       THE COURT: Okay. Counsel, do you want to  
10          approach for a second?

11                               (Off-the record discussion at  
12          the bench out of hearing Ms. Elliot.)

13                      THE COURT: Ms. Elliot, the attorneys are  
14          going to ask you some additional questions now, and  
15          first of all Mr. Benson is going to go first and he  
16          has laryngitis so he doesn't have much voice left  
17          today so he's going to try to do the best he can, all  
18          right?

19                      Go ahead, Mr. Benson.

20                      MR. BENSON: Thank you.

21          BY MR. BENSON:

22                      Q       Just a couple questions. As far as your  
23          nine-month old, you said that you would, I believe you  
24          said you would try to focus on the case or try to --

25                      A       Um-hum.



1           Q     As you are listening to evidence and you are --  
2     you are going to have to tell me because I won't know, but  
3     as you are going to be listening to evidence in this case  
4     do you think in the back of your mind or do you think  
5     you'll also be thinking about whether your child is eating  
6     or whether there's any problems with your child?

7           A     Yes, I probably will. Anytime I leave him with  
8     someone I'm thinking about him and hoping he's okay.

9           Q     Okay.

10          A     It's not to a point where I'm obsessing about it  
11     but as a mom I do think about him and so I would probably  
12     be concerned about him.

13          Q     And now the question is, with that concern, do  
14     you feel that that concern would impair your ability to  
15     focus on the evidence and listen to the evidence when it's  
16     presented in this case?

17          A     Um, I suppose not. I mean, because if I were  
18     selected I would be -- I would just try my best to be  
19     focused on what's happening here, and yes, I would be  
20     thinking of him but I would be attempting to focus.

21          Q     All right. As was indicated to you we  
22     anticipate that the evidence portion of the case would be  
23     over next week.

24          A     Yeah.

25          Q     But there's the issue of the sequestration so I

1 must ask you if you are selected as a juror and you have  
2 to go and deliberate, is there any part of you that you  
3 would just want to hurry through these deliberations in  
4 order to get back to your son?

5 A I think so, yeah.

6 Q Okay. Then with that, and I'm glad that you are  
7 honest, is it fair to say that your concern would disrupt  
8 the, your deliberations or at least your thought process?

9 A I would say so, yeah.

10 Q Okay. All right. Thank you.

11 MR. FURNSTAHL: May I inquire?

12 THE COURT: Go ahead.

13 MR. FURNSTAHL: Thank you.

14 BY MR. FURNSTAHL:

15 Q I want to make sure that you understand the last  
16 questions that were asked of you by counsel. If you are  
17 deliberating you have to base your decisions solely and  
18 completely on the evidence. Do you understand that?

19 A Um-hum.

20 THE COURT: Yes, you have to answer.

21 MS. ELLIOT: I'm sorry. Yes.

22 BY MR. FURNSTAHL:

23 Q Are you telling us that you would vote to  
24 convict even though you didn't think the evidence was  
25 sufficient to convict just to get out of here to deal

1 with, to take care of your son, or on the other hand would  
2 you vote to acquit when you thought the evidence was  
3 sufficient to convict just so that you could get back and  
4 tend to your son? Would you do that?

5 A No, I wouldn't. I mean I think, I believe in  
6 being honest and I believe in justice happening and I  
7 would never lie just to get back to him, but I can't say  
8 that I wouldn't be concerned and I guess hoping that it  
9 would hurry along. I don't know if that makes sense but I  
10 would never vote just so I could get back to him.

11 Q You are a young mother with a nine-month old.  
12 Obviously young mothers with nine-month-olds are going to  
13 be thinking about their child.

14 A Um-hum.

15 Q They are, you are not going to be any different,  
16 correct?

17 A Right. Correct.

18 Q But it's important that if you are selected to  
19 be on this jury you are focused, remind yourself you must  
20 set those feelings aside, compartmentalize them and base  
21 your decision only on the evidence, and what I'm hearing  
22 from you is that you will do that?

23 A I will. It will be difficult but I will do  
24 that.

25 MR. FURNSTAHL: Thank you.

1 THE COURT: Go ahead with additional  
2 questions, Mr. Benson.

3 BY MR. BENSON:

4 Q I'm going to ask you about a couple of responses  
5 that you had. One, you indicated that you don't like it  
6 when there seems to be much evidence against someone but  
7 because of a tiny detail the person is excused?

8 A Um-hum.

9 Q I imagine from that you mean because of some  
10 detail a person is acquitted or -- is that what you are  
11 talking about?

12 A Yes, yes.

13 Q And what's the, I suppose the basis of that  
14 being the perception?

15 A I suppose, and I was thinking about that  
16 response and I knew you were going to ask me but I would  
17 just go back to the O. J. Simpson case. That was the,  
18 really the only thing I had to base it on and even though  
19 I didn't watch the entire case, I guess I was influenced  
20 by it because I, I felt that there was a lot of evidence  
21 against him and because of things and I don't even know  
22 the details but of things like that a piece of evidence  
23 wasn't taken right or there were mistakes in transporting  
24 things or, so that type of thing when there's a lot of  
25 evidence, that's what I'm basing it on, but.

1           Q     Okay. What are your thoughts on that jury, if  
2 you will, because that jury had a case, they considered  
3 it, and they came with a verdict. What are your thoughts  
4 on that jury?

5           A     On the jury?

6           Q     Um-hum.

7           A     Um, well, I guess thinking about it I'm sure  
8 that they took all of the evidence and looked at it, tried  
9 to consider if there was any reasonable doubt in the  
10 accusations so I'm assuming that they all looked fairly at  
11 it and decided based on what they thought was right and so  
12 I'm sure they did what they thought was right.

13          Q     Okay. What you've kind of described is a kind  
14 of somewhat second guessing like the jury verdict?

15          A     Um-hum.

16          Q     Do you have a concern that if you are selected  
17 in this case you would, you know, if there's a guilty or  
18 not guilty verdict, let's just say if there's a verdict on  
19 a first degree murder are you concerned with what  
20 outsiders or people that aren't involve in your jury  
21 possibly would think about the decision that you made?

22          A     I guess not. Maybe to an extent I would be  
23 concerned if they had opinions about it or were to  
24 question me. But if I were selected to be an any jury I  
25 would be as honest as possible and do what I thought was

1 right in the situation, and so if someone second guessed  
2 me in it, it would probably bother me but I don't think it  
3 would affect me, I guess.

4 Q Okay. Thank you.

5 MR. BENSON: Your Honor, we would excuse  
6 Ms. Elliot.

7 THE COURT: All right. Ms. Elliot, you are  
8 excused from this jury and I would ask if you would  
9 please check in with the jury office downstairs.

10 MS. ELLIOT: Okay.

11 THE COURT: Thank you very much.

12 MS. ELLIOT: Okay. Thank you.

13 (Ms. Elliot exits courtroom.)

14 THE COURT: Mr. Furnstahl, do you want to  
15 put on the record your request with regard to these  
16 statements?

17 MR. FURNSTAHL: Yes, Your Honor.

18 The record should reflect that we've had some  
19 discussions off the record regarding statements of  
20 Isiah Harper and Timothy Clifton. It's understood  
21 that the Court has not made a decision as to the  
22 admissibility of these statements, but in order to  
23 address the logistical problems that we may have if  
24 the Court decides that they are admissible, we are  
25 trying to work out these problems ahead of time, and

1 I have -- yesterday I made copies of the statements  
2 and gave redacted copies to both counsel and the  
3 Court. Over the noon hour I asked Mr. Benson if he  
4 could look at those and see if he had any additions,  
5 suggestions or corrections with respect to the  
6 redacted copies, and there were two areas on the  
7 statement from Timothy Haynes (sic.) and I think one  
8 or two that relates to Mr. Clifton that we need to  
9 address.

10 The Court needs to decide whether or not they  
11 should be redacted or not because what we want to do  
12 is have this in place in the event that the Court  
13 decides they are admissible, so I'll address first  
14 why I think the portion that counsel objects to in  
15 the Isiah Harper statement ought to be admitted.

16 I'll refer first to the first objection and  
17 that's on page four where I had redacted and counsel  
18 wishes to keep in the following colloquy. It says  
19 what about Daquan, and that refers to Daquan Bradley.  
20 Answer, Daquan, yeah. What do you mean, yeah. Yeah,  
21 he's known for carrying a gun. He's what? He's  
22 known for carrying a gun. He's known for carrying a  
23 gun? Answer, yeah.

24 Counsel wishes to have that evidence in because  
25 it, well basically it's rank character evidence on a

1 witness, Daquan Bradley. Daquan Bradley is under  
2 subpoena and is listed as one of the potential  
3 witnesses. But this is clearly rank character  
4 evidence that is inadmissible under the character  
5 evidence rules, and I would cite the Court to  
6 404(a)(3), I believe it is, and 608. Mr. Bradley is  
7 a witness and therefore you look at Rule 608 to see  
8 what, if any, character evidence is admissible, and  
9 608 says that the only character (inaudible) or  
10 traits of character that are admissible as it relates  
11 to a witness is a trait for truthfulness or  
12 untruthfulness.

13 This has nothing to do with truthfulness or  
14 untruthfulness of Daquan Bradley. You note that just  
15 above that colloquy that I just read into the record,  
16 there's a reference as to whether or not Marvin  
17 Haynes is known for carrying a gun, and I have  
18 excised those areas where there's been statements  
19 that Marvin Haynes has carried a gun in the past, in  
20 other words it would be rank character evidence of  
21 Marvin Haynes. Counsel agrees that that should be  
22 inadmissible. I think for the same reasons it ought  
23 to be clear that this character evidence of Daquan  
24 Bradley ought to be inadmissible.

25 The other portion counsel seeks to admit appears



1 on page 13. There's a question about halfway down  
2 and I'll read the question and the entire answer then  
3 I'll indicate for the record what part of the answer  
4 counsel wants excluded. The question: We just want  
5 to confirm we are talking about the right people  
6 because oftentimes kids got nicknames. Answer,  
7 Marvin going to find out anyway. I already know how  
8 this system is. I've been through it.

9 The portion that counsel wants excised is the  
10 statement from Isiah Harper, quote, Marvin going to  
11 find out anyway, closed quote. I think that that is  
12 admissible because it demonstrates the voluntariness  
13 and therefore the credibility of the statements that  
14 Mr. Haynes is providing that clearly inculcates a  
15 blood relative. The defendant is a blood relative,  
16 the first cousin of Isiah Harper. In fact, his  
17 mother and the defendant's mother are sisters and  
18 that is what we believe is the basis for Mr. Harper  
19 changing his mind, if in fact that is what he intends  
20 to do at trial.

21 His confirming that he knows that these  
22 statements are going to get back to Marvin Haynes  
23 because he has some understanding of the rules of  
24 discovery given his contact with the system and his  
25 going into this conversation with that in mind

1 demonstrates the credibility, the reliability of  
2 those statements and the voluntariness of the  
3 statements that he gave to the officers. So for that  
4 reason we would ask that that statement be included  
5 and not excluded as counsel requests.

6 Then next with respect to the witness Timothy  
7 Clifton, there's a portion on page one where Mr.  
8 Clifton is referred to as Witness D that counsel  
9 wishes to be excluded. We are asking that that be  
10 admitted.

11 Mr. Clifton also has a long history with the  
12 criminal justice system and knows that that evidence,  
13 knows -- has some understanding of the discovery  
14 rules. He requested that he be referred to not by  
15 his name and that would be -- likewise I think goes  
16 to the voluntariness and the credibility of the  
17 statements. He likewise is a blood relative to the  
18 defendant and is giving information that inculcates  
19 his blood relative. He does that knowing that the  
20 information could get back to his blood relative and  
21 yet he goes forward and provides that information.  
22 That, we think, speaks loudly to the credibility, the  
23 reliability of the information that he provided in  
24 the statement.

25 Another portion appears on page two and I'll

1 read the questions and answers. Counsel wishes all  
2 of this excised. Question is what does "come up"  
3 mean. Answer, get some money, buy some drugs, get a  
4 big quantity of drugs and sell it.

5 Other witnesses will testify that, or at least  
6 statements of other witnesses are to the effect that  
7 the defendant had told witnesses that he was planning  
8 to -- I'm trying to think of the exact language. Hit  
9 a lick. "Hit a lick" and to "come up." That was the  
10 motive that he explained to witnesses as to why he  
11 went into the flower shop to rob it, because he  
12 wanted to hit a lick, rob the place so that he could  
13 get some money and to purchase drugs. This explains  
14 the motive.

15 This is a witness, a blood relative of the  
16 defendant, who has, who explains what the defendant  
17 meant by street vernacular when he said he was going  
18 to "come up." In other words, he is explaining to  
19 the jurors the defendant's motive for having gone  
20 into the flower shop. We think that's obviously  
21 relevant and critical information that likewise ought  
22 to be admitted because it goes to the credibility and  
23 reliability of the statements.

24 Then there was just another portion, I won't  
25 make a record of this but there was another portion

1 on page six that we both agreed ought to be excised.

2 THE COURT: Mr. Benson.

3 MR. BENSON: Thank you, Your Honor.

4 Timothy Clifton, let me start there. Witness D,  
5 the implication of Witness D is that there is some  
6 threat from Mr. Haynes. The anonymity of being  
7 characterized as Witness D, doesn't really matter  
8 what Timothy Clifton thought. There is no  
9 demonstrated threat for Mr. Haynes throughout this  
10 whole process.

11 The State did ask for a protective order or a  
12 prosecutor's certificate to keep names from Mr.  
13 Haynes and we honored that. He didn't know who the  
14 witnesses were against him. There's never been a  
15 threat against either Mr. Harper or Mr. Clifton to  
16 put an anonymous statement within a statement that  
17 would go to the jury if that event arises. I think  
18 it would be unduly prejudicial under a 403 analysis  
19 because there would at least be the perception from  
20 the jury that these witnesses had to have their names  
21 hidden, and while if Timothy Clifton wants to come in  
22 here and testify to that, that's fine, but then this  
23 statement wouldn't come in if he actually comes in  
24 and testifies consistently with his statement. We  
25 are not there yet, however I think it's particularly

1           damaging if Timothy Clifton comes in here and  
2           testifies to something drastically different and the  
3           State is allowed to put in a statement and that  
4           statement gives the perception that Mr. Clifton is  
5           afraid of Mr. Haynes and the live witness doesn't say  
6           that. That becomes problematic.

7           Same thing with Isiah Harper. On page 13 of his  
8           supplement, which is Marvin is going to find out  
9           anyway, that gives the same implication. That's a  
10          thought process. It may be a thought process in the  
11          mind of Isiah Harper, but Isiah Harper can come in  
12          and explain that if it's that important to either Mr.  
13          Harper or to the State, and I would submit to the  
14          Court if he doesn't the probative value of it is  
15          outweighed by the undue prejudice.

16          Two more matters. With respect to page two of  
17          supplement 42, statement of Timothy Clifton and what  
18          does "come up" mean and he says get some money, buy  
19          some drugs, get a quantity of drugs and sell it, that  
20          is speculation. That is an assumption of what Mr.  
21          Haynes, if he said it, would have meant by that.

22                 THE COURT: Wait a minute. Going back to  
23          Mr. Clifton now?

24                 MR. BENSON: Yeah. I'm sorry, Your Honor.

25                 THE COURT: Okay. And that's --

1 MR. BENSON: Page two.

2 THE COURT: Page two. The "come up"  
3 statement. Okay.

4 MR. BENSON: And that response, question  
5 and response is actually speculation on the part of  
6 Timothy Clifton. There's no foundation for that  
7 remark within this statement. As well as the, I  
8 would imagine that the conversation such as "hit a  
9 lick," or "come up," any other witness who wants to  
10 testify about what that means has got to lay some  
11 foundation for something other than just speculation  
12 as to what Mr. Haynes meant if they attribute that  
13 statement to him. So for that reason it should be  
14 excluded.

15 Okay. Finally, I would like to reserve the  
16 issue with respect to page four of Isiah Harper's  
17 statement dealing with Daquan Bradley and his  
18 carrying a gun. The question before that, have you  
19 ever known Little Marvin to carry a gun in the past,  
20 answer no. On my copy the prosecutor left that in,  
21 and I think that's fine with me.

22 As far as Daquan Bradley, the next sequence, I  
23 would request that that come in because there is  
24 other discussion regarding Daquan Bradley and him  
25 possessing a gun on that day and that's -- the

1 prosecutor is offering that should the statement come  
2 in and I think it provides some context for it. I  
3 will, however, I haven't looked at the rules under  
4 character evidence, but at this point I would request  
5 that it not be redacted. I don't agree to it but  
6 I'll leave to the Court to rule.

7 Perhaps I could have until tomorrow morning to  
8 address how the character rules play into this.

9 THE COURT: All right. You can address  
10 that tomorrow morning before we start with our first  
11 juror. So that means 8:45 tomorrow morning.

12 MR. BENSON: That's fine.

13 THE COURT: Okay. Something else, Mr.  
14 Furnstahl?

15 MR. FURNSTAHL: If the Court would permit  
16 me just a brief rebuttal.

17 THE COURT: Go ahead.

18 MR. FURNSTAHL: Regarding the implication  
19 that there's a threat because we label Clifton as  
20 Witness D, we would intend to make that clear from  
21 the officer that -- as to the reason why he requested  
22 Witness D. Not because there was any threat. There  
23 in fact was no threat. We can make that clear for  
24 the jury.

25 Regarding the defendant's, or the statement by

1 Mr. Haynes (sic.) that Marvin is going to find out  
2 about it suggests some kind of a threat, we think  
3 that that demonstrates the credibility and  
4 reliability of his statement, because one would  
5 expect that if you are giving inculpatory information  
6 about your blood relative, you would think that your  
7 relative would not look favorably on that and yet you  
8 do it anyways even though you are close to your  
9 relative. The knowledge that he is going to get that  
10 and he still provided that information indicates that  
11 the statement is reliable.

12 Regarding the argument that the words "come up"  
13 is speculation, it's not speculation in any way,  
14 shape, or form. Mr. -- just the question before  
15 that, what did defendant tell you when he said he  
16 went in there to get some money and come up, to rob  
17 the place and to come up. And that's just, just  
18 explaining the street vernacular for what "come up"  
19 means, which jurors might not know. That is not  
20 speculation, that's actual knowledge.

21 Other than that, that's all I have, Judge.  
22 Thank you.

23 THE COURT: All right. I'll take a look at  
24 those and we'll hear Mr. Benson's response in the  
25 morning, so we'll be back on the record at 8:45 in



1 the morning. And just for the record I have five  
2 strikes by the defense and three by the plaintiff.

3 MR. BENSON: That's correct.

4 (Whereupon, the proceedings  
5 conclude this day at 3:50 p.m.)

6 \* \* \*

7 STATE OF MINNESOTA)

8 ) ss.

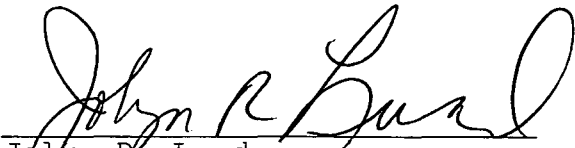
REPORTER'S CERTIFICATE

COUNTY OF HENNEPIN)

9 I, Jolyn R. Lund, Official Court Reporter, do  
10 hereby certify that the above and foregoing is a true and  
11 accurate transcription of my original stenographic notes  
12 in said matter.

13 Date:

3-1-06

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

FILED

FOURTH JUDICIAL DISTRICT

06 MAR -3 PM 12:41

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3 -----  
4 State of Minnesota, COURT ADMINISTRATOR, D.C. File No. 04035635  
S.Ct. File A05-2444

5 Respondent/Plaintiff,

6 vs.

TRIAL TRANSCRIPT

7 MARVIN HAYNES, JR.,

VOL. II, pp. 214-330

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert Blaeser, a judge of  
12 the above-named Court, at 659-C Hennepin County  
13 Government Center, Minneapolis, Minnesota, on the  
14 **24th day of August, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared as counsel for and on  
18 behalf of the State.

19 KASSIUS BENSON, ESQ., appeared as counsel on  
20 behalf of the DEFENDANT, who was also personally  
21 present. JENNIFER PAWLCYN, Student Extern, was also  
22 present.

23

24

CLERK: Toni Rahn

25

REPORTER: Jolyn R. Lund

1 (Whereupon, the following  
2 proceedings occur.)

3 THE COURT: We're back on the record and  
4 out of the presence of the jury panel. And Mr.  
5 Benson, you wanted to put on the record your position  
6 with regard to that Q and A from yesterday's  
7 argument.

8 MR. BENSON: Yes, Your Honor. With respect  
9 to the Q and A and Isiah Harper, we had discussed  
10 whether a section of the Q and A could come in should  
11 the Court admit that as evidence, particularly  
12 dealing with Daquan Bradley's reputation for being  
13 known in the community for carrying guns.

14 At this time I do not have an objection to that  
15 section being redacted, should this Court allow that  
16 statement to come in.

17 THE COURT: What page was that of Mr.  
18 Harper's statement we were referring to?

19 THE CLERK: Page four.

20 THE COURT: Is that the page? Oh, yes.  
21 Page four. Okay.

22 MR. BENSON: Could I inquire as to the two  
23 lines before that? Maybe I'll inquire of the State.

24 There was a question, have you ever seen Marvin  
25 Haynes or Little Marvin with a gun before, and the

1           answer was no. And the copy that I received, that  
2           question and that answer remain within the statement  
3           should it come in, and that's what I would like.  
4           That's why I would like to clarify that that is the  
5           case.

6 MR. FURNSTAHL: You want it to stay?

7 MR. BENSON: Yeah.

8 MR. FURNSTAHL: We had planned to do that.

9 THE COURT: All right. Lastly, now,  
10 counsel agreed to strike juror number 20 for cause,  
11 is that right?

12 MR. FURNSTAHL: Correct, Judge.

13 MR. BENSON: Yes.

14 THE COURT: Go ahead and bring in Ms.  
15 Harrison.

16 MR. FURNSTAHL: Judge, do you have a sense  
17 as to when you'll know about the redaction so I can  
18 get the people working on it?

19 THE COURT: No.

20 MR. FURNSTAHL: Okay.

21 (Ms. Harrison enters courtroom.)

22 THE COURT: Good morning. Would you  
23 remain standing for a minute and raise your right  
24 hand to be sworn today?

25 (Ms. Harrison is sworn.)

1 THE COURT: Go ahead and have a chair. In  
2 a couple minutes the attorneys are going to ask you  
3 some questions, Ms. Harrison, and I first want to ask  
4 you if you've thought about your answers in the  
5 questionnaire, if there's any you want to change or  
6 add to that you thought of after you left here two  
7 days ago.

8 MS. HARRISON: No. No, sir.

9 THE COURT: Okay. And with the situation  
10 with regard to your employer, after you answered the  
11 question do you know if you will continue to be paid  
12 while you serve on a jury?

13 MS. HARRISON: Yes. Yes, I will.

14 THE COURT: Okay. And then Mr. Benson has  
15 laryngitis so he doesn't have a lot of voice so you  
16 have to pay close attention. He's going to come  
17 close to make sure you can hear his questions.

18 Go ahead, Mr. Benson.

19 MR. BENSON: Thank you, Your Honor.

20 BY MR. BENSON:

21 Q Good morning.

22 A Good morning.

23 Q Ms. Harrison, I'm going to ask you a couple of  
24 questions about your questionnaire and then I've got some  
25 general questions for you.

1           You indicated that you had sued an employer?

2           A     Um-um

3           Q     Tell me about that.

4           A     Um, I was working at Creative Training  
5     Techniques and there was a guy there that just kissed all  
6     the women, and it was just months that went by and I told  
7     my employer I didn't know -- he could do that to anybody  
8     else, just not me, and so he, he made games of it, you  
9     know. They didn't do anything to him and -- I think they  
10    wrote him up once. I liked my job there so I stayed. He  
11    continued to do it. Management finally called a meeting  
12    and he came in the meeting. Everybody was there and he  
13    kissed me on my face, so I walked out. A couple days  
14    later they told me I wouldn't be needed any more.

15                   THE COURT: Ms. Harrison, I'm going to ask  
16                   you to speak up a little bit. You've got a soft  
17                   voice and I want to make sure everybody can hear you,  
18                   okay?

19                   MS. HARRISON: Sure.

20           BY MR. BENSON:

21           Q     How long ago was the lawsuit?

22           A     That was 1997, maybe. '97, '98.

23           Q     Did you settle before trial?

24           A     Yes.

25           Q     Okay. All right. And that was -- was it in

1 Hennepin County?

2 A Yes.

3 Q Okay. Couple more things from your  
4 questionnaire. I believe you said your child's father was  
5 shot accidentally by his brother?

6 A Um-hum.

7 Q Okay. How long ago was that?

8 A 1991.

9 Q Okay. You also raised a concern regarding,  
10 somewhat of a concern, regarding firearms or guns within  
11 your questionnaire. I think you indicated that you didn't  
12 like them but you think if people were licensed it was  
13 okay?

14 A Yeah. I mean, I personally don't like guns.

15 Q Okay.

16 A You know, if others do, that's their choice.

17 Q All right.

18 MR. FURNSTAHL: I'm sorry?

19 MS. HARRISON: If others do that's their  
20 choice, but I personally do not like them.

21 BY MR. BENSON:

22 Q Okay. And that is understandable. The question  
23 I have is in this case in here there's an allegation of an  
24 attempted robbery and there's a death, you know, and that  
25 there was a gun involved. Given your opinion on guns,

1 just in general, should I have a concern that you are  
2 going to be, like, disregard the rest of the evidence in  
3 the case or disregard what's going on because you have  
4 such a strong opinion against guns?

5 A No, not at all.

6 Q Okay. Tell me this. This is your first jury  
7 duty, correct?

8 A Yes.

9 Q What was your reaction when you came into jury  
10 duty and you realized that you may be a juror in a first  
11 degree murder case?

12 A I guess I didn't really have a, you know, a big  
13 reaction to it. I thought maybe I would get on a traffic  
14 violation or something but, you know, since it was my  
15 first time, but I guess it's not, it wasn't a big deal.

16 Q Okay. Does it seem overwhelming at all that you  
17 could be a juror in such a case?

18 A No.

19 Q All right. As you sit here right now and you  
20 look at Marvin Haynes, do you see an innocent person?

21 A Yes.

22 Q Okay. And you understand what the Court said  
23 the other day about the State of Minnesota having the  
24 burden of proof in any criminal case?

25 A Yes.



1 Q Do you think that's fair?

2 A Yes.

3 Q Can you tell me in your own words why you think  
4 that is fair?

5 A I think that anybody is innocent until proven  
6 guilty.

7 Q Okay. Can you tell me what the toughest or the  
8 most important decision that you have had to make in your  
9 life, can you tell me about that?

10 A Probably moving here to Minnesota in '91,  
11 leaving my kids' father.

12 Q Okay. All right. And how did you make that  
13 decision? What was in your mind?

14 A Oh, I just I knew I had to move and, you know,  
15 make a life for me and my kids. I knew somebody that was  
16 living here so I left.

17 Q Did you make that decision on your own or did  
18 you consult with other people?

19 A My own.

20 Q Okay. As you sit here now, are you comfortable  
21 with that decision?

22 A Yes.

23 Q All right. You've told the Court that there's  
24 nothing that you would have added to your questionnaire.  
25 Is there any other information that you think I could use

1 or just we all could use in determining whether you would  
2 be a good juror for this case?

3 A I'm a fair, honest person.

4 Q Okay. Okay. I understand that you've, you will  
5 be paid, you know, you've talked to your employer and  
6 that's not an issue. Should this, should your  
7 deliberations go beyond two weeks, is that going to be a  
8 problem? For example, we expect the evidence, the  
9 evidence portion to end late next week, but the  
10 deliberations, as the Court has told you and will tell  
11 you, is up to the jury. If the deliberations go beyond  
12 that two-week period are you going to be okay?

13 A As far as my employer goes?

14 Q Yes.

15 A I would hope so.

16 Q Okay.

17 A I hope so. I mean, I told them that it could be  
18 possibly up to two weeks.

19 Q Okay. All right. Thank you.

20 MR. BENSON: Your Honor, we'll accept Ms.  
21 Harrison.

22 THE COURT: Okay. Mr. Furnstahl.

23 MR. FURNSTAHL: Thank you.

24 BY MR. FURNSTAHL:

25 Q Good morning.

1           A     Good morning.

2           Q     Can I ask a little bit about that shooting in  
3     '91?

4           A     Yes.

5           Q     Could you share with us a little bit about the  
6     facts of that, what was it that happened?

7           A     It was my kids' father. His twin brother was  
8     holding a shotgun.

9           Q     May I ask you first, is it difficult to talk  
10    about it?

11          A     No.

12          Q     I want to know if I'm getting into something  
13    that's too personal I would like you to tell me, okay?

14          A     Okay. Sure.

15          Q     Go ahead.

16          A     He was holding an older shotgun and it went off.  
17    He was a ways away from him but it just kind of slanted  
18    into his leg and his foot.

19          Q     Were they out hunting at this time or inside?

20          A     Inside.

21          Q     How come the gun was loaded, do you know?

22          A     I wasn't there so I don't know if he was at  
23    their house or they were at somebody else's house. I have  
24    no idea.

25          Q     Okay. So he might not have even known it was

1 loaded.

2 A I'm not sure.

3 Q I take it this was after you moved from Indiana?

4 Or was this before?

5 A This was when I was living in Indiana.

6 Q Okay. So after this happened that's when you  
7 moved?

8 A Yes.

9 Q Okay. Did your children's father, he survived?

10 A Yes.

11 Q I see. Was anybody prosecuted as a result?

12 A No.

13 Q You mentioned -- counsel had asked you questions  
14 about your feelings about handguns and I thought I heard  
15 you say that you have personal reasons why you don't like  
16 guns. Is that the reason that you just described, or are  
17 there other reasons?

18 A That would probably be the main reason.

19 Q Okay.

20 A Yeah. That was my first encounter with any type  
21 of shooting related anything.

22 Q Uh-huh.

23 A So I guess that would be, I mean I was 19 at the  
24 time so I guess that would, that kind of scared me a  
25 little bit.

1 Q Gets your attention, doesn't it?

2 A (Nods head.)

3 Q Now, you have three children, correct?

4 A Yes.

5 Q Three teenagers, two boys and a girl, as I  
6 recall?

7 A Yes.

8 Q It strikes me that it's tough to be a kid  
9 nowadays because of everything that's going on in school  
10 with drugs and guns and so on and so forth. Would you  
11 agree or disagree with that?

12 A I agree.

13 Q What do you do with your children to protect  
14 against those kinds of problems?

15 A I talk to my kids. I'm very, very close with my  
16 kids. I believe I was blessed with three very, very good  
17 kids.

18 Q Okay. Are you their best friend, do you think?

19 A Oh, yeah.

20 Q Are they yours?

21 A Yes.

22 Q I see you like to go to Bloomington Kennedy  
23 basketball games?

24 A Yes. My son plays for Kennedy.

25 Q All right. The oldest boy?

1           A     Um-hum.  Yes.

2           Q     As I recall they have a pretty good basketball  
3 team.  Or is it the other Bloomington team?

4           A     They have got a pretty good basketball team.

5           Q     Have you ever been concerned that either of your  
6 sons or daughter might get involved in some of the kinds  
7 of problems that face young people out there in the world  
8 nowadays, guns and drugs and gangs and all that stuff?

9           A     No, not necessarily.

10          Q     All right.  And that's because of the way you  
11 raised them, right?

12          A     Yes.

13          Q     All right.  What do you think about -- well, one  
14 of the things that kind of jumps out to me about this  
15 situation is that you have a son that is close in age to  
16 the defendant, and I'm wondering how that's going to play  
17 out, if at all, in your ability to be a fair juror in this  
18 case.  Do you understand my question?  Do you understand  
19 where I'm going with that?

20          A     I do understand.  I'm not sure how old he is,  
21 but that would not --

22          Q     Okay.

23          A     It wouldn't affect me.

24          Q     There's a concern I have that jurors might feel  
25 sympathetic towards him because he is 16, 17 years old and

1 he looks very young, okay? And the judge will tell you  
2 that in order to be a fair and impartial juror to both  
3 sides in this case you have to base your decision solely  
4 and completely on the evidence you are going to hear and  
5 nothing else. Do you think you are going to have  
6 difficulty following the judge's instruction on that?

7 A Not at all.

8 Q You recognize that your decision is going to  
9 affect somebody no matter what it is, correct?

10 A Yes.

11 Q It's just normal human nature to recognize that,  
12 but in order to be a fair and just juror we have to set  
13 those feelings aside, compartmentalize them and base your  
14 decision only on the evidence, and what I'm hearing from  
15 you is you can do that?

16 A Yes.

17 Q You work two jobs I see, too?

18 A Yes.

19 Q Have some supervisory responsibility?

20 A Yes.

21 Q In one of the jobs now?

22 A Yes.

23 Q Have you ever had to, in any job in your life,  
24 ever had to fire or discipline somebody?

25 A Discipline, not necessarily, no. Not fire.

1           Q     Okay. You were asked do you want to be a juror  
2     in this case and you answered yes and no. Could you  
3     elaborate a little bit on your answer for me, please?

4           A     I guess the no because of the length of time  
5     that it could go on.

6           Q     Um-hum.

7           A     But yes because, I mean, I know it's my duty to  
8     serve.

9           Q     You've never served on a jury before, correct?

10          A     No.

11          Q     Do you know anybody who has?

12          A     No. Oh, yes, I do. My mom has before.

13          Q     In Indiana?

14          A     Yes.

15          Q     Southbend, is that where she lives?

16          A     Yes.

17          Q     What kind of case was she on?

18          A     It was a criminal case.

19          Q     What kind of criminal case, do you remember?

20          A     I believe it was an assault.

21          Q     How long ago was that?

22          A     Maybe a year or two ago.

23          Q     Did you talk to her much about her experience?

24          A     A little bit.

25          Q     Okay.



1           A     She was pretty nervous. She said that she was,  
2 her nerves were a little bad during the case, but.

3           Q     Okay. What was your reaction when you got your  
4 notice for jury service, if you had any?

5           A     Wow, they picked me, I guess.

6           Q     Pardon me?

7           A     First time, I guess I was like wow, I guess.  
8 I've never been picked for a jury before.

9           Q     Are you okay with serving on a case like this if  
10 you are picked?

11          A     Yeah. Sure.

12          Q     Okay. Now, you mentioned that the concern that  
13 you have is the length of the trial. We anticipate after  
14 you are done today you'll be free to go and come back on  
15 Monday and we'll start the trial on Monday, and we feel  
16 that we should be done with the case next week, end of  
17 next week. That's a guess, and lawyers are known for  
18 being notoriously wrong with their guesses so take that  
19 with a grain of salt. But given those time constraints,  
20 is that something that's doable given your work  
21 constraints?

22          A     Sure.

23          Q     What feelings, if any, do you have about cops?

24          A     I really don't.

25          Q     Okay.

1           A     Nothing good or bad, I guess.

2           Q     All right. Do you have any experience with  
3 north Minneapolis? Do you know anybody that lives up  
4 there or visit up there?

5           A     I've got a niece that lives like in the central  
6 part, but.

7           Q     Do you have a lot of family up here?

8           A     No.

9           Q     Do you have brothers and sisters?

10          A     I've got a sister that lives in Bloomington.

11          Q     Bloomington, Minnesota, not Bloomington,  
12 Indiana?

13          A     Yes.

14          Q     Close to you?

15          A     Yes.

16          Q     Are you close to your sister?

17          A     Yeah, we are pretty close.

18          Q     What does she do for a living?

19          A     She's a receptionist.

20          Q     Are you willing, if requested to be on this  
21 jury, are you willing to search for the truth in the  
22 evidence?

23          A     Yes.

24          Q     Do you think that a just verdict is one that  
25 confirms the truth; that is a confirmation of the truth?

1 A Say that again.

2 Q Sure. Do you think that a just verdict is one  
3 that is a confirmation of the truth?

4 A Yes.

5 Q And are you willing to do that?

6 A Yes.

7 Q I take it from your answers that you are  
8 confident that you can be a fair juror to both sides?

9 A Yes.

10 Q So if at the close of evidence you are not  
11 satisfied that I've proved this case then the verdict is  
12 not guilty?

13 A Correct.

14 Q Would you agree?

15 A Correct, yes.

16 Q But if at the close of the evidence you are  
17 satisfied that I proved this case, are you able to convict  
18 on a charge of first degree murder?

19 A Yes.

20 Q Is there any doubt in your mind?

21 A No.

22 Q Thank you, ma'am.

23 MR. FURNSTAHL: Your Honor, we accept Ms.  
24 Harrison.

25 THE COURT: Okay, Ms. Harrison, you will be

1           seated on this jury and I'm going to excuse you now.  
2           You can come back Monday morning at about five to  
3           nine to this courtroom right out here and then just  
4           remain in the hallway until the clerk comes out to  
5           get you, okay?

6                       MS. HARRISON:   Okay.

7                       THE COURT:    Thank you.

8                                       (Ms. Harrison exits  
9           courtroom.   Mr. Olson enters courtroom.)

10                      THE COURT:    Good morning, Mr. Olson.

11                      MR. OLSON:    Good morning.

12                      THE COURT:    Would you raise your right hand  
13           to be sworn, please.

14                                       (Mr. Olson is sworn.)

15                      THE COURT:    Go ahead and have a chair.

16                      Mr. Olson, the attorneys and I have had a chance  
17           to look at your answers to the questionnaire you were  
18           given on Monday.   Have you thought about your  
19           answers?   Are there any changes or additions you  
20           think you need to make?

21                      MR. OLSON:    I think I could have elaborated  
22           more on questions, but seeing as how I didn't know  
23           how in depth you wanted to go so I just put my  
24           statements down that I thought relevant at that time.

25                      THE COURT:    I'm sure you'll get a chance to

1 do that. The attorneys are going to ask you some  
2 additional questions and we'll start with Mr. Benson.  
3 Mr. Benson has laryngitis so you'll have to bear with  
4 him a little bit, okay?

5 Go ahead, Mr. Benson.

6 BY MR. BENSON:

7 Q Good morning, sir.

8 A Morning.

9 Q First of all, you indicated that you did not  
10 want to be a juror in this case?

11 A Yeah.

12 Q Can you tell me why?

13 A I just felt with the kind of commitments of the  
14 upcoming week and things like that, and also I don't know  
15 if it, it will be -- it's hard to I think be not  
16 prejudiced in a case like this, and just kind of it's  
17 intimidating being in a murder case.

18 Q Okay. Let's talk about that. What do you find  
19 intimidating?

20 A Well, be easier to handle a case of a traffic  
21 stop or something else, but when you start talking about  
22 loss of lives and commitments like that it's very, you  
23 know, intimidating that way.

24 Q Okay. And you also indicated that it would be  
25 kind of hard not to be a little prejudiced and intimidated

1 in this case. What do you mean by that?

2 A I think it seems like a lot of the things that I  
3 see on news and reports and things, gang-related violence  
4 and things like that are the intimidating factor there.

5 Q And when you say intimidated, is it like you  
6 feel threatened yourself, or just the nature of what  
7 you've described?

8 A Probably a little combination of both but, you  
9 know.

10 Q Okay. That's fine, you know, I'm glad you are  
11 being candid. I like to get this information. Let me ask  
12 you this. Following up on the intimidation or that  
13 concern that you have, is it a concern that if you are  
14 selected as a juror in this case you might be in some  
15 danger? Or is it a concern that if you are a juror in  
16 this case that -- basically let's put it this way. If you  
17 are a juror in this case and you feel the State has proven  
18 its case beyond a reasonable doubt and you find Marvin  
19 guilty, are you concerned for retaliation or something  
20 like that that you are concerned with?

21 A No, I don't think --

22 Q Okay. Your concern as far as your intimidation,  
23 I think part of it is it seems that -- correct me if I'm  
24 wrong -- part of it seems to be it's a charge of first  
25 degree murder, that whatever way you put it someone died

1 or someone was killed --

2 A Yeah, sure.

3 Q -- dead. Is that something you think you can  
4 get over, like that aspect of it and be able to focus on  
5 the evidence in the case?

6 A Yeah.

7 Q Why I ask that is, well, first of all in the  
8 questionnaire there's some indication or a question about  
9 Marvin being, Marvin Haynes being of young age, being a  
10 juvenile, would that have an affect on the way you view  
11 evidence in this case? Or on the flip side there is going  
12 to be possibly some emotional testimony from witnesses who  
13 are related to the person who was killed in this case.  
14 Given that this is a murder case, how do you think that  
15 hearing that emotional testimony would affect you given  
16 what you said already?

17 A I think -- I have two girls and younger kids and  
18 family, but I think even at a young age, say, my  
19 eight-year old knows what's right and what's wrong, so if  
20 they have done something wrong they know it and if they  
21 are guilty they should pay a consequence for it.

22 Q Okay. And that's understood. How about the  
23 other half of my question? It's my fault, I ramble.

24 A Okay. The emotional part.

25 Q The emotional part about witnesses coming in,

1 and obviously there is going to be some emotional  
2 testimony, I imagine. And the concern I have is that you  
3 may have sympathy, which everybody would have, sympathy of  
4 the loved ones of someone who has died or been killed, but  
5 my concern is whether that sympathy will cause you to not  
6 focus on all of the evidence in the case. Should I have  
7 that concern?

8 A In the case of the victims, the families of the  
9 victims?

10 Q Yeah.

11 A I suppose I could be drawn to that conclusion,  
12 that, you know, and -- but I think I will try to be fair.  
13 I don't know.

14 Q Okay. Part of it, you know, we don't want to,  
15 we don't expect people, jurors not to be human, okay. The  
16 question is whether you can compartmentalize like whatever  
17 sympathy you may have for the victim's family or whatever  
18 sympathy you may have because of Marvin Haynes's age,  
19 compartmentalize those type of things and focus on the  
20 evidence in the case at hand. Do you think you can do  
21 that?

22 A I would make my best attempt, yes.

23 Q If the judge instructed you that sympathy for  
24 either side is not something that should go into your  
25 decision of whether the State has proven its case or not,



1 do you think you could follow that instruction from the  
2 Court?

3 A I would try, yeah.

4 Q Okay. I don't want to beat a dead horse or  
5 anything. You said you'll try. Do you have a concern  
6 that you might not be able to?

7 A No. I think I would be just as fair as anyone  
8 else, if that's what you mean.

9 Q Okay. You also, you indicated that on one  
10 occasion you were questioned by park police officers while  
11 you were a pool manager?

12 A Um-hum.

13 Q How long ago was that?

14 A I was in college, probably mid '80s. It was  
15 more of an, as a pool manager they would ask me, you know,  
16 what had happened, what had occurred in different  
17 incidences and how it escalated to having to call the park  
18 police agent to come to the site, that type of thing,  
19 probably routinely as a manager of a pool in Minneapolis,  
20 six, eight different occasions through an eight-year  
21 period.

22 Q Okay. Have you ever had to call the police?

23 A Yes.

24 Q I mean other than that, like 911 call or  
25 emergency call or anything like that?

1           A     Usually just non-emergency calls. I have called  
2     on my neighbor kids, you know, juvenile drinking and that  
3     in the garages, that type of thing.

4           Q     Okay. Satisfied with the response?

5           A     Yup. Sometimes they don't always get there in  
6     time and the party disburses or something, but that's  
7     understandable.

8           Q     In this trial there will be testimony from law  
9     enforcement officers as well as civilian witnesses. Is  
10    there any part of you that would give greater weight to  
11    the testimony of a police officer simply because they are  
12    a police officer than a civilian witness?

13          A     Yeah, I think I would. I think they are trained  
14    in observation and things like that.

15          Q     Okay. Let's talk about that a little bit. If a  
16    police officer would take the stand, like if you are a  
17    juror and the witness takes the stand, if that police  
18    officer gets up there, simply because of the uniform and  
19    the badge, takes an oath, would you think that that police  
20    officer has a greater ability to tell the truth than a  
21    civilian witness who would get up and take that same oath?

22          A     Yeah, I think they would be more likely to tell  
23    the truth than -- depends on the individual up in the  
24    case, you know, if they are a felon themselves or if they  
25    have had other things, you know, that they have done

1 wrong, they are more likely to lie and not tell the truth  
2 than someone that's, you know, law enforcement position.

3 Q Okay. The judge is going to give you like an  
4 instruction about what factors you can consider when  
5 determining credibility of a witness. You have your  
6 common sense and everything else, but the judge will give  
7 you some factors. One of those factors will not be the  
8 fact that someone is a police officer, the fact that they  
9 wear a badge or they wear this uniform, and I just need an  
10 honest answer from you. You've been candid so I trust you  
11 on that. If the judge gives you that instruction and it  
12 does not include that this person is a police officer or  
13 badge or anything like that, are you going to be able to  
14 follow that instruction and treat that officer on the  
15 issue of truthfulness the same way you would treat a  
16 civilian witness?

17 A I guess I could try, but in all honesty I think  
18 in the back of my mind I would still trust the person, law  
19 enforcement more than a civilian.

20 Q Okay. All right.

21 MR. BENSON: Your Honor, may we approach?

22 THE COURT: You may.

23 (Off-the record discussion at  
24 the bench out of hearing of Mr. Olson.)

25 THE COURT: Go ahead and continue, Mr.

1 Benson.

2 MR. BENSON: Thank you.

3 BY MR. BENSON:

4 Q Mr. Olson, a moment ago I talked to you about an  
5 instruction that the Court may give and some of the  
6 factors that the Court will give, and ultimately whatever  
7 the Court does give will be what you use, but it will  
8 include like the age, experience, ability to observe,  
9 things of that nature of a witness, you know, so when a  
10 witness testifies you are to not watch only the demeanor  
11 and everything else, but consider ability to observe, be  
12 their work experience, life experience, whatever, can you  
13 take those factors, those few factors and everything else  
14 the Court gives and apply those same factors to the  
15 testimony of a police officer and the testimony of a  
16 civilian witness in a similar fashion, or in the same  
17 fashion?

18 A Yeah. You are asking me if someone is too old  
19 to see things or too young to understand what is going on,  
20 those type of things, it would depend on whether they are  
21 a police officer or whether they are a civilian.

22 Q Well, the judge will give you an instruction  
23 that any witness, when you are determining credibility of  
24 any witness, you have to consider things such as the age  
25 of the witness, the experience of the witness, the ability

1 of that witness to observe and relate the events of which  
2 they are testifying about, any motive or bias that they  
3 may have in the action itself. That would be an  
4 instruction that applies to every witness that comes up to  
5 testify. Do you understand that?

6 A Yeah.

7 Q Okay. My question to you is, can you hold a  
8 police officer and a civilian witness to the same  
9 standard, to that instruction, apply that instruction to  
10 both of them and not give a police officer greater weight  
11 simply because they are a police officer and the other  
12 person is not a police officer?

13 MR. FURNSTAHL: I would object to that  
14 question as being compound and confusing.

15 THE COURT: Well, it's difficult framing.  
16 I think it is compound but I don't think it's  
17 confusing. I'll allow you to answer it.

18 Do you understand the question?

19 MR. OLSON: Somewhat.

20 THE COURT: Well, let me just say this:  
21 Can you apply those factors that Mr. Benson listed,  
22 can you apply those factors, if that's what the Court  
23 gives you, the same way to a civilian witness as to a  
24 police officer to judge their credibility? Whatever  
25 factors I give you, can you apply the same factors to

1           either witness?

2                   MR. OLSON: I think I would still have  
3 factors influenced a little bit by the fact that they  
4 are a police officer.

5                   THE COURT: All right. Mr. Olson, I'm  
6 going to excuse you. You can check back down in the  
7 jury room back downstairs. Thank you very much.

8                   MR. OLSON: All right.

9                                   (Mr. Olson exits. Mr. Smith  
10 enters the courtroom.)

11                   THE COURT: Good morning.

12                   MR. SMITH: Good morning.

13                   THE COURT: Would you raise your right hand  
14 to be sworn today?

15                   MR. SMITH: Sure.

16                                   (Mr. Smith is sworn.)

17                   THE COURT: Go ahead and have a seat, Mr.  
18 Smith. The attorneys are going to ask you some  
19 questions, but the first question I have for you is  
20 after you filled out this questionnaire on Monday,  
21 did you think about your answers and do you have  
22 anything you want to add or correct on your  
23 questionnaire?

24                   MR. SMITH: No, I don't believe so.

25                   THE COURT: Okay. Let me follow-up on a

1 couple questions.

2 Number one, on question 15 it asks for the  
3 occupation of your father and your mother and you put  
4 unknown. Could you explain that, please?

5 MR. SMITH: We were adopted by our  
6 grandparents, my brother and I, so at this point my  
7 mother doesn't work and she's still in Texas and I'm  
8 not really sure who my father is, to be honest with  
9 you.

10 THE COURT: I assumed you might have been  
11 adopted when you answered the question that way but I  
12 needed to just clarify that.

13 And then you indicated that you have been  
14 treated for depression in your life?

15 MR. SMITH: Yeah. I'm on Zoloft currently.

16 THE COURT: Have you been on that for  
17 awhile?

18 MR. SMITH: Yeah. It was a result of going  
19 through hep C medication for six months.

20 THE COURT: Does the medication in any way  
21 make you drowsy or anything like that?

22 MR. SMITH: No.

23 THE COURT: Are you able to focus okay?

24 MR. SMITH: Absolutely.

25 THE COURT: Anything about that that would

1           make it more difficult for you to be a juror on this  
2           case because of that reason?

3                   MR. SMITH: No.

4                   THE COURT: Okay. Mr. Benson is going to  
5           ask you some questions first and he has laryngitis so  
6           he's going to approach a little closer so you can  
7           hear him.

8                   MR. SMITH: Okay.

9                   THE COURT: Go ahead, Mr. Benson.

10                  MR. BENSON: Thank you, Your Honor.

11       BY MR. BENSON:

12               Q     Good morning.

13               A     Good morning.

14               Q     Mr. Smith, excuse me, I want to follow-up on a  
15       couple of your responses.

16               A     Sure.

17               Q     One, in giving me some information about your  
18       opinions on the criminal justice system, you indicated  
19       that it seems people with money and influence can buy  
20       their way out of trouble, and two, you said the system was  
21       too lax in some areas and too harsh in others. Can you  
22       elaborate on both of those points?

23               A     Sure. The first one I would say that -- I'm  
24       sorry, that first question again was which one?

25               Q     The first one you indicated it seems people with



1 money and influence can buy their way.

2 A Comes from trials and stuff that I've seen on  
3 television, you know, the O. J. Simpson trial, Robert  
4 Blake, just to name a couple.

5 Q Okay.

6 A The next question in regards to the justice  
7 system, its being too lax in some areas and too harsh in  
8 others pertains to sentencing guidelines for different  
9 crimes that are committed, whether it be drugs, murder,  
10 whatever the case may be, I just think in some cases some  
11 of the penalties are too light and in other cases too  
12 harsh.

13 Q Is that from news reports or talking to people  
14 in the system?

15 A Yeah. Well, I've got a friend that's in prison  
16 right now for meth because he was within a thousand yards  
17 away from a grade school. He is going to be in 20 years,  
18 you know, and yet I've seen people that take other  
19 people's lives that are out in half that time. So it's  
20 kind of, it's pretty much that more than anything.

21 Q Was your friend, was he prosecuted in federal  
22 court or state court?

23 A I believe it's a state court in Kansas.

24 Q Okay. How would your opinions, if at all,  
25 affect the way you, you know, view being a juror in a

1 criminal case?

2 A I think that the system itself is a good system.  
3 I think as far as the criminal justice system, I think  
4 that it gives people an honest chance to find out, you  
5 know, whether they are guilty or innocent, or at least it  
6 gives them the opportunity to be innocent until they are  
7 proven guilty.

8 Q Okay. One other remark I just want to follow up  
9 on briefly. When asked if there is anything else that we  
10 should know that may impact your ability to sit on this  
11 jury, you indicated that you dislike rap music and the way  
12 our young people choose to dress?

13 A Um-hum.

14 Q Could you elaborate on that?

15 A Appearance. It's probably appearance more than  
16 anything.

17 Q Thank you.

18 A I mean, knowing the defendant and who he is, you  
19 know, I know that -- I don't know, it's just my opinion  
20 that rap music with our youth today has created a, I don't  
21 know, less than desirable outcome. I feel that rap music  
22 is, for lack of a better term, poison in some cases as is  
23 video games and a lot of other things, that it's  
24 desensitized our youth.

25 Q Are you concerned with the way Mr. Haynes is

1 dressed right now?

2 A The baggy pants and the sloppy dress. My son  
3 does it, he's white. You know, I mean it's very prevalent  
4 in today's society. I don't understand it, you know.

5 Q Okay. And as you sit here and you look at Mr.  
6 Haynes, how does your opinion, I suppose as far as the  
7 dress of today's kids and everything else, affect the way  
8 you view him before you hear any evidence in this case?

9 A I think it's easy to stereotype people like  
10 that, and I myself would be probably -- I would have a  
11 tendency to stereotype.

12 Q Have you stereotyped him? Is that fair to say?

13 A Yeah, pretty much.

14 Q Can you tell me just what that stereotype would  
15 be?

16 A I'm under the impression that, you know, if he  
17 wasn't guilty I wouldn't be here.

18 Q Okay. So nothing -- I'm glad you are candid.  
19 Nothing else, you know, the judge instructed you at the  
20 beginning of this case that Mr. Haynes is presumed  
21 innocent, the State has to prove him guilty and all that.

22 A Exactly.

23 Q Is it fair to say you've, because of your  
24 background and your stereotype and everything else, you  
25 think he's probably guilty?

1           A     It would depend on the process to determine  
2     that.

3           Q     Okay. And I'm just asking you.

4           A     In my own opinion?

5           Q     In your own opinion, yes.

6           A     I have no idea. I would have to sit through the  
7     jury, see all the evidence and listen to both sides in  
8     order to really come to that conclusion.

9           Q     So let's be clear right now.

10          A     I wouldn't let the way that young man is dressed  
11     affect whether or not I would say, you know, say whether  
12     he is guilty or innocent. Again, I would have to see all  
13     the evidence and everything else should I be selected.

14          Q     How would you set aside the stereotype that you  
15     have described already?

16          A     It's my civil duty to do that. I believe in  
17     this country, I believe in this system.

18          Q     Okay.

19          A     So I would have to set that aside.

20          Q     How long have you had this opinion?

21          A     I don't know, I guess ever since my son started  
22     listening to rap music.

23          Q     Okay. How old is your son?

24          A     He's 22 right now. Since 15; 14, 15 years old.

25          Q     And you are the only one that can tell us this.

1       Only one that can tell me this.

2           A     Right.

3           Q     So you are looking at about seven years' worth  
4       of this stereotype in your mind being developed, baggy  
5       clothes and rap music. How is it, other than just, you  
6       know, you said that you will do it, but how are you going  
7       to like through the thought process take and separate your  
8       stereotype that you have about Mr. Haynes at this time and  
9       stereotype about people in general and then how it applies  
10      to Mr. Haynes, how are you going to set that aside to  
11      focus on evidence in this case?

12          A     I would just have to. Again it's my civil duty  
13      to do that. I mean, I would, I would just have to.

14          Q     And then we also agree that this remark you have  
15      about disliking rap music, is it fair to say that you've  
16      made an assumption, or you basically gave your stereotype,  
17      whatever, but you made an assumption that Mr. Haynes may  
18      like rap music?

19          A     Yeah. Probably. Yeah, I think that's safe to  
20      say.

21          Q     Why do you say it's safe to say?

22          A     Again, just by seeing who he is.

23          Q     Is it also --

24          A     It's almost like it's a given. I will say it's  
25      a given.

1           Q     I do want to explore this because you've never  
2 heard any evidence in this case.

3           A     Right.

4           Q     You don't know anything about Mr. Haynes's  
5 background.

6           A     Absolutely nothing.

7           Q     The only thing you know is the way you've seen  
8 him dressed?

9           A     Exactly.

10          Q     The fact he's black?

11          A     Right.

12          Q     You see he's got braids in his hair?

13          A     Um-hum.

14          Q     Because of that you made a conclusion that it's  
15 a given that he likes rap music?

16          A     Pretty much, yes.

17          Q     And also because he likes rap music and because  
18 he has baggy clothes, that's something that's a commentary  
19 on today's youth in society?

20          A     It is, yes.

21          Q     That's something that has been ingrained in you  
22 for maybe seven years since your son started listening to  
23 rap music?

24          A     Right. It's just something that I don't  
25 understand. I have no understanding of why somebody would

1 dress like that and/or listen to that kind of music. But  
2 again, that's just my opinion.

3 Q Okay. And -- okay.

4 A I mean, to me it just doesn't, you know, I mean  
5 if you are trying to impress somebody or, you know, trying  
6 to make a difference in society, I don't think you do that  
7 by dressing like that.

8 Q Okay. It's a negative thing?

9 A Yeah. Absolutely. Absolutely. I think it  
10 keeps a person from being able to contribute to society  
11 and it's because of the stereotype. It's unfortunate but  
12 it is there.

13 Q Okay. And more important to society, you hold  
14 that stereotype?

15 A To a certain degree, yeah.

16 Q All right. Okay. Thank you.

17 MR. BENSON: Your Honor, can we approach?

18 THE COURT: You may.

19 (Off-the record discussion at the  
20 bench out of hearing of Mr. Smith.)

21 THE COURT: Mr. Smith, I'm going to excuse  
22 you from this jury and I would ask if you'd check  
23 back in with the jury office downstairs.

24 MR. SMITH: Sure.

25 THE COURT: Thank you very much.

1 (Mr. Smith exits. Ms.

2 Schlueter-Hynes enters the courtroom.)

3 THE COURT: Good morning.

4 MS. SCHLUETER-HYNES: Good morning.

5 THE COURT: It's Schlueter-Hynes, is that  
6 right?

7 MS SCHLUETER-HYNES: Right.

8 THE COURT: Would you raise your right hand  
9 to be sworn today?

10 (Ms. Schlueter-Hynes is sworn.)

11 THE COURT: Go ahead and have a seat.  
12 There's an L in front of there, huh?

13 We have your questionnaire that you filled out  
14 on Monday and the attorneys are going to ask you some  
15 questions in a couple of minutes. First of all I'm  
16 going to give you an opportunity, is there anything  
17 you feel you should have said on here that you didn't  
18 or anything that you feel you want to change?

19 MS. SCHLUETER-HYNES: I don't think so.

20 THE COURT: Okay. Mr. Benson is going to  
21 go first and ask you some questions and he has  
22 laryngitis so he's having some difficulty. He's  
23 going to get a little closer so you can hear him,  
24 okay?

25 Go ahead, Mr. Benson.



1 MR. BENSON: Thank you.

2 BY MR. BENSON:

3 Q Good morning.

4 A Good morning.

5 Q Ma'am, you indicated that you may have some  
6 difficulty with family arrangements?

7 A Right.

8 Q What would those be?

9 A Well, I have young children school age and so  
10 making sure they get to school and off the bus and that  
11 kind of thing would be an issue for me, especially being  
12 sequestered or something, evening, responsibility with  
13 kids, getting them to activities and sports games and  
14 things like that.

15 Q Okay. Would you be able to make those  
16 arrangements if you were selected as a juror?

17 A I guess I will do what I have to do, and if  
18 (inaudible).

19 Q All right. You indicated that you did not want  
20 to be a juror in this case?

21 A Right.

22 Q Part of that would be the family arrangements.  
23 Is there any other reason?

24 A Being away from work and just life in general.  
25 My own concerns.

1           Q     Okay. You noted also that you had some  
2 concerns, or at least about the severity of the charge in  
3 this case?

4           A     Right.

5           Q     Can you elaborate on that, please?

6           A     I think it's a big responsibility to sit in  
7 judgment of another human being and how their life is  
8 affected, how the victim's lives and families' lives are  
9 affected, and I just take it very seriously so I think  
10 it's a difficult position.

11          Q     This is your first jury service?

12          A     Yes.

13          Q     And you've indicated it would be a difficult  
14 thing to do. Do you think you are up to doing that?

15          A     I guess I would like to think I could if I had  
16 to. I don't know. Never been in that situation so I  
17 think you can't say for sure how you might handle it.

18          Q     Okay. What's the toughest decision that you had  
19 to make in your life, or the most important decision?

20          A     Deciding to adopt my child.

21          Q     Okay. And what went into that process?

22          A     Coming to the realization that that I wasn't  
23 going to be able to have my own second child, dealing with  
24 all those kinds of emotions and thoughts and processes,  
25 and then actually making a step to do all the paperwork

1 and requirements that it takes to take on that  
2 responsibility and follow through with all of that.

3 Q How long ago was that?

4 A Six years.

5 Q Okay. How old is your adopted child?

6 A Six.

7 Q Six? Okay. Is it a boy or girl?

8 A Girl.

9 Q Do you feel you made the right decision?

10 A Yes.

11 Q Okay. When you made that decision, did you like  
12 make it from yourself or did you consult with someone?

13 A Well, my husband and I made it together.

14 Q Okay. Well, in this context, as far as if you  
15 are selected to be a juror in the case, you would have to  
16 work with six (sic.) people you don't know in order to  
17 make a decision of whether the State has proven its case  
18 or not. Do you have any apprehension of doing that task  
19 if you are called to do it?

20 A Some.

21 Q What would that be?

22 A Oh, just, you know, unknown personalities and  
23 differences of opinions. I think it's always challenging.

24 Q Okay. Are you able to hold up to your own  
25 opinion, like in a group?

1           A     For the most part.

2           Q     Okay. Let me ask you if -- I'm going to give  
3     you a continuum. On this left-hand side in a group  
4     situation there's people that stand, like maybe they are  
5     going to sit back until they really, really need to say  
6     something, and on the right-hand end they are people who  
7     are just like the alpha personalities, they are going to  
8     take over a discussion. There's a whole bunch of people  
9     in the middle. Where would you put yourself on that  
10    continuum?

11          A     Definitely to the more reserved, quiet side and  
12    not completely unopinionated but I would withhold my  
13    judgment, or my statement.

14          Q     Okay. You would withhold it?

15          A     Withhold it maybe isn't the right word, but I  
16    would tend to be more quiet about my opinion.

17          Q     Okay. Are you the type of person that if you  
18    really felt strongly about your opinion that you would  
19    just keep it to yourself rather than have a  
20    confrontational type situation?

21          A     Depending on the circumstance, I guess.

22          Q     I'm asking you to kind of predict some things  
23    that you don't know about, obviously, with this case, but  
24    in this circumstance, if, you know, basically if you have  
25    a strong opinion about whether the State has proven its

1 case or not and another juror has a different opinion, are  
2 you going to be able to debate about that or talk about  
3 that? Or be more inclined just to sit back and see what  
4 happens?

5 A Probably more inclined to sit back.

6 Q Okay. Let me ask you this: You indicated that  
7 you heard and read some news reports about this case?

8 A Right.

9 Q All right. You've had some time to think about  
10 this since you filled it out. Do you remember any details  
11 from those news reports?

12 A Not really.

13 Q So is it fair to say that other than the fact  
14 that that was in the newspaper, that shouldn't impact  
15 the --

16 A Not significantly, no.

17 Q Okay. Would it impact it somewhat?

18 A I think anytime you've read anything about  
19 anything it has some impact on you, any experience or  
20 knowledge or information you have impacts how you think  
21 about things, even though I don't recall the details of  
22 what I read about it.

23 Q Okay. How does the fact that this case was in  
24 the newspaper at all, how does that affect the way you  
25 view this case or potential of being a juror on this case?

1 A I feel like it's pretty high profile.

2 Q Okay. And how's does that affect you?

3 A Makes me not want to be involved.

4 Q Why is that?

5 A I don't need that kind of stuff to deal with in  
6 my life. I'm busy enough, got enough of my own situation  
7 and things to deal with, and taking on that isn't my first  
8 choice. Definitely.

9 Q Okay. I mean, are there any concerns about the  
10 -- maybe you could clarify as far as are there any safety  
11 concerns you have, just being involved in a potentially  
12 high profile case?

13 A No, I'm not concerned about my safety  
14 necessarily.

15 Q All right. One moment, ma'am.

16 MR. BENSON: Your Honor, we'll excuse Ms.  
17 Schlueter.

18 THE COURT: All right. Ms. Schlueter,  
19 you'll be excused from this case. If you would  
20 please check in downstairs with the jury office.  
21 Thank you very much.

22 MS. SCHLUETER-HYNES: Okay.

23 (Ms. Schlueter-Hynes exits.)

24 MR. BENSON: Your Honor, can I have a  
25 moment before the next juror?

1 THE COURT: Yes. Actually we are going to  
2 take our recess now, so.

3 (Recess.)

4 THE COURT: Counsel, I just received a  
5 phone call from juror number 35, Tony Walker, who  
6 indicates he did not get to talk to the jury office  
7 on Monday because of the confusion down there; that  
8 he was in a moped accident, had a closed head injury  
9 in 1995 and he said he didn't think he could remember  
10 what happened in a week-long trial, he has memory  
11 problems, so I said I would just provide that  
12 information to you and let him know if he needs to  
13 come in for examination, and he's going to also  
14 provide that to the jury office downstairs. He is  
15 employed but I asked him if he thought he could  
16 remember what happened in a week-long trial, told him  
17 he was allowed to take notes, and he said he didn't  
18 think he could. So I provide that information to  
19 counsel.

20 MR. FURNSTAHL: I guess we'll agree to  
21 cause. He indicated that in his questionnaire.

22 MR. BENSON: Yeah.

23 THE COURT: Mr. Benson, you agree to cause  
24 on him?

25 MR. BENSON: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. FURNSTAHL: Judge, could we just have a  
3 moment?

4 THE COURT: You may.

5 (Off-the-record discussion.)

6 MR. FURNSTAHL: We have stipulations on  
7 jurors 21 and 40.

8 THE COURT: 21 is cause and 40 cause.  
9 Stipulation on cause with regard to juror number 21  
10 and juror number 40.

11 MR. FURNSTAHL: Could you ask her questions  
12 28, 43 and 68, please?

13 THE COURT: 28, 43 and 68?

14 MR. FURNSTAHL: Yes, sir.

15 (Ms. Klatke enters.)

16 THE COURT: Good morning. Ms. Klatke,  
17 right?

18 MS. KLATKE: Yes.

19 THE COURT: Would you raise your right hand  
20 to be sworn today?

21 MS. KLATKE: Sure.

22 (Ms. Klatke is sworn.)

23 THE COURT: Go ahead and have a chair.

24 MS. KLATKE: Thank you.

25 THE COURT: Ms. Klatke, we have your



1 questionnaire that you filled out on Monday.

2 MS. KLATKE: Yes.

3 THE COURT: In a few minutes the attorneys  
4 will ask you some questions about it. Is there  
5 anything you thought of that you needed to either  
6 change or add on your questionnaire?

7 MS. KLATKE: No. I don't think so.

8 THE COURT: Okay. Let me ask you to  
9 explain, you list organizations that you belong to  
10 and you did list Alanon.

11 MS. KLATKE: Yes. I didn't know if I was  
12 supposed to list that though, but.

13 THE COURT: No that's fine.

14 MS. KLATKE: Okay.

15 THE COURT: How long have you been a member  
16 of Alanon?

17 MS. KLATKE: Since October of 2003.

18 THE COURT: Okay. Do you have a family  
19 member that caused you to join that organization?

20 MS. KLATKE: Um, well, a lot of people in  
21 my family have been alcoholics, so.

22 THE COURT: Okay. And --

23 MS. KLATKE: That's why.

24 THE COURT: Has that been helpful to you to  
25 deal with that?

1 MS. KLATKE: Yes.

2 THE COURT: It says Christianity?

3 MS. KLATKE: Yes. I go to church once in  
4 awhile, so.

5 THE COURT: Okay.

6 MS. KLATKE: I'm a Christian so I just  
7 decided I would put that.

8 THE COURT: All right. Do you belong to a  
9 particular church?

10 MS. KLATKE: No. I'm kind of looking for  
11 one right now.

12 THE COURT: Okay. Now, you were also a  
13 victim of a crime. It says -- you say that you were  
14 raped, is that right?

15 MS. KLATKE: Yes.

16 THE COURT: Now, when did that happen, how  
17 long ago?

18 MS. KLATKE: Actually I've had it happen  
19 twice and one was on my 17th birthday, one of my  
20 mom's neighbors -- none of them were reported. And  
21 the other one was I ended up having a stillbirth  
22 because I was raped, that was by someone else that I  
23 had known too. That was --

24 THE COURT: Okay.

25 MS. KLATKE: -- about --

1 THE COURT: Are you able to talk about this  
2 all right?

3 MS. KLATKE: Yeah. It was five years ago  
4 so I've had counseling and stuff for it, so.

5 THE COURT: Let me ask you this. First of  
6 all, you chose not to report either one of these.

7 MS. KLATKE: Well, I was really young when  
8 I, when the first one happened and I was too scared  
9 to, and the second one I was in another state and  
10 everything and I just wanted to get home so I didn't  
11 do anything about it.

12 THE COURT: Okay. Did you tell anybody at  
13 all about the first one when you knew it was your  
14 mom's neighbor, is that what you said?

15 MS. KLATKE: I think I told like one of my  
16 friends but that's about it, and my mom never found  
17 out until a few years later so there was nothing they  
18 could do about it anyways.

19 THE COURT: Okay. And you say you've been  
20 doing counseling to deal with those issues?

21 MS. KLATKE: Yes.

22 THE COURT: Do you think anything about  
23 being a victim of two serious crimes would make you  
24 tend to favor say the prosecutor in this case more  
25 than the defense? Or would you be able to listen to

1 the evidence and judge this case if you are a juror  
2 based on just what you hear in the witness stand?

3 MS. KLATKE: No, I think I'm pretty much  
4 kind of -- well, I'm not, you know, you never really  
5 get over them but I'm okay with -- not okay, but I've  
6 let things go in these ca -- in those two incidents.

7 THE COURT: What about just the emotional  
8 impact of -- now, you are going to hear emotional  
9 testimony in this case obviously from relatives of  
10 the victim. Is that going to bring back some  
11 emotional feelings such that it would interfere with  
12 your listening to the case and judging it on the  
13 evidence?

14 MS. KLATKE: No, I don't think so.

15 THE COURT: Okay.

16 MR. FURNSTAHL: Can we approach?

17 THE COURT: You may.

18 (Off-the record discussion at  
19 the bench out of hearing of Ms. Klatke.)

20 THE COURT: Ms. Klatke, I'm going to excuse  
21 you from this case and ask you if you would check  
22 back in with the jury office back downstairs. Thank  
23 you very much.

24 MS. KLATKE: Okay. Thank you.

25 (Ms. Klatke exits courtroom.)

1 THE COURT: We'll do a couple other things  
2 on the record as soon as the clerk gets back.

3 First of all, on the memorandums on the Dexter  
4 slash Crawford issue, do you have those to give me  
5 today, or are you not done with them yet?

6 MR. BENSON: Not done yet, Your Honor.  
7 They will be ready by 4:30.

8 THE COURT: If you get them earlier --

9 Then that's all the jurors we have for the  
10 morning. I have down six strikes for the defense,  
11 three for the State, and we have so far gotten three  
12 jurors. You guys promised me you would be done by  
13 Friday.

14 MR. BENSON: I have no doubt we'll be done  
15 by Friday.

16 THE COURT: We're off the record now.

17 (Noon recess. Court  
18 reconvenes at 1:35 p.m. and the following proceedings  
19 occur.)

20 THE COURT: All right. Are we ready to  
21 proceed with juror number 23? And that is Ms. --  
22 okay. Go ahead and bring in juror number 23.

23 MR. FURNSTAHL: I've already advised  
24 counsel that unless -- what I'm going to do is I'm  
25 going to ask the Court to ask her some questions

1 based upon her questionnaire and unless cause is  
2 developed from your questions I'm going to exercise a  
3 peremptory and the questions I'm referring to, she  
4 has some strong opinions about the system, that it's  
5 rife with racial profiling, that persons of color are  
6 not treated fairly, system needs to be reformed. 57,  
7 58, 75. And also she has an issue with her classes  
8 starting on the 6th.

9 THE COURT: Yeah, I saw that.

10 MR. FURNSTAHL: So' just to speed things  
11 along.

12 THE COURT: All right. Go ahead and bring  
13 her in.

14 (Ms. Wanyama enters.)

15 THE COURT: Good afternoon.

16 MS. WANYAMA: Hi.

17 THE COURT: Would you raise your right hand  
18 and be sworn today?

19 (Ms. Wanyama is sworn.)

20 THE COURT: Go ahead and have a chair.  
21 Now, the attorneys and I have your questionnaire that  
22 you answered on Monday and I'm going to ask you some  
23 follow-up questions on that. And first of all, on  
24 question 48 you said you didn't think that the -- you  
25 did not believe the jury system in this country is a

1 fair system. Right?

2 MS. WANYAMA: (Nods head.)

3 THE COURT: Can you answer out loud?

4 MS. WANYAMA: Yes.

5 THE COURT: And it says I think it tries to  
6 be but historical precedent leads me to be unsure,  
7 for example instances of racial profiling, inadequate  
8 staffing, inconsistencies and lack of support for  
9 public defenders. First of all let's kind of take  
10 that a little bit, when you say historical precedent,  
11 I just want to get a feel first of all what do you  
12 mean by that?

13 MS. WANYAMA: Um, what little knowledge I  
14 have of the criminal justice system in the United  
15 States, um, kind of has led me to understand that the  
16 law is something that -- interpretation of the law  
17 is something that changes over time so historically  
18 courts have not always upheld the rights I feel that  
19 are granted to us in our constitution.

20 More specifically, I have taken some classes in  
21 African American studies and in those classes we  
22 speak a lot about issues such as racial profiling and  
23 I -- we learned about a few cases where racial  
24 profiling was obviously used and the defendant was  
25 found guilty even though there was not a lot of

1 evidence to prove that.

2 THE COURT: Okay. Now can you remember any  
3 examples of the ones that you thought were racial  
4 profiling?

5 MS. WANYAMA: I don't remember the name or  
6 when it happened, it was fairly recently, and it was  
7 a young black man who was kind of walking by, like  
8 two blocks away from a scene where a murder had taken  
9 place in Florida and he ended up being convicted of  
10 the crime. And they go through, we watched a  
11 documentary about it and how he was kind of harassed  
12 by the police and taken into the woods and kind of  
13 physically harassed and just all kinds of things like  
14 that, so I guess that leaves me to understand that  
15 this is a system that is imperfect.

16 THE COURT: Okay. And that's something you  
17 primarily learned of those examples in your class?

18 MS. WANYAMA: Yes.

19 THE COURT: Okay. Was that, were did you  
20 take the class?

21 MS. WANYAMA: At the University of  
22 Minnesota.

23 THE COURT: Was that in the last couple of  
24 years?

25 MS. WANYAMA: Um-hum.



1                   THE COURT: Okay. Now, there's a little  
2 different answer you gave to another question, I  
3 think is the next question which is racial profiling  
4 is also pervasive in the system as well as  
5 hierarchies created by economic classifications.

6                   MS. WANYAMA: Um-hum.

7                   THE COURT: Now, when you say pervasive in  
8 this system, can you explain that a little bit?

9                   MS. WANYAMA: I think that what I meant is  
10 that it's something that from, again from what little  
11 I know, I'm a music major, that is kind of not really  
12 built into the system in the United States, the  
13 criminal justice system, but is something that is  
14 often played out, particularly it seems in certain  
15 communities. Again, I don't really have any specific  
16 examples that I can think of at the moment but when I  
17 was thinking, for example, of the economic  
18 hierarchies, I was just thinking of something that a  
19 couple of my friends have told me about how like, for  
20 example, public defenders receive very little support  
21 and they have enormous case loads, and of course who  
22 are the people who are most often represented by  
23 public defenders, they are people of lower income,  
24 that sort of thing. So I guess that was just kind of  
25 something that I was thinking of in that situation.

1                   THE COURT: Okay. One of the other  
2                   questions that you answered, the question is asking,  
3                   indicates that, number one, the defendant in this  
4                   case is 16 and a half years old and what reaction do  
5                   you have to someone that age that can be charged with  
6                   first degree murder. And you said -- first of all  
7                   you said you are not sure, 16 seems old enough to  
8                   understand what you are doing but the punishment that  
9                   goes with first degree murder might be tough for a  
10                  16-year-old. Then you say you don't know enough  
11                  about the punishment to say. Anything else that you  
12                  want to, can you elaborate a little bit on that?

13                 MS. WANYAMA: I guess what I was getting at  
14                 is that I feel that when you are 16, you are old  
15                 enough to understand the ethical repercussions of  
16                 what you are doing, of your actions, but I think not  
17                 knowing the, what a charge of first degree murder  
18                 entails in terms of punishment, for example if it's  
19                 something like life in prison that's something that I  
20                 guess I would struggle with because 16 is also a very  
21                 young age to have to say, you know, the rest of your  
22                 life is kind of shot. So I don't, I guess I don't  
23                 know enough.

24                 THE COURT: Well, let me ask you this. If  
25                 part of the instructions you received if you were a

1 juror on this case were that you were to make your  
2 decision based on the evidence you heard in this case  
3 and you were not to consider what the effect of your  
4 decision would be in terms of what punishment would  
5 be given in the event there was a guilty verdict, do  
6 you think you could keep that part aside and focus on  
7 the evidence in this case?

8 MS. WANYAMA: Yes. Definitely.

9 THE COURT: Now, I notice that you did make  
10 note that you are starting classes on September 6th,  
11 right?

12 MS. WANYAMA: (Nods head.)

13 THE COURT: And you need to be there.

14 MS. WANYAMA: Yeah.

15 THE COURT: I think is your words, right?

16 MS. WANYAMA: Yes.

17 THE COURT: This case, if you were a juror  
18 on this case they would anticipate being done with  
19 testimony next week, sometime latter part of the  
20 week, but then it's up to the jury how long they take  
21 to make a decision. I mean, they could make a  
22 decision before the 4th or 5th but it's potentially  
23 possible they could go -- I mean it's up to the jury.  
24 You understand that part?

25 MS. WANYAMA: Yes.

1 THE COURT: What kind of hardship would it  
2 cause you, you know, if you were worried about, I  
3 mean would you be able to set aside that part of  
4 worrying about school and just concentrate on making  
5 a decision on this case?

6 MS. WANYAMA: Yes.

7 THE COURT: Okay.

8 MS. WANYAMA: With reservation, though.

9 THE COURT: And the reservation, I mean,  
10 could you set aside your worries about school, I know  
11 your timing, and just participate with the other  
12 members of the jury on this case in making a  
13 decision?

14 MS. WANYAMA: Yes.

15 THE COURT: All right. Counsel, you want  
16 to approach?

17 MR. FURNSTAHL: Can I just ask a couple  
18 questions?

19 THE COURT: Yes.

20 BY MR. FURNSTAHL:

21 Q How do you pronounce your last name?

22 A Wanyama.

23 Q Ms. Wanyama, a couple of things, couple  
24 questions based upon the Judge's questions. Regarding the  
25 issue of sentence of someone the defendant's age, is that

1 something that you are going to be thinking about if you  
2 are asked to be on this jury and you go back to  
3 deliberate?

4 A It's something that I will think about but I  
5 don't believe that it will influence my decision.

6 Q Okay.

7 A Because we have to return to the evidence.

8 Q Okay. And you mentioned about your class  
9 issues, you said yes, with reservations. What did you  
10 mean by that?

11 A I will be here if I'm asked to be on the jury  
12 but I can't say that I won't be disappointed to miss, if I  
13 have to, the first few days of classes. That's all.

14 Q Thank you.

15 MR. FURNSTAHL: Can we approach?

16 THE COURT: You may.

17 (Off-the record discussion at  
18 the bench out of hearing of Ms. Wanyama.)

19 THE COURT: Ms. Wanyama, I'm going to  
20 excuse you from this jury, and if you could gather  
21 your belongings I would ask you to check back in with  
22 the jury office downstairs.

23 MS. WANYAMA: Okay.

24 THE COURT: Thank you very much.

25 (Ms. Wanyama exits. Ms. Mach enters.)

1 THE COURT: Good afternoon, ma'am.

2 MS. MACH: Good afternoon.

3 THE COURT: Will you remain standing and  
4 raise your right hand to be sworn today?

5 (Ms. Mach is sworn.)

6 THE COURT: Go ahead and have a seat. The  
7 attorneys are going to ask you some questions and  
8 they have your questionnaire that you answered on  
9 Monday.

10 First of all, are there any additions or  
11 corrections you feel like you need to make to these  
12 answers after thinking about it?

13 MS. MACH: I don't believe so.

14 THE COURT: And Mr. Benson is going to go  
15 first and he was suffering with laryngitis so you'll  
16 have to bear with him a little bit, he doesn't have a  
17 lot of voice.

18 MS. MACH: Okay.

19 THE COURT: Go ahead, Mr. Benson.

20 MR. BENSON: Thank you, Your Honor.

21 BY MR. BENSON:

22 Q Ms. Mach, what was your reaction when you got  
23 here yesterday and found out that this was a first degree  
24 murder trial?

25 A I had no yes or no opinions of it. You know, I

1 thought well, you know, either way.

2 Q All right. And this is your first jury service?

3 A Yes.

4 Q When you first got your notice that you were  
5 going to be on jury duty, did it cross your mind at all  
6 that you might be asked to be on a case this serious?

7 A No. I thought it could turn up.

8 Q Okay. Is there any part of you that thinks that  
9 sitting on a jury in a case such as this would be  
10 overwhelming?

11 A I don't believe so.

12 Q Anything about working with a group of other  
13 jurors in this case, if you are selected be 11 other  
14 jurors, to reach a decision, is there -- do you have any  
15 reservations about that at all?

16 A No.

17 Q Okay. Have you had occasions to work with  
18 groups of people to make decisions?

19 A At work, not on a jury or anything.

20 Q Okay. Can you give me an example of a work  
21 situation?

22 A Um, well maybe someone had a certain way to  
23 improve something and we had to go in a room, decide which  
24 would be the best way to do it. When we come up with  
25 something on the Internet or something to have a certain

1 endorsement would be through the Internet now that we  
2 would have to type manually or something like that, we  
3 would bring up ideas like that.

4 Q Okay. How do you perform in a group? What  
5 would you say your role is?

6 A A leader, kind of.

7 Q All right. I believe in your questionnaire  
8 there's no indication that you had a concern about, I  
9 suppose, the firearms issue?

10 A No.

11 Q No concern about that? And I also, I don't  
12 think you indicated that you had come in contact or anyone  
13 close to you had come in contact with like a violent or a  
14 threatening situation?

15 A No.

16 Q Okay. How do you think you would react to  
17 emotional evidence, or if a witness comes on the stand and  
18 was very emotional in relaying an event?

19 A I would listen very clearly, you know, to her or  
20 him or whatever. I wouldn't break down or something like  
21 that, if that's what you are getting at. But I would pay  
22 close attention.

23 Q Are you the type of person that can -- obviously  
24 you might have empathy or sympathy for that person, but  
25 would you be able to set that sympathy aside and focus on



1 the evidence and the facts?

2 A Right, right.

3 Q Can you do that?

4 A (Nods head.)

5 Q All right. As you sit here right now and you  
6 look at Marvin Haynes, do you see an innocent person?

7 A Yes or no. I have to find out what the evidence  
8 is.

9 Q Okay. Okay. And you heard the judge's  
10 instructions at the beginning of this case?

11 A Right.

12 Q And you know that the State of Minnesota has the  
13 burden of proof in a criminal case?

14 A Um-hum.

15 Q Do you think that's fair?

16 A I don't know offhand.

17 Q Okay.

18 A Probably no.

19 Q Why?

20 A I think you both have to present sides. Is that  
21 what you wanted me to say, kind of more or less, you know.

22 Q I want you to tell me honestly whatever your  
23 answers are.

24 A Okay. I will listen to both the attorneys.

25 Q Okay. What I was asking is I think you, and

1 maybe I misspoke, but the judge informed you that the  
2 State of Minnesota or the prosecutor in any criminal case  
3 bears of burden of proof in a criminal case, meaning that  
4 they have to prove guilt in any case. The ultimate burden  
5 on every element and every issue is on the State.

6 A Okay.

7 Q So I asked you do you think that's fair that the  
8 State bears that burden?

9 A Um, no, I don't think so.

10 Q Okay. And the reason for that is?

11 A For the State to bear the burden, you mean?

12 Q You think that's not fair for the State to bear  
13 that burden?

14 A It is fair. It is fair. Okay. Maybe I've  
15 figured it out. Sorry.

16 Q All right. Give me an idea of maybe the last  
17 time you had to determine whether someone was telling you  
18 the truth, in your work, your personal life, just some  
19 kind of an example?

20 A Probably a few years ago, my kids.

21 Q Okay. How old are your kids?

22 A They are -- they are 25. Twin boys.

23 Q All right. What was the situation?

24 A One was blaming the other one for doing  
25 something. It was very minimal now when I think about it.

1 I think they couldn't find someone's car keys, I'm  
2 thinking. I don't know who, Rick or Joe. Eventually  
3 someone did take the other one's car keys. As a joke.

4 Q All right. How did you go about determining,  
5 you know, who was telling you the truth?

6 A Well, I knew one of them had it but no one  
7 confessed to it. I said come on guys, you know one of you  
8 have them, I know you do, I don't have them so.

9 Q One of them confessed eventually?

10 A Yeah. Yeah.

11 Q Do you think it's tougher for you as a person or  
12 for one in general to determine if someone that they don't  
13 know is telling the truth than if they do know that  
14 person?

15 A Probably. Yeah.

16 Q Do you have any situations where you've had to  
17 determine, someone who is not a family member or someone  
18 that you didn't work with, whether they are telling you  
19 the truth or not?

20 A I can't think of anything offhand at the moment.

21 Q Okay. Are there particular things that you  
22 believe you would look for in general in assessing  
23 credibility?

24 A Like --

25 Q For example, if say for example someone came to

1       you and said I want to sell you that car over there, it's  
2       a great car, never been in an accident, what are you going  
3       to look for to determine --

4           A       I would need more proof than that if they are  
5       selling a car, yeah.

6           Q       All right. What I'm getting at is I would  
7       imagine there are certain things you would look for or  
8       certain things either common sensically or mannerisms or  
9       whatever, certain things that you would look for in  
10      determining whether someone is being straightforward with  
11      you or being truthful?

12          A       Right. You can more or less tell by their  
13      expressions.

14          Q       Okay. And when you do that, in this case  
15      there's going to be witnesses that will testify, some will  
16      be civilian witnesses, some will be adult, some will be  
17      juvenile, some will be law enforcement officers. Are you  
18      able to apply whatever standards you use to each and every  
19      one of those witnesses?

20          A       Oh, yeah. Yes.

21          Q       And the judge will give you some instructions as  
22      to what you can use and what you can't use. What you can  
23      use in determining credibility such as age, experience,  
24      ability to observe, ability to relate, things like that.  
25      And are you able to take, for example, if a law

1 enforcement officer came up and testified, could you hold  
2 them to the same standard or the same instruction as you  
3 would a civilian witness?

4 A Yes.

5 Q All right. And I don't recall from your  
6 question but do you -- I believe you didn't have any  
7 contacts with law enforcement officers?

8 A No, no.

9 Q Any opinion one way or another with respect to  
10 --

11 A No. No opinion.

12 Q Would you agree that a police officer like any  
13 other individual, you know, police officers, some are  
14 good, some are bad?

15 A Yes.

16 Q And some do their jobs better than others?

17 A Yes.

18 Q Okay. And they have the same good qualities and  
19 bad qualities as any other profession?

20 A Any individual, yes.

21 Q Tell me this. What was the toughest or the most  
22 important decision you've had to make in your life?

23 A In my life?

24 Q Yes.

25 A Probably getting married. Getting married.

1 Q All right.

2 A We dated for a long time and I didn't want to do  
3 it quite yet. Six years later, well.

4 Q All right. And is there anything else that you  
5 would think I would need to know in determining whether  
6 you would be a good juror in this case?

7 A I would just listen very carefully to both  
8 sides.

9 Q Okay. I forgot what you said as far as whether  
10 you wanted to be a juror when you filled out the  
11 questionnaire. So just forget that for the moment, but as  
12 you sit here now would you want to be a juror in this  
13 case?

14 A Yes.

15 Q Thank you, ma'am.

16 MR. BENSON: Your Honor, we'll accept this  
17 juror.

18 THE COURT: Okay. Mr. Furnstahl.

19 MR. FURNSTAHL: Thank you.

20 BY MR. FURNSTAHL:

21 Q Good afternoon.

22 A Good afternoon.

23 Q Tell me why you want to be a juror in a murder  
24 case.

25 A Um, not just because it would be interesting but

1 to give that person, you know, either way to weigh  
2 circumstances and, either guilty or not guilty.

3 Q Do you think -- are you confident that you'll be  
4 able to vote the way the evidence leads you?

5 A I believe I would.

6 Q Do you think that a just verdict is one that  
7 confirms the truth, that is a confirmation of the truth?

8 A Yes.

9 Q Would you search for the truth in the evidence?

10 A Yes.

11 Q Okay. What about the fact that the defendant is  
12 so young, is that going to affect your ability to look at  
13 the evidence?

14 A No.

15 Q Tell me why.

16 A The age isn't really a factor to me.

17 Q The judge, if you are asked to be on this jury,  
18 the judge will instruct you that you have to base your  
19 decision solely and completely on the evidence and he will  
20 define for you what evidence is and what it isn't.

21 A Right.

22 Q And one of the things you cannot do is base a  
23 decision on sympathy, for example sympathy towards the  
24 victim or the victim's family. Can you appreciate that?

25 A Yes.

1           Q     And also a decision, you may recognize that your  
2     decision is going to affect someone, everybody does, would  
3     you agree with that?

4           A     Yes.

5           Q     But in order to be a fair and just juror, you  
6     have to compartmentalize those feelings, set them aside  
7     and just focus on the evidence.

8           A     Yes.

9           Q     Are you confident you can do that?

10          A     Yes.

11          Q     Appreciate how important that is? Okay. You  
12     had mentioned some response to counsel's questions, he had  
13     asked you some questions about guns. It sounds like you  
14     have some knowledge or familiarity with guns?

15          A     My husband has guns for hunting.

16          Q     Do you ever hunt?

17          A     Long time ago. Missed.

18          Q     Have you shot a pistol?

19          A     A pistol, no.

20          Q     Do you know the difference between a revolver  
21     and a semiautomatic pistol?

22          A     Revolver, that's just a regular handgun, isn't  
23     it?

24          Q     Pardon me?

25          A     That's just a regular handgun, revolver.



1           Q     I'm talking about two different types of  
2 handguns, one being a revolver and another being a  
3 semiautomatic. Do you know the difference between the  
4 two?

5           A     I know a semiautomatic I believe that's, with  
6 the bullets whatever.

7           Q     Jump out?

8           A     Yeah. I guess that's what I'm looking for.

9           Q     The revolver has the cylinder?

10          A     Yes.

11          Q     Okay. You've never shot anything like that?

12          A     No.

13          Q     Does your husband have any kind of a handgun?

14          A     Yes, he has a handgun.

15          Q     Does he have a revolver or a semiautomatic?

16          A     Revolver.

17          Q     Okay. Counsel had asked you some questions  
18 about whether or not you thought it would be easier or  
19 more difficult to determine if a stranger is lying to you.  
20 You recognize that -- you indicated in response to the  
21 questionnaire that you don't know any of the potential  
22 witnesses, correct?

23          A     Right.

24          Q     So these are all strangers?

25          A     Correct.

1           Q     People you maybe have never seen before and will  
2     probably never, ever see again?

3           A     Correct.

4           Q     Can you appreciate -- and one of the jobs we ask  
5     the jurors to do as judges of the facts is to decide the  
6     credibility or believability of the individual witnesses.

7           A     Um-hum.

8           Q     Appreciate that?

9           A     Yes.

10          Q     Can you appreciate how in a situation like this  
11     where we ask strangers to judge the believability of  
12     strangers that your own common sense might be the best  
13     tool you have in making that kind of evaluation?

14          A     Yes.

15          Q     How do you feel about being asked to rely on  
16     your common sense in a first degree murder case?

17          A     Common sense? Common sense, yeah.

18          Q     How do you feel about being asked to rely on it  
19     in a murder case though? Do you have any feelings along  
20     those lines?

21          A     No.

22          Q     Sometimes people would like this forum to be a  
23     lot more objective but it's a pretty subjective forum.

24          A     Right.

25          Q     And I just want to know if you're intimidated in

1 any way, shape, or form about relying on your common sense  
2 in evaluating the evidence that you might hear?

3 A No.

4 Q Do you use your common sense in your personal  
5 and professional life?

6 A Yes.

7 Q Raised three kids with your common sense?

8 A Yes.

9 Q Does that prove you have common sense?

10 A Yes.

11 Q And can you bring that tool in here?

12 A Yes.

13 Q Okay. Do you have any brothers and sisters?

14 A I have one brother, one sister.

15 Q Tell me what they do.

16 A My brother I believe he does like stocks over  
17 the Internet or something like that. Computer work. My  
18 sister, she cleans for a restaurant.

19 Q Okay. And what did your parents do?

20 A My parents did? My dad was a truck driver. My  
21 mom worked for J. C. Penney's.

22 Q Okay. And you have three kids, two twins? Twin  
23 boys.

24 A Twin boys.

25 Q It says here one of your kids is a block layer?

1           A     Block -- actually both are. They work the same  
2 company.

3           Q     I'm assuming that's both the boys, right?

4           A     Yeah, the boys, right.

5           Q     How about your daughter? What is she doing?

6           A     She works for Western National Insurance  
7 Company.

8           Q     What does she do for them?

9           A     Processing insurance.

10          Q     You mentioned that you have some supervisory  
11 responsibilities?

12          A     Yes.

13          Q     Is that in the job that you have now?

14          A     Right now, no.

15          Q     Okay. In the past?

16          A     My previous job, yeah.

17          Q     Okay. What job was that? What was that job?

18          A     My previous job?

19          Q     Yes.

20          A     I worked for Aid Insurance for 12 years and I  
21 supervised I think it was 14 people.

22          Q     Did you ever have to discipline or fire anybody?

23          A     Yes.

24          Q     How did you feel about doing that?

25          A     They had it coming.

1 Q Okay. Was it an easy decision or tough?

2 A It was pretty easy.

3 Q Easy because the facts showed it?

4 A Yes.

5 Q How about the emotional part of it because, you  
6 know, you've taken somebody from their job? Is that, is  
7 that easy?

8 A I figure they took time within the company to do  
9 what they shouldn't have done anyway, so.

10 Q So you were able to seat aside any emotional  
11 aspect and base your decision only on the evidence?

12 A Yes.

13 Q What was your reaction when you got your notice  
14 for jury service?

15 A Well, I hadn't been called for 54 years. It's  
16 about time I had been called.

17 Q Do you know anybody who's been a juror before?

18 A Not offhand I don't, no.

19 Q And things are squared away at work so that you  
20 can --

21 A Yes.

22 Q You know a little bit about the time limits or  
23 the time we're talking about here. We pretty much intend  
24 to use up all of next week and then the jury will  
25 deliberate. It's up to you to determine how long you

1 deliberate.

2 A Right.

3 Q Is that all right with you?

4 A Yes.

5 Q Okay. Now, let me ask you a few more questions.

6 Have you ever been to or do you ever go to north

7 Minneapolis?

8 A No.

9 Q Do you have any sense of what kind of  
10 neighborhoods are present in north Minneapolis in terms of  
11 crime and so forth, economic situations and so forth?

12 A Offhand, no. I don't get down in that area.  
13 I'm more or less south.

14 Q South? Okay. But have you ever heard from the  
15 news or read in the papers about north Minneapolis, any  
16 crimes up there and so forth?

17 A Probably. I just heard something on TV or  
18 something, you know, briefly, probably didn't pay much  
19 attention to it.

20 Q Okay. As best you can recall what did you hear  
21 about that area?

22 A Um, maybe a drug thing.

23 Q Okay.

24 A It just happened to catch my ear when I was  
25 doing my dishes and I thought oh, okay.

1           Q     If you saw a crime being committed, what would  
2     you do?

3           A     I will call the cops.

4           Q     Why would you do that?

5           A     Because I think it's my duty to call the cops.

6           Q     But why get involved?

7           A     Well, I guess if someone needed help that's just  
8     me, I would just call the cops.

9           Q     Do you recognize that not everyone shares your  
10    opinion about your duty or responsibility in that respect?

11          A     I'm sure.

12          Q     Do you have any impression about people who have  
13    that attitude that they don't want to get involved?

14          A     That's their prerogative.

15          Q     Okay. What would be some reasons why someone  
16    might not want to get involved if they have information  
17    about a serious crime?

18          A     They don't want to be probably on TV or, you  
19    know, in public.

20          Q     Okay. Can you think of any other reasons?

21          A     Maybe someone going after them.

22          Q     Any other?

23          A     Not offhand.

24          Q     How about if they have some, like a connection  
25    to the person who was committing the crime, is that a

1 possibility?

2 A It's possible, yeah.

3 Q Okay. Do you think -- this will be kind of a  
4 silly question but I want to ask you it. Do you think  
5 that every time somebody commits a serious crime they run  
6 into the police department and say arrest me, arrest me, I  
7 did this crime?

8 A No.

9 Q You recognize that sometimes it requires some  
10 investigation?

11 A Oh, yeah.

12 Q Some cases are easier than others?

13 A Yes.

14 Q If you have a situation, if the police encounter  
15 a situation where they are not getting a lot of  
16 cooperation, in your opinion do you think that they should  
17 drop the investigation or should they continue to pursue  
18 it, or what should they do?

19 A I would think they would continue to pursue it,  
20 yeah.

21 Q Why do that if nobody, let's just say it comes  
22 from a certain neighborhood, if nobody in the neighborhood  
23 cares why would you think the cops would care?

24 A I would think they want to care.

25 Q All right. Have you ever had an occasion,



1       either your boys or your daughter or anybody that you  
2       worked with, where someone gave you a story one minute and  
3       then later on they told you a different story, and when  
4       the first -- when they gave you the first story they told  
5       you that's the truth, and when they gave you the second  
6       story they said no, no, the second story is the truth.

7       Have you ever had a situation like that?

8           A       Yes.

9           Q       Tell me about it.

10          A       It's the boys again.

11          Q       These boys are --

12          A       Yeah, I know. They are fun raising.

13          Q       Are they pretty close?

14          A       Yes, they are very close. Let's see, which one.

15          Q       Let me ask you this.

16          A       Yup.

17          Q       That was a situation where your boys did it so  
18       it was a non-stranger and you can, because of your  
19       knowledge and background with your sons you have an  
20       ability to tell which story is the truth and which isn't.  
21       Would you agree?

22          A       I would agree.

23          Q       How about with a stranger, do you think you have  
24       an ability to decide which story is the truth if it's a  
25       stranger giving you a story?

1           A     I think I could. I'm pretty good at reading  
2 faces, yeah.

3           Q     Rely on your common sense in those kinds of  
4 things?

5           A     Yes.

6           Q     Have you or anyone you know ever experienced a  
7 startling experience? For example a car accident,  
8 something like that?

9           A     No.

10          Q     It seems to me, ma'am -- is it Mach?

11          A     Mach, yeah.

12          Q     It seems to me, Ms. Mach, that you are confident  
13 that you can be a fair juror to both sides. Is that a  
14 correct --

15          A     Correct.

16          Q     You will base your decision solely and  
17 completely on the evidence and nothing else?

18          A     Right.

19          Q     So if at the close of the evidence you are not  
20 satisfied that I proved this case then the verdict is not  
21 guilty. Would you agree?

22          A     Agree.

23          Q     But if at the close of the evidence you are  
24 satisfied that I've proved this case, can you convict on a  
25 charge of first degree murder?

1 A Yes.

2 Q Is there any doubt in your mind?

3 A No.

4 Q Thank you, ma'am.

5 MR. FURNSTAHL: We'll accept Ms. Mach, Your  
6 Honor.

7 THE COURT: All right, Ms. Mach, you will  
8 be seated on this jury. I'm going to excuse you now  
9 and I will have you come back here Monday morning  
10 just before nine o'clock to this courtroom and remain  
11 in the hall until the clerk comes to get you, okay?

12 MS. MACH: Okay. Nine o'clock on Monday?

13 THE COURT: Right. You are excused.

14 MS. MACH: Okay. Thank you.

15 (Ms. Mach exits. Ms. Jacobs  
16 enters.)

17 THE COURT: Ma'am, would you raise your  
18 right hand to be sworn today.

19 (Ms. Jacobs is sworn.)

20 THE COURT: Go ahead and have a chair.

21 It's Jacobs, right?

22 MS. JACOBS: Yes.

23 THE COURT: Ms. Jacobs, I have your  
24 questionnaire that you filled out and the attorneys  
25 do as well, and shortly they are going to ask you

1           some questions about it but before they do that I  
2           wanted to follow up on the one question. You  
3           indicated that you take care of your mother who is in  
4           her eighties and that she has dementia?

5                   MS. JACOBS: Yes.

6                   THE COURT: Are you going to be able to  
7           make arrangements for somebody to help you with her  
8           care while you are on this jury if you are on it?

9                   MS. JACOBS: You know, I can try to do that  
10          yes. I mean --

11                  THE COURT: Do you have brothers and  
12          sisters?

13                  MS. JACOBS: Nobody who lives in town. I  
14          have a daughter who is 22.

15                  THE COURT: Well, do you think you are able  
16          to do that? And I should tell you the parameters  
17          again, if you were seated on this jury I would excuse  
18          you today. You would come back Monday morning for  
19          the start of the trial, and the trial is expected to  
20          go most of next week but be done by the end of the  
21          week, then it would be up to the jury how long they  
22          take to deliberate and make their decision and that's  
23          the part where you may then be sequestered and not be  
24          allowed to go home, just during the time you are  
25          making a decision on the case with the rest of the

1 jurors. Do you think you would be able to do that?

2 MS. JACOBS: Yes, I do.

3 THE COURT: So you could figure out some  
4 way of having somebody there so you wouldn't be  
5 worried about your mom?

6 MS. JACOBS: I could have my daughter  
7 there.

8 THE COURT: Very good. Mr. Benson is going  
9 to ask you some questions first and he has laryngitis  
10 today so he's having a hard time speaking up but  
11 he'll do the best he can.

12 Go ahead, Mr. Benson.

13 MR. BENSON: Thank you, Your Honor.

14 BY MR. BENSON:

15 Q Good afternoon.

16 A Hi.

17 Q Ms. Jacobs, I see you are a cashier at Byerly's?

18 A Yes, I am.

19 Q How long have you had that job?

20 A 32 and a half years.

21 Q And you indicated that there are times when you  
22 had contacts with police officers?

23 A Yes.

24 Q Usually it was for shoplifting cases?

25 A With shoplifting or when they come in and they

1 purchase lunch, breakfast when they come through.

2 Q Okay. In that 32 years that you have been at  
3 Byerly's, has it ever been robbed in a forcible sense?

4 A I have never been, but my counter has. Two of  
5 the girls that work for me have been.

6 Q Okay.

7 A But I've never been.

8 Q Okay. When or how long ago?

9 A One was probably about oh, August of -- probably  
10 three years ago, and the other one was probably a year  
11 before that.

12 Q Okay. If you know, what were the results of  
13 those, the investigation?

14 A One they caught, and one they never did.

15 Q Were they armed robberies?

16 A They said they were. Nobody saw any guns or  
17 anything.

18 Q Okay. Did you talk to the people who were  
19 actually the immediate victims of the robbery? Did you  
20 speak to them about what happened?

21 A Yeah.

22 Q Did they describe the situation for you?

23 A Right. The gentleman came up and told them to  
24 put the money in the bag and just took off then.

25 Q Okay. Were they able to give a description to

1 the police?

2 A They were pretty scared, yeah. They had -- one,  
3 there was a description due to the fact that before he  
4 held us up, we have a Fast Bank machine up in the front of  
5 the store and he was on their cameras before prior to it,  
6 and the other one was a gentleman who worked at the  
7 Bruegger's Bagels across the street and he robbed them the  
8 night before and then he came across the street and robbed  
9 us the next night and everybody kind of knew him.

10 Q Okay.

11 A So he kind of got caught.

12 Q Okay. All right. What are your thoughts about  
13 the fact that you work in a situation where you could be  
14 the victim of a robbery, fortunately you haven't been,  
15 what are your thoughts about potentially being a juror in  
16 a case which has not only a first degree murder but it's  
17 an allegation of attempted robbery as well?

18 A I'm a little nervous.

19 Q Okay.

20 A You know, I mean I've never dealt with anything  
21 like that so yeah, I am nervous.

22 Q Okay. And how do you think your nervousness  
23 would affect the way you hear and view evidence in this  
24 case?

25 A I think I'm a fair person.

1           Q     Okay. Do you think somebody -- and your  
2 nervousness would be understood.

3           A     Yeah.

4           Q     But do you think that it would cause you to  
5 relate or to sympathize too much, if you will, I mean  
6 there is going to be sympathy with the victim's family in  
7 this case, for witnesses of the robbery in this case, or  
8 the attempted robbery in this case, there is going to be  
9 some sympathy, do you feel that your experience and your  
10 potential given your job and everything else, that that  
11 would cause you to focus too much on how the victim's  
12 family is feeling?

13          A     No, I think I can be a fair person.

14          Q     You indicated also that you heard some news  
15 reports about either this incident or about the store?

16          A     Um-hum.

17          Q     What did you hear?

18          A     I mean, I just remember hearing it when it did  
19 happen and I do remember reading something or hearing  
20 either on the news that they had opened the shop for, I  
21 think it was Mother's Day this year for the day or  
22 whatever, but I mean I don't, I don't know anything else  
23 other than that. I mean, I don't remember anything that  
24 stuck out.

25          Q     Okay. And you indicated that you did not want



1 to be a juror in this case.

2 A I'm a little nervous. I mean, I have to be  
3 honest, I am.

4 Q Thank you, ma'am.

5 MR. BENSON: Your Honor, we'll excuse Ms.  
6 Jacobs.

7 THE COURT: Okay. Ms. Jacobs, I'm going to  
8 excuse from you this jury and ask you to check back  
9 downstairs with the jury office, okay?

10 MS. JACOBS: Okay.

11 THE COURT: Thank you.

12 (Ms. Jacobs exits. Mr. Tutt  
13 enters.)

14 THE COURT: Good afternoon.

15 MR. TUTT: Good afternoon.

16 THE COURT: Would you raise your right hand  
17 to be sworn today?

18 (Mr. Tutt is sworn.)

19 THE COURT: Go ahead and have a chair.

20 MR. TUTT: Thank you.

21 THE COURT: You pronounce it Tutt?

22 MR. TUTT: Tutt, yup.

23 THE COURT: Okay. Mr. Tutt, we have your  
24 questionnaire that you filled out on Monday.

25 MR. TUTT: Okay.

1 THE COURT: And shortly the attorneys will  
2 ask you some additional questions about it, but  
3 before they do that, is there anything that you've  
4 thought of that you want to add to any of your  
5 answers or change?

6 MR. TUTT: No, sir.

7 THE COURT: Okay. Now, you are a medical  
8 salesman, orthopedic devices, is that right?

9 MR. TUTT: That was a previous job, yeah.  
10 Now it's medical devices, surgical instruments.

11 THE COURT: Surgical instruments?

12 MR. TUTT: Yeah.

13 THE COURT: Okay. And I know you were  
14 concerned about being gone because you are paid by  
15 commission, is that right?

16 MR. TUTT: Correct.

17 THE COURT: Now, if you were going to sit  
18 on this jury you would be excused today and then  
19 asked to come back on Monday for the start of the  
20 trial. The trial is anticipated it would be done  
21 next week, towards the end of the week and then the  
22 jury would have the case to make a decision and  
23 there's -- only the jury would know how long that  
24 would take. Would that be an issue with you, or  
25 would you be able to set aside your thoughts about

1           where you are supposed to be selling equipment right  
2           now and concentrate on the evidence you see and hear  
3           in this case?

4                       MR. TUTT: I wish I could say I could but  
5           it would be very hard for me to do that. I wear a  
6           pager, and if they need me in surgery --

7                       THE COURT: So you are one of those guys  
8           that goes in there and shows the doctor how to  
9           operate that equipment?

10                      MR. TUTT: Yes, sir.

11                      THE COURT: Did you tell the jury office  
12           that? Did you get a deferment?

13                      MR. TUTT: I did not because it was  
14           expressed to me that unless there was extreme  
15           hardship that I wouldn't be dismissed, so.

16                      THE COURT: Okay. Mr. Benson is going to  
17           ask you some questions first and Mr. Benson has  
18           laryngitis so he's, he doesn't have as loud a voice  
19           as possible but he'll do the best he can.

20                      Go ahead, Mr. Benson.

21           BY MR. BENSON:

22                      Q     Good afternoon, sir.

23                      A     Good afternoon.

24                      Q     I'll follow up on the judge's question for a  
25           moment.

1 A Sure.

2 Q You say you get pages?

3 A Yeah.

4 Q Okay. About how many do you get in a week?

5 A Two, three, four.

6 Q Okay.

7 A It's going to vary depending on what kind of  
8 case load and, you know, what instruments they are using.

9 Q All right. And if you were to get a page, is it  
10 necessary for you to go and handle it or do you have  
11 someone else that can handle it?

12 A I don't necessarily have someone else. I have a  
13 partner, he has his own territory so depending on where  
14 and what he is doing, but in most cases when we get paged  
15 we are expected to either answer it or in most cases be  
16 there, be present.

17 Q Okay. And why is it necessary for you to be  
18 present?

19 A Because a lot of this is new technology, the  
20 staff, the scrub techs and the surgeons are not a hundred  
21 percent familiar with the devices so we're there for  
22 support, technical as well as moral.

23 Q Okay. All right.

24 MR. BENSON: Can I approach, Your Honor?

25 THE COURT: You may.

1 (Off-the record discussion at  
2 the bench out of hearing of Mr. Tutt.)

3 BY MR. BENSON:

4 Q I'm going to ask you a few more questions.

5 A That's all right.

6 Q Outside of that issue, you indicated that you  
7 didn't want to be a juror in this case. Outside of the  
8 work issue, is there any other reason?

9 A Absolutely not.

10 Q Okay. What were your thoughts when you were  
11 called to be a potential juror in a first degree murder  
12 case?

13 A I thought it was going to be, I definitely had  
14 concerns about work and I know it's time consuming to do  
15 the job that needs to be done.

16 Q Okay.

17 A I was concerned that I wouldn't be able to do  
18 that.

19 Q Okay. Did you have any concern about the  
20 severity of the allegation --

21 A No.

22 Q -- in this case? Okay. Did you have any  
23 thoughts that you might be a better juror on a less  
24 serious case?

25 A No.

1           Q     And do you find it in any way overwhelming to be  
2     a juror in a murder case and facing the issues of  
3     potentially the emotions of it and also the severity?

4           A     To some degree I would say yeah, I think it's an  
5     important, an important role.

6           Q     Okay. And I'm asking I guess basically you were  
7     asked some questions in the questionnaire regarding Marvin  
8     Haynes's age?

9           A     Um-hum.

10          Q     And some people might feel they are sympathetic  
11     because of his age, some people would be sympathetic  
12     because when they hear emotional testimony from the  
13     victim's family or just the fact that somebody died. Do  
14     you have any concerns that -- and those are expected  
15     responses, but you would be asked to set those feelings  
16     aside and focus on the evidence in this case. Is there  
17     any concern whatsoever?

18          A     No.

19          Q     Okay. You also indicated that you had a number  
20     of legal acquaintances, if nothing else?

21          A     Um-hum.

22          Q     Are any of those acquaintances like in the area  
23     of criminal defense?

24          A     Um, no. I think most of them are corporate.

25          Q     Okay.

1           A     And I know a few, you know, a few officers.  
2     Other than that --

3           Q     And with respect to the lawyers that you  
4     actually -- your mother is in law school?

5           A     Yes, she is.

6           Q     Which law school?

7           A     William Mitchell.

8           Q     What year is she?

9           A     She's got a year left, I think.

10          Q     Okay. She have any plans?

11          A     Or a year and a half. She's in health care  
12     right now so I think she's going to stick with health  
13     care. At least that's what we're hoping.

14          Q     All right. During the course of her school,  
15     even the discussions you had with other attorneys that you  
16     know, did you ever discuss the criminal justice system?

17          A     Probably not in great deal. Most of our  
18     background is in the corporate world, so.

19          Q     Okay. I take it there's nothing from either  
20     those conversations with the corporate attorneys or your  
21     mother that would impact the way you view this case or the  
22     judge's instructions or anything else?

23          A     No, absolutely not.

24          Q     Have you had -- I'm sure you have. Give me an  
25     example of a situation where you've had to determine if

1       someone is telling you the truth.

2           A     Every day.

3           Q     Okay.

4           A     When you are selling something to a surgeon and  
5 they are telling you they like it and then, you know, you  
6 turn around and they are not going to give you a case to  
7 trial it, you got to see through that and work through it  
8 and rephrase the question and, you see it every day. All  
9 day, unfortunately.

10          Q     All right. Okay. Have you had situations where  
11 the same person has told you something different every  
12 time you talk to him?

13          A     Yeah, the same scenario. I mean, it's just some  
14 people are adverse to saying no.

15          Q     Okay. And then, well, kind of tells from your  
16 expression what your reaction is to that. Have you had a  
17 situation where, aside from your work, have you had a  
18 situation where you needed to determine the credibility of  
19 someone and that person has talked about an important  
20 issue and told different stories each time, what is your  
21 general thoughts about the credibility of that person?

22          A     I would say that they are not very credible.

23          Q     Okay.

24          A     Generally speaking.

25          Q     Okay. Is it fair to say that the more



1 consistent the statement is at times the more likely it is  
2 that it can be reliable?

3 A As a general rule? I would say yes.

4 Q And then flip side of that, a person could just  
5 say the -- say they are a good liar, they can lie the same  
6 way?

7 A Absolutely.

8 Q All right. Do you feel that you have a good  
9 ability to determine the credibility of a person?

10 A Um, I would like to say yes but obviously  
11 there's, you know, ways that my method of doing it would  
12 be probably different than what's allowed in this  
13 environment.

14 Q Okay. In this environment the Court will give  
15 you certain things to look at as far as determining the  
16 credibility of a witness, give you instructions such as  
17 the age, the experience of the witness, any motives or  
18 biases that a witness may have, their ability to observe  
19 or relate an incident, those are some of the things. Also  
20 you are going to bring in some of your common sense and  
21 your own personal experiences. Do you feel that whatever  
22 you use, do you feel that you can apply that in a  
23 courtroom setting?

24 A I would think so, yeah.

25 Q Okay. In your job, do you work with groups of

1 people in the sense of staffing or meeting --

2 A Oh, absolutely.

3 Q In a group how would you describe your  
4 participation? Are you a leader? Are you -- do you sit  
5 back?

6 A Usually up front, involved.

7 Q All right. If you were selected to be on this  
8 jury, how would you envision your participation in a jury  
9 deliberation process?

10 A I don't know if I would be able to change. I  
11 think that's how I'm wired.

12 Q Are you open to listening to the other jurors?

13 A Oh, absolutely.

14 Q As you sit here, do you foresee any problems  
15 with working with 11 people that you don't know to reach a  
16 decision?

17 A No.

18 Q All right.

19 A No, sir.

20 Q Okay. Tell me this. Tell me what's the most  
21 important or the toughest decision that you've had to make  
22 in your life?

23 A I would have to say whether to get married or  
24 not and I still haven't made that decision, so.

25 Q How long have you been thinking about it?

1           A     It's been three or four years.

2           Q     Okay. All right. What's your -- are you  
3 engaged yet?

4           A     No.

5           Q     Okay. Is there anything else you think I need  
6 to know as far as whether you would be a good juror in  
7 this case?

8           A     No.

9           Q     Finally, you are the only one that you can tell  
10 me this, if you are selected as a juror and you have to be  
11 here and be able to focus on this case even though you've  
12 got the work responsibilities and everything else. Are  
13 you going to be able to focus?

14          A     Is that a question? Okay. I'm sure going to  
15 try. You know, I mean, it is, it is what it is. You  
16 know, I mean I will obviously be thinking about it because  
17 that's my livelihood.

18          Q     Okay. All right. Let me ask you this way. If  
19 you are selected to be on this jury, you are obviously --  
20 I mean you are going to have your three to four pages a  
21 week or more, you know, there's -- you have those  
22 responsibilities, at the same time you are going to have  
23 two weeks of having to focus on the case itself. If you  
24 are stuck here, basically stuck here to be on this jury,  
25 are you going to hold it against either myself or the

1 State, or more importantly Mr. Haynes or the State or the  
2 Court in kind of forcing you to be here, do you think you  
3 would hold it against anyone?

4 A No, I mean --

5 Q All right.

6 A I couldn't do that.

7 Q Okay. All right. Thank you.

8 MR. BENSON: Your Honor, can I approach  
9 again?

10 THE COURT: You may.

11 (Off-the record discussion at  
12 the bench out of hearing of Mr. Tutt.)

13 MR. BENSON: Outside of our discussions, we  
14 do accept Mr. Tutt.

15 THE COURT: All right. Mr. Furnstahl.

16 BY MR. FURNSTAHL:

17 Q Good afternoon, sir.

18 A Good afternoon.

19 Q You had mentioned in response to counsel's  
20 questions, he was asking you how you determine credibility  
21 or believability of people and you said that you do that  
22 every day and you said something about your method of  
23 doing it might not be allowed here or something like that?

24 A Well, mine is that I'm involved in it in  
25 questioning and I can phrase the questions as I --

1 Q I see.

2 A So that's --

3 Q That's what you meant?

4 A Yeah, exactly.

5 Q Okay. You indicated that you live in  
6 Minneapolis. I don't know, I don't want to know the  
7 address but can you give me a sense of the neighborhood?

8 A Southwest.

9 Q Okay. Any experience with north Minneapolis?

10 A Um, not a whole lot, no.

11 Q You know what I mean when I refer to north  
12 Minneapolis?

13 A Yeah, yeah. I mean, I know where north  
14 Minneapolis is but I've not had a lot of experience with  
15 it, no.

16 Q Do you have any sense as to what kind of area  
17 north Minneapolis is in terms of socio-economically and as  
18 far as crime goes?

19 A Yeah.

20 Q Tell me what your impressions are?

21 A I would say that it's a fairly high crime area  
22 and low socio-economic.

23 Q Different from your neighborhood?

24 A Yeah, I would say.

25 Q You probably -- well, how do you feel about

1 listening to people that come from an area like that that  
2 come from a different socioeconomic background as  
3 yourself?

4 A How do I feel about --

5 Q About listening to people from those kinds of  
6 areas? What I'm asking is, are you judgmental about  
7 people because they come from a different socioeconomic  
8 background than yourself?

9 A I try not to be.

10 Q Okay. Can you appreciate how important that  
11 quality can be in a forum like this?

12 A Absolutely.

13 Q All right. You indicated that you grew up in  
14 Balaton? Where is that?

15 A Southwestern Minnesota.

16 Q How big is that?

17 A I think population is booming at 750 some  
18 people.

19 Q Okay. And it says your dad was a senior  
20 technical manager?

21 A Yeah.

22 Q What did he do?

23 A He's for FMC, they develop, among other things,  
24 well they build everything from Caterpillars and machinery  
25 but he's on the chemical side so he's an agronomist by

1 education.

2 Q Do you have brothers and sisters?

3 A I do.

4 Q Tell me about that.

5 A I have of four. I'm the oldest of five boys,  
6 four younger brothers.

7 Q Tell me what they do for a living?

8 A Three of the youngest are in school, one is  
9 going to school for welding, the other is going to school  
10 for, what do they call it, they work on the power lines,  
11 and the other one is in high school, and then I have  
12 another brother that's self-employed. He owns a  
13 construction company in Marshall.

14 Q Okay. You have a friend on the Minneapolis  
15 police department?

16 A Yeah.

17 Q Who is that?

18 A I'm drawing a blank on the last name. Adam,  
19 he's a college friend of mine that I see around at  
20 different birthday parties and weddings and things like  
21 that.

22 Q You know a judge from Euclaire?

23 A Yup.

24 Q What's his name?

25 A Paul Lenz.

1 Q How long has he been a judge over there?

2 A Quite awhile.

3 Q Okay. But no, no friends that do criminal  
4 defense as far as you know, or?

5 A Yeah. As far as I know.

6 Q Okay. You were called to jury duty once before  
7 but the case settled?

8 A Yeah. Seems like, I don't know, seems like  
9 yesterday.

10 Q Really?

11 A It's whatever the, what are the requirements?  
12 Every five years? Four years? Five years?

13 Q So they nailed you twice?

14 A Yeah.

15 Q And were you picked for the jury?

16 A I was picked for -- we went through this process  
17 and they settled over the weekend.

18 Q I see. Was it civil or criminal?

19 A It was criminal.

20 Q What kind of case?

21 A I think it was alleged, I don't know, assault or  
22 robbery or something. I don't remember.

23 Q Something serious though, sounds like?

24 A Oh, yeah.

25 Q Did you have the same job back then that you do



1 now?

2 A No.

3 Q Was it a little bit easier?

4 A Well, it wasn't a hundred percent commission  
5 base, so yeah, it was a little bit easier. My employer  
6 was a little, you know, willing to work with me and  
7 understanding.

8 Q Okay. It says on the question about the  
9 defendant's age and whether or not you had any reaction to  
10 that, you say not surprising, should know the difference  
11 between right and wrong. Did I get that right?

12 A If that's what's on there, yeah. I would think  
13 at that age you would know the different between right and  
14 wrong.

15 Q The question I have for jurors is whether or  
16 not, I mean, you look at the defendant, he looks like a  
17 very young person and he is a young person.

18 A Um-hum.

19 Q And we ask you to base your decision solely and  
20 completely on the evidence and nothing else. The fact  
21 that he's a young person could with some people engender  
22 some sympathy for him, and I need to know if you have any  
23 feelings like that, you can set those aside and base your  
24 decision solely on the evidence?

25 A Yes.

1 Q Okay. Regarding your work --

2 A Yes.

3 Q We all can appreciate the hardship we are going  
4 to be asking of you, but can you appreciate that, you  
5 know, we need people like yourself, responsible citizens  
6 that are willing to come in and make the decisions we ask  
7 you to make?

8 A I can appreciate it, yes.

9 Q You seem like you wanted to say something else.  
10 Now is the time to do it.

11 A Well, I can appreciate it but, I mean, this is  
12 how I make my living and to say okay, take two weeks off  
13 or however long it's going to last, and who knows how long  
14 it's going to last, to say well, you know, you can put  
15 your customers on hold because, you know, you can just go  
16 back and tell them you were on jury duty and they are  
17 going to say well here's your business back, Mr. Tutt.  
18 That's not how it works and you guys know that so it is a  
19 little frustrating, yes.

20 Q Okay.

21 A Because I'm sure there are people that are not  
22 commission based that would, you know, would probably like  
23 to be here.

24 Q Uh-huh. Now, we anticipate using up the bulk of  
25 next week on testimony. If you are asked to be on this --

1 and then the jury deliberates for as long as they need to  
2 to reach a decision. If you are asked to be on this jury,  
3 and I don't know if you have an impression that the  
4 testimony is going to take two weeks, that's kind of what  
5 I was thinking there, but if your impression about how  
6 long the testimony is less than that and if you are asked  
7 to be on the jury, does that make it more workable or not?

8 A I would like to say yes but it still comes down  
9 to the same issue. If I'm not out there every day, all  
10 day long, if I don't sell anything I don't get paid and if  
11 I don't get paid there goes my car, there goes everything  
12 else so, you know, for me I would like to be able say I  
13 can take my mind off and do the right thing but, you know,  
14 that's, that's some stress. I mean it's stressful enough  
15 worrying about if you are going to make enough money to  
16 pay the bills.

17 MR. FURNSTAHL: I have no objection.

18 THE COURT: All right. Did you ask the  
19 jury office to get a deferment when you were called  
20 this time?

21 MR. TUTT: No. As I mentioned earlier,  
22 that in the beginning they said unless it's a severe  
23 hardship, basically poverty, that --

24 THE COURT: It wouldn't do you any good.

25 MR. TUTT: They weren't going to grant it.

1           They said they were very stiff on what they look at.  
2           Very firm.

3                       THE COURT: I'm going to excuse you from  
4           this jury. You need to check back in with the jury  
5           office downstairs before you leave.

6                       MR. TUTT: Okay. All right.

7                                       (Mr. Tutt exits. Mr.  
8           Jansen enters.)

9                       THE COURT: Good afternoon.

10                      MR. JANSEN: Hi.

11                      THE COURT: Do you want to raise your right  
12           hand to be sworn today?

13                                       (Mr. Jansen is sworn.)

14                      THE COURT: Go ahead and have a chair. Mr.  
15           Jansen, we have your questionnaire you filled out on  
16           Monday.

17                      MR. JANSEN: Yes.

18                      THE COURT: And the attorneys will ask you  
19           a few questions about it in a minute, but let me just  
20           ask you this. You answered one of the last couple  
21           questions about would service on this jury cause any  
22           personal problems and you indicated loss of pay and I  
23           want to ask you about that. First of all, so you  
24           understand before you answer the question, if you  
25           were selected to serve on this jury you would be

1           excused today and told to come back on Monday and the  
2           trial would start on Monday, it would be done next  
3           week, then the jury would deliberate and only the  
4           jury can tell how long it's going to take them to  
5           reach a decision, okay?

6                     MR. JANSEN:   Okay.

7                     THE COURT:   Now, that being the case, would  
8           that cause you a hardship?

9                     MR. JANSEN:   It would, it would.   I'd lose  
10          about \$500 a week on overtime and I brought the check  
11          receipts to show that.

12                    THE COURT:   So your employer will not pay  
13          you while on jury duty?

14                    MR. JANSEN:   He will pay me 40 hours but I  
15          average 15, 20 hours overtime a week.

16                    THE COURT:   And you work tomorrow and  
17          Friday and do you work weekends too?

18                    MR. JANSEN:   No.

19                    THE COURT:   If you were on this jury you  
20          would basically lose most of next week but you would  
21          lose overtime.   You would still get regular pay?

22                    MR. JANSEN:   That is correct.

23                    THE COURT:   Mr. Benson is going to ask you  
24          some questions and he has laryngitis so you'll have  
25          to pay good attention.   He's getting a little better

1 but he still doesn't have his total voice back yet.

2 Go ahead, Mr. Benson.

3 MR. BENSON: Thank you, Your Honor.

4 BY MR. BENSON:

5 Q Good afternoon.

6 A Hi.

7 Q I'll follow up with a few questions to the  
8 responses you made. When asked about your concerns about  
9 the criminal justice system, you left a couple things  
10 blank. One you put a question mark, but you did also  
11 indicate you thought there might be some profiling?

12 A That's correct.

13 Q Could you just elaborate on what your thoughts  
14 were?

15 A Well, just from what I've seen on TV and heard  
16 in the news that there was some trouble with the  
17 Minneapolis police department with profiling. That's  
18 where I got that information.

19 Q Okay. This is your first jury service, is that  
20 correct?

21 A That's correct.

22 Q What were your thoughts when you learned that  
23 this was a first degree murder case?

24 A Nervous.

25 Q Why is that?

1           A     Well, I mean it's a decision that, I don't know,  
2 I'm not sure if I can cope with making. Just nervousness.

3           Q     Could you just explain like what it is about the  
4 decision that troubles you?

5           A     Well, on one hand we have a young man that could  
6 be put away for a long, long time, and on the other hand  
7 someone lost a father or relative or a, just all that  
8 going through my mind all the time actually made me sick  
9 to my stomach before I came in here today.

10          Q     Did it? Okay. And obviously it's, it makes  
11 sense and everybody understands that there may be as far  
12 as sympathetic reactions or emotional reactions as you've  
13 described them either to Marvin Haynes's age or the  
14 victim's family and the fact that somebody died. The  
15 question I have for you is whether you think you would be  
16 able to compartmentalize or set that aside once the  
17 evidence starts coming in and be able to focus on the  
18 evidence so at the end of this you would be able to  
19 consult with 11 other people and make a decision. Do you  
20 think you can do that?

21          A     I'm not sure.

22          Q     Okay. Have you worked with a group of people to  
23 make a decision?

24          A     No.

25          Q     Have you talked to anybody that's been on a jury

1 before?

2 A Just people who have been here that have been on  
3 jury, yes.

4 Q All right. When you heard about this case, when  
5 you came in on Monday and you got the questionnaire and  
6 everything, I take it you still had the same feelings as  
7 far as the nervousness and all that, is that right?

8 A It kind of grew on me. The more I kept on  
9 thinking about it, the worse it got.

10 Q Okay. Okay. All right. Let me ask you a few  
11 more questions and then I'll come back to that, okay? You  
12 indicated that you were a witness to some, you had some  
13 checks that were stolen, actually, not a witness?

14 A What was the question?

15 Q Did you talk to the police about some checks  
16 that were taken at some point?

17 A Did I talk with a police about some checks?  
18 That is correct, yes.

19 Q Okay.

20 A Now I remember.

21 Q There were some forged checks and you were like  
22 a victim, is that right?

23 A That is correct.

24 Q How long ago was that?

25 A Five, six years ago.



1 Q Was it in Hennepin County?

2 A Yes, it was.

3 Q What city?

4 A Hopkins.

5 Q Okay. And how do you think the police handled  
6 your case?

7 A Well, what happened was is a detective came over  
8 and he told me that -- I went to my bank, my bank said  
9 that they reimbursed me and said it was their case and not  
10 mine because the money came from my bank and I didn't hear  
11 anything much after that.

12 Q Okay. So as far as you know no one was caught  
13 or prosecuted?

14 A I believe that they were caught, but I don't  
15 know if they were, what happened on the -- I wasn't  
16 involved in the case.

17 Q Okay. Have you had any other occasion to call  
18 the police?

19 A In my life?

20 Q Yeah. Did you ever call 911 or call for  
21 assistance from the police?

22 A Um, yeah, I did, one time, I think in '85 I got  
23 a DUI and I had to go to court and it upset me very much  
24 and I kind of actually got sick over it and passed out and  
25 my wife called 911 to make sure I was okay.

1           Q     All right. Let's see, you indicated that you  
2     had a -- you've been in court before, you had like a DUI?

3           A     That's correct.

4           Q     All right. Was that in Hennepin County?

5           A     That's correct.

6           Q     And is there anything about that process that  
7     kind of sours you on the court system or anything else?

8           A     No.

9           Q     All right. Okay. Now, I do want to get back to  
10    the nervousness that you were feeling.

11                   MR. FURNSTAHL: Can we approach?

12                   THE COURT: You may.

13                                   (Off-the record discussion at  
14    the bench out of hearing of Mr. Jansen.)

15                   THE COURT: Sir, I'm going to excuse you  
16    from this jury and have you check in with the jury  
17    office downstairs.

18                   MR. JANSEN: Okay. Thank you very much.

19                                   (Mr. Jansen exits.)

20                   THE COURT: We'll take our afternoon recess  
21    until 3:15.

22   (Recess.)

23                   MR. BENSON: Your Honor?

24                   THE COURT: Yes.

25                   MR. BENSON: Number 29, I don't know if you

1 want to wait until we get to her or not, but I  
2 believe we have a stipulation for cause based on the  
3 responses in the questionnaire.

4 THE COURT: I've read the questionnaire.  
5 Is that your understanding, Mr. Furnstahl?

6 MR. FURNSTAHL: It is, Your Honor.

7 THE COURT: All right. We will excuse Ms.  
8 Lahti.

9 (Dr. Stevenson enters.)

10 THE COURT: Good afternoon.

11 DR. STEVENSON: Good afternoon.

12 THE COURT: Would you raise your right  
13 hand, Doctor, and be sworn?

14 (Dr. Stevenson is sworn.)

15 THE COURT: Go ahead and have a chair.

16 The attorneys and I have the questionnaire that  
17 you filled out on Monday. First of all, let me give  
18 you a chance, is there anything you feel that you  
19 need to change or add to any of your answers?

20 DR. STEVENSON: No.

21 THE COURT: Okay. Mr. Benson is going to  
22 give you some additional questions first and he has  
23 laryngitis so he's having difficulty speaking but  
24 he's getting better today.

25 Go ahead, Mr. Benson.

1 MR. BENSON: Thank you, Your Honor.

2 BY MR. BENSON:

3 Q Good afternoon.

4 A Good afternoon.

5 Q Just a couple questions for you. Following up  
6 on your questionnaire, it says your wife's father was  
7 robbed at gunpoint in Rochester. When was that?

8 A It was probably like a year and a half ago.  
9 Something like that, I would guess.

10 Q Did the case get prosecuted? Was anybody  
11 caught?

12 A Nobody was caught.

13 Q Obviously you've heard from the judge's reading  
14 of the charges in this case it's a murder case. There's  
15 also an allegation of attempted robbery as well.

16 A Right.

17 Q How much did you know about your wife's father's  
18 situation? Did you talk to your father-in-law about what  
19 happened to him?

20 A Not a lot. I mean, you know, it was, I mean I  
21 can describe a little bit that I know. Would that be  
22 helpful? He went up to the local grocery store at night,  
23 probably like nine o'clock or so at night, it was already  
24 dark, and he came back and a couple guys kind of, when he  
25 got out of his car they must have followed him is what we

1       were thinking and asked him for his wallet and he thinks  
2       they had a gun although, you know, it wasn't, that's what  
3       he thought, and he called the police, you know, he  
4       basically -- I think he gave them the cash out of the  
5       wallet and didn't give them the wallet and he was lucky,  
6       he got away with that and they never found anybody and  
7       that was it. That's all I know.

8           Q       Okay. All right. And then one other question,  
9       you talked about a six-month old son at home and you have  
10      some concerns or possible concerns about the sequestration  
11      at the end of this trial.

12           A       Well, I saw that term in there and I didn't know  
13      if you would sequester during trial or just during  
14      deliberation. I didn't know, but I didn't really want to  
15      be gone from home a lot if I didn't have to be, so.

16           Q       It would be during the deliberations.

17           A       During deliberation, okay.

18           Q       So would you be able to make arrangements --  
19      basically we're looking at starting Monday, hopefully  
20      finishing at the end of the week next week and then jury  
21      deliberations would take place and that would be up to the  
22      jury for how long they would deliberate, but you are  
23      looking at being sequestered in a hotel or whatever during  
24      those deliberations.

25           A       Anything is possible. I could probably make

1 some sort of arrangements but it's not ideal.

2 Q Okay. Thank you.

3 MR. BENSON: Your Honor, we'll excuse Mr.  
4 Stevenson.

5 THE COURT: Dr. Stevenson, you are excused  
6 and I would ask you to check back in with the jury  
7 office downstairs. Thank you very much.

8 DR. STEVENSON: Okay. Thank you.

9 (Dr. Stevenson exits.

10 Off-the-record discussion.)

11 THE COURT: We are in recess until 8:45  
12 tomorrow morning.

13 (Whereupon, the proceedings  
14 conclude this day at 3:25 p.m.)

15 \* \* \*

16 STATE OF MINNESOTA)

17 ) ss.


COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

18 I, Jolyn R. Lund, Official Court Reporter, do  
19 hereby certify that the above and foregoing is a true and  
20 accurate transcription of my original stenographic notes  
21 in said matter.

22 Date:

3-1-06

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

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ORIGINAL  
DISTRICT COURT

FILED  
FOURTH JUDICIAL DISTRICT  
06 MAR -3 PM 12:41  
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DEPUTY  
COURT ADDRESS  
No. 04035635  
S.Ct. File 05-2444

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN  
3 -----  
4 State of Minnesota,  
5 Respondent/Plaintiff,  
6 vs.  
7 MARVIN HAYNES, JR.,  
8 Appellant/Defendant.  
9 -----

**TRIAL TRANSCRIPT**  
VOL. III, pp. 331-530

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, at 659-C Hennepin County  
13 Government Center, Minneapolis, Minnesota, on the  
14 **25th day of August, 2005.**

15 APPEARANCES:  
16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.

22  
23  
24 CLERKS: Toni Rahn, Andrea Martin  
25 REPORTER: Jolyn R. Lund

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## I N D E X

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JURY SELECTION

333

PLAINTIFF'S WITNESS:

Sergeant David Mattson

Direct by Mr. Furnstahl. . . . .	500
Cross by Mr. Benson. . . . .	506
Redirect by Mr. Furnstahl. . . . .	514
Recross by Mr. Benson. . . . .	517



1 (Whereupon, the following  
2 proceedings occur.)

3 THE COURT: All right, counsel, before we  
4 bring in our first juror, just for your, with regard  
5 to the statements, if they come in, I'll just give  
6 you the editing parts and then we'll talk about the  
7 substantive evidentiary rulings after we get a break  
8 today later. Page two, Clifton, "come up." Asking  
9 him what it means or explaining what it means. That  
10 will come in.

11 Clifton, Witness D, the beginning, zero  
12 probative value. That's not going to come in.

13 Harper, the Marvin going to find out anyway,  
14 that comes in. Nonprejudicial. And then we will  
15 talk about these substantive evidentiary rulings when  
16 we have a break later on today.

17 MR. FURNSTAHL: Okay. Thank you.

18 THE COURT: All right. Let's bring in  
19 juror number 30.

20 (Mr. Spector enters.)

21 THE COURT: Good morning. Do you pronounce  
22 it Spector?

23 MR. SPECTOR: Correct.

24 THE COURT: Mr. Spector, would you raise  
25 your right hand to be sworn please, today?

1 (Mr. Spector is sworn.)

2 THE COURT: Go ahead and have a chair.

3 MR. SPECTOR: Thank you.

4 THE COURT: Mr. Spector, the attorneys are  
5 going to be asking you some questions. We have the  
6 questionnaire you completed on Monday, so the first  
7 thing I'll ask you, number one, is I want you to  
8 speak up good and loud so everybody can hear you,  
9 okay? The court reporter is taking down what you  
10 have to say.

11 MR. SPECTOR: All right.

12 THE COURT: Do you have anything that you  
13 want to add or change on your questionnaire that you  
14 thought of since you answered these questions?

15 MR. SPECTOR: No, sir.

16 THE COURT: Mr. Benson, you may voir dire.

17 MR. BENSON: Thank you, Your Honor.

18 BY MR. BENSON:

19 Q Good morning, sir.

20 A Good morning.

21 Q Mr. Spector, in your questionnaire you indicated  
22 that you wanted to be a juror in this case?

23 A Yes.

24 Q Why is that?

25 A Well, it was very interesting and a privilege to

1 be here and I want to make the most of it.

2 Q Okay. This is your first jury service?

3 A No, sir.

4 Q How long ago was your last jury service?

5 A About that many years ago.

6 Q And what kind of case were you on if you were  
7 seated?

8 A I was called up for a case but was dismissed as  
9 a juror so I never really made it onto that case.

10 Q 25 years ago, was that in Hennepin County?

11 A Yes, sir.

12 Q All right?

13 A Approximately that years ago.

14 Q Were you actually, did you go through the voir  
15 dire process?

16 A Yes, I was questioned by the attorneys.

17 Q Do you remember what kind of case that was?

18 A No, sir, I don't.

19 Q Was there anything about that experience that,  
20 you know, could help you in dealing with this experience?

21 A I was very interested because one of my brothers  
22 is an attorney and on occasion his work is as a judge in  
23 conciliation court, so.

24 Q Okay.

25 A It was, you know, very interesting for us as a

1 family to discuss some of the goings-on during  
2 proceedings.

3 Q Okay. And first of all, what kind of attorney  
4 is your --

5 A Contract law.

6 Q Okay. And have you -- he's in contract law, has  
7 he had jury trials?

8 A Yes, sir.

9 Q Okay. And I'm sure you've talked to him about  
10 just the trials he's gone through?

11 A On a limited basis. Not much.

12 Q Has he ever done any criminal trials?

13 A Not that I'm aware, no.

14 Q Have you had any discussions with him about the  
15 criminal justice system at all? With him or any other  
16 lawyers?

17 A Yes, uh-huh.

18 Q Okay. And so based on those discussions, have  
19 you had any impressions about how this jury process works  
20 in the criminal context?

21 A Basic discussions. Other than that I'm very  
22 ignorant of the laws and it's very complicated and he  
23 guides me through what the reasoning is behind these and  
24 why we have such, you know, strict limits on what can and  
25 cannot be done and it helps to just understand what and

1        why it happens in the course of a trial.

2            Q        Okay. Okay. And when you say limits, are you  
3        talking about limits on what can come in evidence and what  
4        can't come in?

5            A        Exactly. Yeah.

6            Q        And as you know here, the Court, Judge Blaeser  
7        will give you instructions, you know, what you can  
8        consider and what you can't. Are you comfortable with  
9        following the judge's instructions?

10          A        Absolutely.

11          Q        Okay. I didn't ask, is your brother a lawyer in  
12        the city?

13          A        Ramsey County.

14          Q        All right. You had also indicated that your car  
15        had been stolen?

16          A        Some years ago, yes.

17          Q        Was that in Minnesota?

18          A        Yes.

19          Q        Minneapolis?

20          A        St. Louis Park.

21          Q        St. Louis Park. All right. Was it recovered?

22          A        Yes, it was.

23          Q        What kind of shape was it in?

24          A        Broken window, and the steering column had been  
25        smashed.

1 Q Okay. Was anyone ever prosecuted or arrested?

2 A I don't recall. It was about ten, 15 years ago.

3 Q How about your, how do you think the police  
4 handled your case?

5 A Very professional.

6 Q All right. And what other context, if any, have  
7 you had as far as having to call the police or just  
8 contacts with police officers?

9 A Nothing comes to mind. I don't think so.

10 Q Have you ever had to call 911?

11 A Yes, yes I have. Several months ago I was  
12 driving home from work and there was a car weaving in and  
13 out of the lanes and I called 911 because I thought that  
14 they might have been drinking, that kind of thing. They  
15 were driving very dangerously.

16 Q And did that end like your involvement in that?

17 A Yes.

18 Q And you just called them and gave them all the  
19 information.

20 A Right. I pulled over and took out my cell phone  
21 and called them and they asked me if they apprehend this  
22 person would I pursue the matter and I agreed.

23 Q Okay. And then they never called you back?

24 A Correct.

25 Q Did you have a license plate at all or a

1 description of the car?

2 A Yes. I gave them both, yeah.

3 Q You also indicated in your questionnaire that  
4 you were very sad in response to question of what are your  
5 thoughts about a 16-and-a-half-year-old person being  
6 charged with first degree murder?

7 A Yes, sir.

8 Q Can you elaborate on that?

9 A It's very sad to see a situation where someone  
10 this young is going through something like this who may or  
11 may not have committed a terrible act and may spend the  
12 rest of his life incarcerated.

13 Q Okay. And do you think that -- well, put it  
14 this way. There's an instruction about setting aside  
15 emotions to some extent, and we expect everybody to be  
16 human and everything else; however, some jurors have the  
17 exact feelings that you have with respect to the age of  
18 Marvin. Some jurors also, and I think most jurors may  
19 have the same reaction when they hear emotional testimony  
20 coming from the victim's family or they hear this is a  
21 murder case and that somebody has died. Do you think  
22 you'll be able to focus on the evidence even though you  
23 have these other feelings out there?

24 A I feel it's the best system we have.

25 Q All right. Tell me a little bit about, you

1 indicated that you're a customer service person at  
2 Hartford?

3 A Correct.

4 Q And when you work at the Hartford, do you work  
5 by yourself or do you work with other people?

6 A I work with other people around me as well as on  
7 the telephone.

8 Q All right. And when you work with these other  
9 people, is it to make like a joint decision or do you just  
10 have the meetings?

11 A Basically to feed off ideas of resolution on  
12 issues that may come up.

13 Q Okay.

14 A The best course of resolution.

15 Q And have you had situations either outside of  
16 work or maybe work related where you've worked with people  
17 that you don't know in order to reach a decision?

18 A Sorry, I don't recall.

19 Q Okay. Do you anticipate that if you are  
20 selected as a juror, do you anticipate any problem with  
21 working with 11 people that you don't know to make a  
22 decision in a first degree murder?

23 A No, sir.

24 Q How would you characterize the way in which you  
25 operate or which -- how you function within a group of



1 people?

2 A I try to listen and understand other people's  
3 point of view. I grew up in a diverse area, St. Paul, and  
4 everyone had reasons or opinions or feelings that may or  
5 may not have been different from other people around  
6 there, and basically we all learned to get along with each  
7 other because we just didn't know any better, you know.  
8 We worked with each other, basically.

9 Q Okay. Previously you had been a store manager?

10 A That's right.

11 Q What was that position?

12 A I was a store manager with Snyder Drugs,  
13 19 years. I worked in 13 different stores in the Twin  
14 City metro area.

15 Q Okay. Any of the stores that you worked in, had  
16 they been robbed?

17 A Yes, sir.

18 Q Okay. Any at gunpoint?

19 A Yes, sir.

20 Q Okay. Were you present during any of those?

21 A Yes, sir.

22 Q And about how many times were you present during  
23 a robbery?

24 A We were robbed three times and twice I was  
25 present.

1           Q     Okay. And the two times you were present, were  
2 those at gunpoint?

3           A     Yes, sir.

4           Q     So you were -- okay. You were, obviously you  
5 know my next question. You've heard the charge in this  
6 case that this was a first degree murder charge, that it  
7 was an allegation of an attempted robbery as well. I want  
8 to ask you more about your experience, but how do you  
9 think you would react to evidence involving an allegation  
10 of an attempted robbery, given that you've gone through  
11 that experience twice yourself?

12          A     Weigh the evidence for how it stands up to the  
13 charges.

14          Q     When you heard the charges in this case, did  
15 your experiences at the drug store come into your mind?

16          A     Yes, they did.

17          Q     Let's talk about those for a moment. You were  
18 -- you said there were two times you were personally  
19 present and you were personally around. When was the  
20 first one, how long ago?

21          A     Say little more than 20 years ago.

22          Q     Okay. And did you -- I assume you called the  
23 police or somebody called the police?

24          A     Yes, sir.

25          Q     All right. And when the police came, actually

1 did you call the police or someone else?

2 A Yes, sir.

3 Q Did you give a description of the person that  
4 robbed you?

5 A Yes, I did.

6 Q Was it a detailed description?

7 A Very much so.

8 Q Okay. Were you asked to -- was anyone arrested?

9 A Yes, sir.

10 Q Were you able to, did you have to go and  
11 identify that person?

12 A Yes, sir.

13 Q Was it a photo lineup or a live lineup?

14 A A live lineup.

15 Q Okay. And was that person prosecuted  
16 successfully as far as you know, or?

17 A I don't recall. It was so long ago.

18 Q Did you have to testify at a trial?

19 A No, I did not.

20 Q What about, let me ask you, can you tell me  
21 about the circumstances of it 20 years ago?

22 A The circumstance was that an individual came up  
23 to my cashier and had a gun underneath her scarf or a  
24 scarf and a newspaper underneath the scarf and telling her  
25 that she had a gun and to empty the contents of the

1 register into a bag and hand them over. And I was just  
2 down the aisle there and I saw this and turned around and  
3 witnessed her.

4 Q Okay. All right. Then the other incident where  
5 you were like physically present during the robbery, how  
6 long ago was that?

7 A That was about 15 years ago, and I did not see  
8 it. They called me up right after it happened and went  
9 from there.

10 Q Okay. Now I'm going to ask you how do you set  
11 that aside, because you are going to hear evidence in this  
12 case from a witness and they are going to describe going  
13 through a robbery, okay? Or attempted robbery. How are  
14 you going to set aside your experiences and just focus on  
15 this case to determine if the State has met its burden of  
16 proof?

17 A Well, first of all that was just so many years  
18 ago and all that and it didn't really come to mind until  
19 the question, you know, asked me to explain any previous  
20 circumstances so I did, but I need to see the evidence,  
21 the weight of the evidence, to make a judgment.

22 Q Okay.

23 A So.

24 Q All right. Just a couple more questions for  
25 you. Maybe more than a couple. Going back to that first

1 incident where you made the identification procedures, you  
2 know, and you witnessed and did the live lineup, when you  
3 called -- I take it you called 911?

4 A (Nods head.)

5 Q And you gave a description, they asked for a  
6 description of the person at the time?

7 A Yes.

8 Q And you said that you definitely gave a good  
9 description of the person?

10 A Um-hum.

11 Q And you had actually, or that the person had  
12 displayed like a gun or something at least that seemed  
13 like a gun. Did you actually see the gun?

14 A I did not see the gun.

15 Q He was purporting to have a gun?

16 A She was.

17 Q Do you recall now what that person looked like?

18 A Yes, I do.

19 Q What did that person look like?

20 A A white female, middle to late 40s, blond hair,  
21 glasses, heavy-set build, she was wearing a white top and  
22 blue jeans.

23 Q Okay. So that's in your mind from just the  
24 moment when it happened?

25 A I remember vividly, yes.

1 Q And that's the description that you gave?

2 A Yes.

3 Q Right away? And when you went through -- okay.

4 So you went through and you had the lineup and you knew  
5 your description and then you picked that person?

6 A Right out.

7 Q All right. Do you think it's possible for  
8 somebody -- well, first of all, do you think it's possible  
9 for somebody to go through a lineup procedure and pick the  
10 wrong person?

11 A It's possible, sure.

12 Q Okay. However, do you think it's possible for  
13 some eyewitness, something like you witnessed, to call up  
14 911 and gave a description of what you perceived at that  
15 time?

16 A Yes, sir.

17 Q What are your thoughts on whether you think  
18 that's one of the best descriptions as far as what happens  
19 almost immediately?

20 A I'm not sure I understand your question.

21 Q Let me ask you this. Do you think that if you  
22 were to have given a description of the person that robbed  
23 you like three days later rather than the day of, do you  
24 think your description three days later would be more or  
25 less accurate?

1           A     It's certainly possible.

2           Q     But in your case you remember right now the same  
3 description?

4           A     Yes.

5           Q     Because you went through that?

6           A     Yes. I walked right past her and seen her  
7 before it happened.

8           Q     It happened so you had a chance to observe her?

9           A     Yes.

10          Q     What's the most important decision you've made  
11 in your life?

12          A     Oh boy. I would guess that after my father had  
13 passed and my mother was very ill, I made a decision that  
14 I would take care of her for as long as I needed to and go  
15 from there.

16          Q     Okay. I can imagine but can you tell me why  
17 that was a tough decision?

18          A     I had, I was working for Snyder's at the time as  
19 a store manager and it's somewhat of a 24/7 operation when  
20 you are a store manager and you are everybody's mother  
21 that kind of thing and it was very difficult, and when you  
22 have an ailing parent it's somewhat like a child, you've  
23 just got to be there and I felt that this job was not the  
24 correct job anymore for my circumstances and I had to make  
25 a very big life decision.

1 Q Okay.

2 A I did not stay there 19 years because I hated  
3 it, so.

4 Q All right. I am going to beat a dead horse for  
5 one more moment so I apologize, but going back to your  
6 identification procedure with your 20 years ago, in your  
7 mind as far as you, not people in general, do you think it  
8 would have been possible for you after you arrived, after  
9 you were robbed, after you called 911, is it possible for  
10 you to have picked the wrong person out of the lineup?

11 A No, sir.

12 Q That's because you went through that experience?

13 A Well, as I said I walked right past her and I  
14 greeted her and she just seemed like any other person,  
15 just very nice, motherly type person and after this  
16 happened, it was very shocking.

17 Q Okay.

18 MR. BENSON: May I have a moment, Your  
19 Honor?

20 THE COURT: You may.

21 MR. BENSON: One moment.

22 (Off-the-record discussion  
23 with defendant.)

24 BY MR. BENSON:

25 Q Mr. Spector, obviously it's important for me to



1 make a decision as to whether you would be a good juror in  
2 this case and I would to some extent rely on your answer  
3 to this question. Obviously the line of my questioning,  
4 understand that I may have some concern not about you to  
5 be fair in general but this is a robbery allegation,  
6 attempted robbery, and it's a first degree murder and you  
7 said that you would be able to at least set aside your  
8 experience and I think you indicated you are a fair  
9 person. Given that this involves an allegation of  
10 attempted robbery, do you think you would be better suited  
11 on another case, or do you think that this type of case  
12 would be good for you?

13 A Well, sir, my mother comes from Missouri which  
14 is the Show Me state, so we've kind of been the kind of  
15 family that, you know, show me, prove it to me, that kind  
16 of thing. So whether this case or another case I think I  
17 would be an impartial juror regardless of the situation.

18 Q Okay. So if we go through this trial and you  
19 are convinced after hearing the evidence, arguments of  
20 counsel, instructions from the Court that the State of  
21 Minnesota has not proven its case, could you vote not  
22 guilty in a first degree murder case?

23 A I believe it's the duty of the prosecutor to  
24 prove the case against him as the defendant is innocent  
25 until otherwise proven, so.

1 Q Okay.

2 MR. BENSON: Your Honor, we'll accept Mr.  
3 Spector.

4 THE COURT: All right. Mr. Furnstahl.

5 BY MR. FURNSTAHL:

6 Q Good morning, sir.

7 A Good morning.

8 Q Let's see. Did I hear you say that you were  
9 present during two store robberies?

10 A Yes, sir.

11 Q You mentioned one where you had to view a  
12 standup lineup and then there is another one you said you  
13 weren't present for?

14 A Correct.

15 Q Was there a third one?

16 A Yes, there was. I was not working that day.

17 Q Okay. But were there two robberies total or  
18 three robberies?

19 A Three robberies total, two that I was present  
20 for.

21 Q One was the 20 years ago when you viewed the  
22 standup lineup. What was the other one that you were  
23 present for?

24 A The other one was at the store, someone came in  
25 and we have a, what we call a drop safe underneath the

1 register where periodically through the day the clerks or  
2 management would take pulls from the register till and put  
3 them in the drop safe underneath, and someone came in  
4 during the day and if -- I don't know if they took a  
5 crowbar, whatever, they but they managed to get the drop  
6 safe and pull it out from the counter.

7 Q You were present but you didn't see that, is  
8 what you were telling us?

9 A That is correct.

10 Q So you weren't asked to view a photo lineup or  
11 any other kind of a lineup or anything like that?

12 A That's correct.

13 Q Okay. Let me ask you a little bit more about  
14 your family. You mentioned one brother who's a lawyer.  
15 Do you have any other siblings?

16 A Yes, I do. I have an identical twin brother and  
17 I have a sister.

18 Q What does the twin do?

19 A He works for a company that's a mailing services  
20 company, I'm sure all of you get inserts in the mail from  
21 various advertisers. His company sees to it that they are  
22 mailed out to the seven-county metro area.

23 Q How about your sister?

24 A My sister is married, homemaker, two children,  
25 both in college. And my brother works for his father's

1 construction company.

2 Q Okay. You mentioned your supervisory  
3 responsibility. I'm assuming that was at Snyder's.

4 A That's correct, sir.

5 Q Do you have, did you have occasion where you had  
6 to discipline or fire somebody?

7 A Yes, sir.

8 Q Did you ever fire anybody?

9 A Yes, sir.

10 Q How did you feel about that?

11 A Not good, sir. One of the saddest parts of the  
12 job.

13 Q But how did you feel about the decision that you  
14 made?

15 A It was the right decision.

16 Q So even though there's some emotions attached to  
17 that, you can set those emotions aside, compartmentalize  
18 them and make the decision that's called for?

19 A Yes, sir. It was unfortunate in some ways but  
20 you have to do what you have to do.

21 Q Have you see the parallels in this kind of  
22 situation?

23 A Absolutely.

24 Q All right. What was your reaction, Mr. Spector,  
25 when you got your notice for jury service?

1 A My reaction?

2 Q Yes.

3 A It was my time to call and to duty.

4 Q Do you know anybody who was on a jury before?

5 A Yes. My twin brother was on one about five  
6 years, five, six years ago.

7 Q What kind of case was he on?

8 A I don't recall.

9 Q Did you talk to him about that very much?

10 A He told me that after his juror duty had ended  
11 he wrote a letter to the judge expressing his -- he was  
12 very impressed with the way the judge handled the case and  
13 told him it was just so refreshing to experience something  
14 like this and seeing our courts in action work so well.

15 Q Okay.

16 A And all that he really enjoyed.

17 Q I'm sorry.

18 A He was very upbeat about it. He thought it was  
19 a terrific experience.

20 Q Was it a criminal or civil case?

21 A I don't recall. I do remember that the judge  
22 was I think the sister or sister-in-law to Rosenbaum, or.  
23 He was very impressed with her.

24 Q Okay. What was your reaction when you found out  
25 this was a murder case?

1           A     Shocking, you know. It's something that you see  
2     on TV, that kind of thing, but you never really imagine  
3     that you may be sitting on a jury.

4           Q     One thing I noticed in your questionnaire you  
5     like to read books about the law and watch TV programs?

6           A     Um-hum.

7           Q     Did you ever have any designs to be a lawyer or  
8     anything like that?

9           A     No, sir.

10          Q     All right. Why is it that you are drawn to that  
11     kind of entertainment?

12          A     I just find it interesting. They seem to be  
13     well written, people who have experienced it firsthand and  
14     can present it in a very moving way.

15          Q     Getting back to my question about this case, is  
16     there anything about the prospect of making a decision in  
17     a first degree murder case that is intimidating or  
18     overwhelming to you in any way, shape, or form?

19          A     No, sir.

20          Q     Okay. Counsel talked to you a little bit about  
21     this and it was touched on in the questionnaire about the  
22     defendant's age, and you mentioned that it's very sad.

23          A     Um-hum.

24          Q     Is it surprising that a juvenile is charged with  
25     a crime like this to you? Is that surprising to you?

1           A     No. I think it's sad.

2           Q     Okay. Now, if you are asked to be on this jury  
3 the judge will instruct you that you have to base your  
4 decision solely and completely on the evidence that you  
5 hear and nothing else.

6           A     That's correct, sir.

7           Q     It's normal to have emotional feelings towards  
8 the victim's family or towards the defendant because  
9 perhaps because of his age?

10          A     Yes, sir.

11          Q     Can you compartmentalize those feelings, set  
12 those aside and base your decision solely on the evidence?

13          A     Yes, sir.

14          Q     Confident of that?

15          A     Yes, sir.

16          Q     What feelings, if any, do you have about police  
17 officers?

18          A     I hold them in highest regard.

19          Q     Do you have any contact with north Minneapolis?

20          A     No, sir.

21          Q     Do you have any impression about the  
22 neighborhoods in north Minneapolis?

23          A     I worked there some years ago and I liked it.  
24 It was a very unique experience. I grew up in a diverse  
25 area of St. Paul. I found north Minneapolis was much more

1       so, but a lot of interesting people from a lot of  
2       different areas and people that I had not had any  
3       association with in the past but I grew to really  
4       understand and appreciate their backgrounds as well.

5           Q     You know, one thing, a couple things that we  
6       ask, I think counsel touched on this, we don't want 12  
7       robots in there judging evidence in this case. We want 21  
8       human beings, so you can appreciate those kinds of  
9       qualities that make you who you are when you go back there  
10      to deliberate? Can you appreciate that?

11          A     I think so. As I mentioned previously that I  
12      worked as a store manager for 19 years in different  
13      stores, areas in the city, so.

14          Q     You've got a couple of life experiences that may  
15      work well for you in this case. One, you come from a  
16      diverse neighborhood so you have some kind of a background  
17      that way, and also you went through this experience of a  
18      robbery where you had to identify someone. Those  
19      experiences may or may not be of assistance to you, but  
20      can you appreciate how they could and use them in an  
21      appropriate way?

22          A     Yes, sir.

23          Q     All right. One thing I want to touch on, when  
24      counsel asked you about the defendant's age you said it  
25      was sad, and you said that it may turn out that he would



1 spend the rest of his life in prison. You understand the  
2 sentence is not something for the jury to consider; that's  
3 something that the judge does?

4 A Absolutely.

5 Q So you won't be considering that when you go  
6 back and deliberate and make your decision on the evidence  
7 only?

8 A That's correct, sir.

9 Q Okay. It sounds to me Mr. Spector, that you are  
10 confident that you can be a fair juror to both sides?

11 A Yes, sir.

12 Q If I don't prove it, as counsel asked you, the  
13 verdict is not guilty, right?

14 A That's correct.

15 Q But if I do prove it, can you convict on a  
16 charge of first degree murder?

17 A Yes, sir.

18 Q Any doubt in your mind, sir?

19 A No, sir.

20 Q Thank you, sir.

21 MR. FURNSTAHL: We accept Mr. Spector, Your  
22 Honor.

23 THE COURT: Mr. Spector, you will be seated  
24 on this jury. I'm going to excuse you now. I'll  
25 have you come back Monday morning shortly before

1 nine o'clock and to remain in the hallway until the  
2 clerk comes out to get you, okay?

3 MR. SPECTOR: Yes.

4 THE COURT: So you are excused.

5 (Mr. Spector exits. Ms.  
6 Faster enters.)

7 THE COURT: Good morning. How are you?

8 MS. FASTER: Good.

9 THE COURT: Would you raise your right hand  
10 to be sworn today?

11 (Ms. Faster is sworn.)

12 THE COURT: Go ahead and have a seat. Ms.  
13 Faster, the attorneys and I have the questionnaire  
14 you filled out on Monday. The first thing is you and  
15 I know each other, don't we?

16 MS. FASTER: Yes.

17 THE COURT: We have served on a board  
18 together?

19 MS. FASTER: Yes.

20 THE COURT: That is the DIW Board, is that  
21 right?

22 MS. FASTER: Yes.

23 THE COURT: Okay. Anything about that you  
24 think would make it difficult for you to be a juror  
25 on this case?

1 MS. FASTER: I don't think so.

2 THE COURT: All right. And I don't know  
3 the answer to this question, but how long has that  
4 been?

5 MS. FASTER: Four years, maybe. Four or  
6 five years.

7 THE COURT: All right. Before I ask you  
8 one question, did you think about your answers and is  
9 there anything you want to add or change to the  
10 answers you did on this questionnaire?

11 MS. FASTER: I don't think so.

12 THE COURT: Okay. One of the questions you  
13 answered was whether or not anyone close had ever  
14 been charged with or accused of a crime and you  
15 mentioned your stepson as a juvenile.

16 MS. FASTER: Yes.

17 THE COURT: Can you explain a little bit  
18 about that experience and what you did with him?

19 MS. FASTER: Well, from age 15 on he was in  
20 trouble. He was with burglary, breaking into houses  
21 and truancy and alcohol and drugs and then graduated  
22 to some check fraud, credit card fraud, so also had  
23 some adult problems, and he was in the system for  
24 several years.

25 THE COURT: So you went to court with him

1 on more than one occasion?

2 MS. FASTER: Yes.

3 THE COURT: Okay. Anything about that  
4 experience that you think would, you know, make you  
5 feel like you really couldn't be fair to both sides  
6 on this kind of a case?

7 MS. FASTER: I don't think so.

8 THE COURT: Did that give you any  
9 impressions of either of the juvenile justice system  
10 or criminal justice system in general?

11 MS. FASTER: We just let it work. We  
12 didn't fight the system.

13 THE COURT: Okay.

14 MS. FASTER: I mean we felt he was breaking  
15 the law and so we stood by him but not trying to help  
16 him get out of it.

17 THE COURT: Okay. Do you feel like he was  
18 fairly treated by the criminal justice system.

19 MS. FASTER: Um-hum.

20 THE COURT: Mr. Benson, you may voir dire.

21 MR. BENSON: Thank you, Your Honor.

22 BY MR. BENSON:

23 Q Good morning.

24 A Good morning.

25 Q Ms. FASTER, I'll stay with your stepson for a

1 moment. About how often was he arrested say in general  
2 terms?

3 A I don't know. I got to know a lot of policemen  
4 and probation officers so it was many times, but mainly  
5 minor offenses until he was an adult and then he fled the  
6 state and we didn't see him for a few years.

7 Q Okay. Did he ever have a trial?

8 A Have a trial?

9 Q Did you ever have a trial?

10 A No. There were times before a judge.

11 Q Okay.

12 A If that's a trial, then he did.

13 Q Okay. And I may have missed this, was this in  
14 Hennepin County, or?

15 A It was in Hennepin and Carver and Ramsey, I  
16 think all three counties.

17 Q Okay. All right. And I imagine, this is some  
18 speculation on my part, correct me if I'm wrong, you had  
19 discussions with your son about his behavior?

20 A Oh, yes.

21 Q And I would also imagine once again, could be  
22 wrong, times when he wasn't honest about his behavior?

23 A Yes.

24 Q And once again I imagine that you became good at  
25 telling whether he was telling you the truth or not?

1           A     Yes.

2           Q     Okay. Do you think -- well, in this case you  
3 are going to have a situation, you are going to have to  
4 determine the credibility of some witnesses, some are  
5 going to be adults, some are going to be juveniles, some  
6 are going to be police officers, some won't be. Do you  
7 think you can take whatever skills you used to determine  
8 whether or not someone is telling you the truth and apply  
9 that to each and every one of the witnesses that come in  
10 to testify?

11          A     Well, I would think so.

12          Q     Do you think it would be harder or easier, about  
13 the same, to tell the credibility of someone that you  
14 don't know versus somebody that you know?

15          A     Probably harder.

16          Q     Do you think you would be able to do that?

17          A     I think I could.

18          Q     Okay. Have you had a situation where you've had  
19 to do that?

20          A     Not offhand that I can think about.

21          Q     Okay. Well, the judge is going to give you some  
22 instructions as far as what factors you can go into in  
23 making that decision. The judge will -- and then part of  
24 that instruction will be, you know, you have to base it  
25 upon your own common sense as well, but some factors such

1 as age, education, their experiences, ability to observe,  
2 things of that nature. Do you feel you could apply those  
3 type of standards that the judge will give you in making  
4 your assessment in a trial in a courtroom setting?

5 A I would think so.

6 Q Okay. You did indicate that you did not want to  
7 be a juror in this case. I sense that as you sit here  
8 right now. Can you tell me why?

9 A Well, I think it would be a hard thing. That's  
10 my reason, to just --

11 Q I'll ask you, just tell me why it would be hard  
12 for you?

13 A Well, a lot is hanging in the balance and so I  
14 just think that would be a hard position to be in.

15 Q Okay.

16 A To be making those decisions.

17 Q And I think a lot of potential jurors have that  
18 same thought process. So the question is, if you were  
19 selected to be a juror on this case, would a first degree  
20 murder case be too daunting a task or too overwhelming for  
21 you to sit through and focus and work with 11 people that  
22 you don't know to make a decision?

23 A I don't know that it would be too daunting but I  
24 don't think it would be pleasant.

25 Q Okay. You had, looks like some prior jury

1 experience in federal court?

2 A Um-hum.

3 Q How long ago was that?

4 A Several years. Eight, ten, maybe even more than  
5 ten years ago.

6 Q Did you sit on a jury?

7 A Yes.

8 Q And what kind of case was that?

9 A Drug case.

10 Q And about how long did that case last?

11 A It was at six weeks I had to ask to be excused  
12 and that was, it was almost over but we had been told it  
13 would take two weeks.

14 Q Okay.

15 A And so when it went six weeks I had ended up  
16 with some other plans that I had that I needed to do and I  
17 was excused.

18 Q Okay. Was it like a multi co-defendant  
19 conspiracy case or just one defendant?

20 A There were I think started with five defendants  
21 and then there were four and then one of them had a heart  
22 attack and it went on for a long time, that's why it was  
23 -- and there were, they were all Columbians.

24 Q Okay. Other than the fact that it went six  
25 weeks and you had to get off the trial, what was your



1 thought of that experience?

2 A I mainly thought it was interesting. Sometimes  
3 boring, I mean it went on a long time but I thought it was  
4 an interesting experience overall.

5 Q Okay. Is there anything from that experience  
6 that you think would, I suppose, assist you if you were a  
7 juror in a case now?

8 A Not particularly.

9 Q All right. You had indicated that you had a  
10 burglary at your cabin?

11 A Um-hum.

12 Q When was that?

13 A Several years ago. Again maybe seven years,  
14 something like that.

15 Q All right. And were you present at the time?

16 A No.

17 Q Okay. Was anything taken?

18 A Yes.

19 Q Were the items ever recovered?

20 A No.

21 Q How did you go from, you went to school at the  
22 University of Hawaii for awhile?

23 A Um-hum.

24 Q And you grew up in, is it Jackson, Mississippi?

25 A Minnesota.

1           Q     Minnesota. Okay. I couldn't see the writing.  
2     So you were in Minnesota then you went to Honolulu for  
3     school. Couple more questions. Two points. You  
4     indicated that you thought there were too many minorities  
5     in the system. How would that impact the way you view  
6     evidence in this case or view the situation right now, if  
7     at all?

8           A     Well, I would hope they wouldn't. I think  
9     unfortunately I believe that it's a fact.

10          Q     Okay. You also indicated that in response to  
11     the question about what do you think about a  
12     16-and-a-half-year-old being charged with first degree  
13     murder, you indicated that he's very young. Can you  
14     elaborate on that a little bit?

15          A     That's just my response. It's very young to  
16     see, for somebody to be in this position, and I don't know  
17     how I feel about what court he's in, it's just, it's young  
18     to be there.

19          Q     Couple more questions. You also responded that  
20     I think one of the groups you were involved with or you  
21     had some connection to, anti handgun legislation?

22          A     I just contributed, yeah.

23          Q     And in this case, you know, there's an  
24     allegation of the -- well, there's -- you are going to  
25     hear about the use of a handgun. Is there anything about

1 just handguns in general that would cause you to, because  
2 there's an allegation in this case because a handgun is  
3 alleged, that you are going to come into this case and  
4 just kind of close your mind to the evidence because of  
5 the nature of it either because it's a first degree murder  
6 case or because it's a shooting, is that going to bother  
7 you too much so that you can't focus?

8 A I don't think so. It would support why I  
9 support handgun legislation.

10 Q There is nothing wrong with that at all. I just  
11 want to make sure, you know, there's -- for example you  
12 indicated that Marvin is very young as you look at him?

13 A Um-hum.

14 Q Also some jurors may think that the, when the  
15 person who is in the store comes in and testifies there is  
16 some sympathy that they are going to have and some people,  
17 I think most people are going to have some sympathy for  
18 the person that went through what they went through and  
19 those people are going to have sympathies because somebody  
20 is dead. What I'm asking, the same with the gun question,  
21 is those are all reasonable responses for people to have,  
22 those are all reasonable positions for people to have, but  
23 ultimately you are going to be instructed from the Court  
24 that you need to set aside like sympathies and things of  
25 that nature and focus on the evidence in the case. Do you

1 think you would be able to do that if called as a juror?

2 A I would hope so.

3 Q And when I say set aside, at least  
4 compartmentalize it to at least recognize and say okay,  
5 I've got these feelings but I don't want my biases to come  
6 into the case to interfere with what's going on here so  
7 you can be fair. Does that make sense?

8 A Um-hum.

9 Q Okay. Ma'am, I understand you don't want to be  
10 a juror on this case; however, if you were selected to be  
11 a juror, you think you could be a fair juror?

12 A I think so, um-hum.

13 Q And have you made any conclusions about this  
14 case or have you formed any opinions about this case at  
15 all as you sit here?

16 A I don't really know anything about it except  
17 what we've been told, so.

18 Q Okay. And in this first degree murder case if  
19 you hear the evidence in the case and you feel that the  
20 State hasn't proven its case, can you vote not guilty?

21 A I think so, um-hum.

22 Q Okay. Thank you, ma'am.

23 MR. BENSON: Your Honor, we will accept Ms.  
24 Faster.

25 THE COURT: Mr. Furnstahl.

1 BY MR. FURNSTAHL:

2 Q Good morning.

3 A Morning.

4 Q What is the DIW Board that you were on with the  
5 judge?

6 A Division of Indian Work.

7 Q What do you do with them?

8 A I've been a long-time board member and  
9 supporter.

10 Q Tell me what your duties and responsibilities  
11 are on the board?

12 A Well, attend meetings. I've been on the  
13 personnel committee and public affairs and have generally  
14 had an interest in the Indian community in Minneapolis and  
15 also on a couple reservations for most of my adult life.

16 Q Okay. What have you done on reservations?

17 A Mainly helped with projects with money and on  
18 one of the reservations I go there a couple of times a  
19 year and work with women on the reservations on sewing  
20 projects.

21 Q Okay. I wanted to follow-up on a couple of  
22 questions that counsel asked regarding minorities in the  
23 system and the defendant's age. I want you to understand  
24 that it's all right for you to have opinions and feelings  
25 but it's important that you share those with us so that we

1 can make a decision as to whether or not you are a good  
2 fit for this particular case as opposed to something else,  
3 okay?

4 Regarding the question about minorities in the  
5 system, counsel asked you if you thought that it would  
6 affect your ability to listen to the evidence here and you  
7 said I would hope that it wouldn't. It sounds to me like  
8 you have some doubts in that respect.

9 A Well, all I can say is I would like to think  
10 that I would be a fair, be able to listen and be fair,  
11 but.

12 Q And you can appreciate that, I mean obviously  
13 the defendant is entitled to a fair trial but so is the  
14 State, and what I'm hearing from you is that you have  
15 some, I mean you have some -- it sounds to me like you  
16 have some very strong opinions in that area and it's  
17 sometimes difficult to separate those kind of opinions  
18 when you come into a forum like this. The impression I'm  
19 getting from you is it might be kind of difficult for you.  
20 Is that a fair statement?

21 A It might be.

22 Q Okay. And then regarding the defendant's age,  
23 you said that he was very young and you made a comment  
24 that I don't know how I feel about what court that he's  
25 in. Does that mean you don't know how you feel, you might

1 have some opinions about him being prosecuted in adult  
2 court as opposed to juvenile court?

3 A Um-hum.

4 Q I see. Now, if the judge were to advise you  
5 that you have to base your decision only on the evidence  
6 and these other feelings that you have have to be set  
7 aside, what I'm picking up from you is that you are going  
8 to have a tough time following the Court's instructions.  
9 Is that fair?

10 A Well, I would like to think that it isn't. I  
11 mean that I could do what I was told to do.

12 Q Everybody would like to think that.

13 A Yeah.

14 Q The thing is, is that this is my only  
15 opportunity to speak to you.

16 A Um-hum.

17 Q And I don't know you, we've never met before,  
18 I'll probably never see you ever again and I've got a few  
19 minutes to decide if this juror is going to give me a fair  
20 trial on this first degree murder case when she has these  
21 feelings, okay? And I need to hear from you from your  
22 heart of hearts because what I'm getting from you is that  
23 -- and I mean nobody is judging your opinions or your  
24 feelings, but what I'm getting from you is that you are  
25 going to have a tough time with this even if the Court

1       were to instruct you. Is that a fair statement?

2           A     It could be, um-hum.

3           Q     Okay. Thank you, ma'am.

4                   MR. FURNSTAHL: Can we approach?

5                   THE COURT: You may.

6                               (Off-the record discussion at  
7       the bench out of hearing of Ms. Faster.)

8                   THE COURT: Ms. Faster, I'm going to excuse  
9       from you this jury. I would ask you to please check  
10      in with the jury office downstairs when you leave,  
11      okay?

12                  MS. FASTER: Okay.

13                  THE COURT: Thank you.

14                               (Ms. Faster exits. Mr.  
15      Dockter enters.)

16                  THE COURT: Good morning.

17                  MR. DOCKTER: Good morning.

18                  THE COURT: Would you remain standing and  
19      raise your right hand to be sworn?

20                       (Mr. Dockter is sworn.)

21                  THE COURT: Go ahead and have a chair.

22                  MR. DOCKTER: Thank you.

23                  THE COURT: Is it Dockter? Is that how you  
24      pronounce it?

25                  MR. DOCKTER: Correct.



1 THE COURT: Mr. Dockter, the attorneys and  
2 I have your questionnaire that you filled out on  
3 Monday. First of all, have you thought of anything  
4 that you want to add or change to your answers on  
5 that questionnaire?

6 MR. DOCKTER: Yes, probably in addition, if  
7 I may comment. There was a question in there whether  
8 I knew some professional medical people, et cetera,  
9 personally yes, but professionally I do work with  
10 medical people as well that are M.D.s, my colleagues  
11 are M.D.s, some are nurses that came from EP labs or  
12 cardiac cath labs.

13 THE COURT: And let's see, you are a  
14 technical consultant?

15 MR. DOCKER: Correct.

16 THE COURT: So what do you do with the  
17 doctors and the nurses?

18 MR. DOCKTER: We provide 24/7 coverage for  
19 fields for medical professionals who are doing either  
20 an implant with a pacemaker, a defibrillator or an  
21 ablation system and there is some technical problems  
22 or questions we try to resolve over the phone.

23 THE COURT: Okay. And so when you deal  
24 with Medtronic implants, they're pacemakers, for  
25 instance?

1                   MR. DOCKTER: Defibrillators and what we  
2                   call R ablation systems where they will actually go  
3                   in transvenously and do a burn to interrupt the  
4                   electrical conduction system of the heart and  
5                   sometimes there's problems or questions about the  
6                   equipment that's being used in these procedures.

7                   THE COURT: There has been some press with  
8                   regard to some issues and some actual recalls on some  
9                   of those recently, is that right?

10                  MR. DOCKTER: That's correct.

11                  THE COURT: So are you on any kind of call  
12                  status for any doctors?

13                  MR. DOCKTER: Yes, we are.

14                  THE COURT: Okay. So in your particular  
15                  instance, if a doctor needs assistance is there  
16                  somebody else that can respond to that call?

17                  MR. DOCKTER: Yes. The local sales rep  
18                  field engineer.

19                  THE COURT: All right. Now I want to ask  
20                  you about one additional question that you answered.  
21                  You said when the question was have you or anyone  
22                  close to you ever been charged with or accused of a  
23                  crime, your son was charged and pled guilty to  
24                  possession of drugs, is that right?

25                  MR. DOCKTER: That's correct.

1 THE COURT: How long ago was that?

2 MR. DOCKTER: About 15 years ago.

3 THE COURT: Was that here in Hennepin  
4 County?

5 MR. DOCKTER: Yes, it was.

6 THE COURT: Do you know what kind of drug  
7 was involved?

8 MR. DOCKTER: Marijuana, I believe.

9 THE COURT: Okay. And did he have to go to  
10 jail as a result of that?

11 MR. DOCKTER: What he, Judge Burke was the  
12 judge at that time and before he was sentenced, the  
13 attorney asked me to consider something because my  
14 son is a quadriplegic, and my son had not completed  
15 high school, he had left home and ran away and got  
16 into trouble, and the consideration was my son kind  
17 of felt that well, because I'm a quadriplegic and so  
18 forth they are not going to give me any jail time or  
19 something, and Judge Burke asked me what my thoughts  
20 were about putting him in like the Workhouse for a  
21 short period of time and probation. I said I think  
22 that's a great idea as long as he has medical cares  
23 for his disabilities. And the requirement was that  
24 he was sentenced to, I think it was like up to six  
25 weeks in the Workhouse unless he pursued and obtained

1 his GED. In less than two weeks he was released and  
2 put on probation. He hadn't been in trouble since so  
3 it was kind of a positive thing for everyone  
4 involved.

5 THE COURT: So this experience hasn't left  
6 you feeling negative about the criminal justice  
7 system?

8 MR. DOCKTER: Not at all. It was a really  
9 positive one for my son as well.

10 THE COURT: Mr. Benson is going to ask you  
11 some questions first.

12 Go ahead, Mr. Benson.

13 MR. BENSON: Thank you.

14 BY MR. BENSON:

15 Q Good morning, sir.

16 A Good morning.

17 Q Sir, it looks like you served on two different  
18 juries?

19 A Correct.

20 Q Okay.

21 A This is the fourth time I was called for  
22 service. Two in Anoka, and this is the second time here.

23 Q Okay. And in Hennepin County, when was the last  
24 time you were in Hennepin County, how long ago?

25 A Probably six, seven years ago.

1           Q     Okay. And then Anoka County would have been  
2 before that?

3           A     That is correct.

4           Q     All right. Tell me what, with the Hennepin  
5 County case, which was a criminal case, what kind of  
6 charge was it?

7           A     Assault and robbery.

8           Q     Okay.

9           A     I was the alternate juror at that time.

10          Q     But you sat through the evidence?

11          A     Yes.

12          Q     What did you think of that process?

13          A     I think it went, was very well structured. The  
14 evidence was well presented. The only question in that  
15 case was it involved the defendant who worked at Menard's  
16 at that time and he had blood on his jacket but no test  
17 was ever done to determine if it was the defendant's blood  
18 or his blood.

19          Q     Okay.

20          A     That's the only concern that I had out of that  
21 whole process, you know, because they brought it into  
22 evidence, the blood on his jacket, but nothing was ever  
23 determined whose blood it was. But everything else was  
24 nice and fine.

25          Q     Okay. And you were an alternate so you didn't

1       participate in the deliberation?

2           A       That's correct.

3           Q       Okay. After you were excused, actually did you  
4       know you were an alternate beforehand?

5           A       Yes.

6           Q       Okay.

7           A       At the time they selected the jurors, they told  
8       me that I would be alternate juror and I was seated.

9           Q       Would you have liked to have sat in on the  
10       deliberations in that case?

11          A       I would have liked to, yes.

12          Q       All right. How about in Anoka County, that was  
13       a civil case?

14          A       That was just a civil case where a boy was  
15       riding his motor scooter in a country road and the farmer  
16       who owned the land had machinery or a vehicle parked on  
17       this trail that he was riding on, it was at night, and he  
18       ran into this machine with his scooter and he broke his  
19       leg or something.

20          Q       Okay.

21          A       That one we went through the whole trial  
22       process, but when we were to convene as jurors for  
23       deliberation they decided to settle out of court.

24          Q       Okay. All right. Going back to the Hennepin  
25       County case, that involved as you said a robbery, you

1 heard from the judge's instructions that not only is this  
2 a first degree murder but there is an allegation of an  
3 attempted robbery. Do you think that your experience of  
4 sitting through a trial already, you know, that dealt with  
5 a robbery, would have any impact at all on hearing  
6 evidence in this case?

7 A No, I don't think it would have any impact on it  
8 at all.

9 Q In that case you talked about, I take it --  
10 well, was identification an issue? I mean, was there a  
11 description given by the party? Was there a lineup?

12 A It was selected from a mugshot.

13 Q Okay.

14 A Is how it was identified.

15 Q Okay. And if you recall, what kind of robbery  
16 was it? Was it a robbery of a store?

17 A No, it was on a corner, early morning hours in  
18 November when was still twilight, not quite dark maybe,  
19 but they claimed there was illumination from the street  
20 light.

21 Q Okay. All right. And is there anything, I  
22 don't know how much you remember about the instructions  
23 and all that, but you would be able to follow Judge  
24 Blaeser's instructions as far as the law and everything  
25 for this case if you were selected?

1           A     Yes, I would be.

2           Q     You indicated that you did want to be a juror in  
3 this case. Can you tell me why that is?

4           A     Well, there was only two choices, yes or no, and  
5 I just feel it's a civic duty and responsibility and I  
6 could make the commitment. I know others probably have  
7 personal reasons or preferences for not wanting to be on  
8 the jury. I don't have a problem serving on the jury.

9           Q     Okay.

10          A     I would be willing to, yes.

11          Q     All right. You grew up in (unintelligible),  
12 North Dakota?

13          A     Correct.

14          Q     Where's that?

15          A     It's farming community close to Minot.

16          Q     Actually I know Minot.

17          A     Oh.

18          Q     I actually know Minot.

19          A     It's about 60 miles on this side of Minot.

20          Q     Okay.

21          A     By Hardee.

22          Q     Okay. So did you -- how long were you in North  
23 Dakota before you came to Minnesota?

24          A     I left North Dakota in '62.

25          Q     Okay.



1           A     Then came here.

2           Q     All right. Let me ask you, is there anything  
3 about potentially being a juror on this first degree  
4 murder case that you find overwhelming or too much?

5           A     No, there's nothing.

6           Q     Do you think you would be a fair juror?

7           A     I think so.

8           Q     All right. You think you are good at  
9 determining whether someone is telling you the truth or  
10 not?

11          A     By reading sign language helps.

12          Q     Okay.

13          A     And how they direct their eyesight and if they  
14 are fidgety. I use that in conjunction as well.

15          Q     And there are going to be police officers that  
16 testify as well as civilian witnesses that testify. Are  
17 you able to, you know, look at those police officers in  
18 the same manner you look at civilian witnesses in  
19 determining whether or not they are telling the truth or  
20 not?

21          A     I think you need to, yes.

22          Q     And you can agree that -- or can you agree that  
23 police officers, being human like everyone else, some do  
24 better jobs than others and some may be more candid or  
25 truthful than others?

1           A     I agree with that, yes.

2           Q     Anything else you think I need to know about  
3     you, sir, in order to determine whether you would be a  
4     good juror for this case?

5           A     Probably in the professional field I work in, we  
6     are hit with questions boom, boom, boom and we have to  
7     make instant decisions that we cannot give cardiologists  
8     or physiologists, we cannot direct them to tell them what  
9     to do but we have to provide them information to make a  
10    good decision to treat that patient because the patient's  
11    health is number one to us and the physician as well, and  
12    we have to take all of that data that they are presenting  
13    to us over the phone, break it down in an analytical form  
14    and make our decision based on our opinions and  
15    recommendations on that data, so I think I could be  
16    helpful in this type of situation looking at all the data.

17          Q     Thank you.

18          A     Evidence, I should say, rather than data.

19          Q     Appreciate that. Thank you.

20                   MR. BENSON: Your Honor, we'll accept Mr.  
21     Dockter.

22                   THE COURT: Mr. Furnstahl.

23                   MR. FURNSTAHL: Thank you.

24     BY MR. FURNSTAHL:

25          Q     Good morning.

1           A     Good morning.

2           Q     Can I ask you some questions first about your  
3 son's experience?

4           A     My what?

5           Q     Your son's experience in court?

6           A     Yes.

7           Q     Obviously you felt that the system treated you  
8 and your son well?

9           A     I think it did. It really did, basically from  
10 the standpoint that the incident I was referring to turned  
11 him around.

12          Q     Okay. What is he doing now?

13          A     He's totally disabled, like 98 percent, he's not  
14 able to be employed so he lives at home, he has his own  
15 home, he has health care coming in, because this was a  
16 work related incident through work comp, but he's gone to  
17 Sister Kinney and to Courage Center for both technical  
18 skills and competencies and where he could fit into the  
19 working world. Well, there isn't really much because of  
20 his disability so he's not employed in any way but he's  
21 clean of his drugs and his druggie friends because in this  
22 situation I related to because he was covered or injured  
23 under work comp he was always paid a monthly income. Well  
24 he was using that money for drugs and to maintain friends  
25 and finally he realized through all of this that, you

1 know, they are just taking my money and then he turned  
2 himself around after all of that and kept himself clean.

3 He stays at home. He does a lot of work on the  
4 computer with graphic type things, pictures and things.  
5 He has a nice size garage and he's learned to maneuver a  
6 spray painter so he does spray painting of cowlings on  
7 snowmobiles and things for friends who have had accidents  
8 and order new cowlings so he keeps himself busy in that  
9 sense but not employed.

10 Q How old was he when he was injured?

11 A He would have been 22.

12 Q Now, you mentioned that you had some problems  
13 with him when he was younger? He ran away?

14 A That's correct.

15 Q So that was before he got injured?

16 A That is correct.

17 Q Can you give me a sense, if this is too personal  
18 please let me know, give me a sense of the kinds of issues  
19 that you had to deal with with him?

20 A The issues we were having with him when he was  
21 living at home, he was going to school normally, but he  
22 was skipping school or cutting out of classes and school  
23 by midday and we didn't know about this until we were  
24 contacted by the school themselves. And we confronted him  
25 with that and we suspect he was involved with marijuana at

1 the time because we found, not the marijuana itself but  
2 like bongos or whatever you call them or pipes and things.  
3 And you could also, that aroma or smell. And then he just  
4 rebelled against any authoritative person, even parental  
5 people or us parents, I mean.

6 Q Do you have any sense of what made him go that  
7 route?

8 A I don't know. Just his friends he started  
9 hanging around with, I guess.

10 Q Must have been pretty frustrating for you and  
11 your wife at the time?

12 A Yes, it really was. And then he did go to, I  
13 think through Anoka County when this first occurred and he  
14 ran away from home we had reported it and then I don't  
15 remember circumstances but we had a counselor working with  
16 us through Anoka County that were trying to help and he  
17 rebelled against all of that. That is when he decided to  
18 run away.

19 Q I am assuming that you and your wife were  
20 concerned he would get himself into more trouble when he  
21 was on runaway status and so forth?

22 A Yes, but he would call us periodically and let  
23 us know that he was okay.

24 Q Okay.

25 A But he would never tell us where he was at.

1           Q     Okay. What do you feel about you having gone  
2 through that kind of experience, what do you feel about  
3 other teenagers that live that type of life-style?

4           A     I don't approve of it in any fashion.

5           Q     Okay.

6           A     But for people who have had gone through it, in  
7 my situation it came out to be a positive thing in the end  
8 and I, I would like other parents to have that same  
9 experience but not all of us will. Fortunately for me it  
10 worked out fine and now my son and I have a very good  
11 relationship.

12          Q     Okay. I want to relay those kinds of kids, you  
13 know, teenagers with problems with your ability to assess  
14 their credibility or believability in a forum like this,  
15 okay? What I'm wondering is are your feelings about that  
16 life-style so strong such that you would not be able to  
17 give a fair listen to somebody from that type of  
18 environment?

19          A     I wouldn't be real negative against them and not  
20 listen to them. I would have some doubts if they were  
21 being honest and truthful, yes, because I was lied to  
22 many, many, many times.

23          Q     Sure.

24          A     And there was always an excuse or somebody else  
25 to blame. That is the way my son presented everything and

1 he was very good at doing that. He was very clever, and I  
2 also had second thoughts about what he was telling me but  
3 I also thought well, maybe he is telling me the truth. In  
4 most cases though it wasn't.

5 Q Let me ask you this. This is a hypothetical and  
6 it's got nothing to do with this case. Some young person  
7 does something bad. Do you think they are more likely to  
8 talk to an adult about it or to some of their friends that  
9 may live in the same type of environment that we are  
10 talking about?

11 A I think they would most likely go to their  
12 friends first. It depends upon what kind of adult  
13 relationship they have. Probably they wouldn't go to  
14 their parents, but if they had a relative who was an adult  
15 that they trusted and felt confident in they would  
16 probably go to that adult.

17 Q Okay. With respect to your son's issues in  
18 court, what I'm wondering is did you feel that --  
19 obviously he was prosecuted in Hennepin County so somebody  
20 from my office handled that case. I'm just wondering how  
21 you felt the prosecutor in that case acted towards your  
22 son. Was he too hard nosed, was he fair? Do you have any  
23 opinion?

24 A No. I don't remember who the prosecutor was. I  
25 don't recall. But what I appreciated was that both the

1 prosecutor and his public defender took the time to  
2 discuss this, some recommendations or suggestions with the  
3 judge and then they consulted with me individually and  
4 privately on what my thoughts were about pursuing some of  
5 these other options and that's what I really admired about  
6 it.

7 Q Both the prosecutor and the public defender did  
8 that?

9 A Yes.

10 Q Okay. About your prior jury service, so there's  
11 twice you've been on a jury, one you were an alternate and  
12 one they settled right before and then two other times you  
13 were called but did not serve.

14 A That is correct. The one time I did not serve  
15 in Anoka is, the case happened to be -- one of the  
16 attorneys happened to be a neighbor kid who grew up two  
17 doors down from me so I knew him all his life, and the  
18 other one in Hennepin County.

19 Q But the one in Hennepin County that was a  
20 robbery, you said?

21 A Yeah.

22 Q And what was the issue with the blood on the  
23 coat?

24 A Well, they claimed that the defendant had  
25 attacked the plaintiff in this robbery on a street corner



1 and knocked him down and had taken his money and things,  
2 and that he had this jacket on during this robbery  
3 attempt, and then they pointed out that there was blood on  
4 this jacket. And the defendant's claim that well yes, I  
5 work at Menard's and I had cut myself, that's how I got  
6 blood on my jacket.

7 Q I see.

8 A But there was, as I mentioned there was no  
9 testing to determine whose blood it was.

10 Q I see. Okay.

11 A That's all.

12 Q So that was something that wasn't done prior to  
13 trial obviously?

14 A Correct.

15 Q So then you thought that should have been?

16 A I did. If they were going to bring it into  
17 evidence I would think it should have been done.

18 Q And did this incident occur in the city of  
19 Minneapolis?

20 A Yes. I think it was, it was like in the Lowry  
21 and Central Avenue area in Minneapolis, yes.

22 Q All right. Anything about the prospect of  
23 making a decision in a first degree murder case that is  
24 intimidating or overwhelming to you in any way, shape, or  
25 form?

1           A     No, it's not.

2           Q     You know from the prior jury experience that you  
3 have to base your decision solely and completely on the  
4 evidence?

5           A     Correct.

6           Q     And there's been some discussion about the  
7 defendant's age and so forth. The concern I have is that  
8 people might be concerned about the affect your decision  
9 is going to have on someone his age such that a decision  
10 might not be based on the evidence. Do I need to worry  
11 about that with you?

12          A     I don't think so, no.

13          Q     You appreciate the importance of that?

14          A     (Nods head.) Yes.

15          Q     And you know from your experience that there are  
16 two judges, the judge of the facts and the judge of the  
17 law. You'll follow the judge's instruction on the law?

18          A     Correct. The judge had mentioned that Monday.

19          Q     Now, it may be, it might not and probably won't  
20 be, but it may be that some of the instructions that you  
21 got in the last trial might be different from an  
22 instruction that Judge Blaeser gives you. You recognize  
23 that you have to set that aside and use Judge Blaeser's  
24 instruction?

25          A     Correct. Yes, I do.

1           Q     Okay. Have you ever been involved in any kind  
2 of a startling situation?

3           A     Any type of what?

4           Q     Startling situation, like a car accident,  
5 anything like that?

6           A     Well, yes. I think I had mentioned it, my  
7 vehicle was stolen, that was startling when I got a call  
8 at three o'clock in the morning, the police department  
9 asked me where my vehicles is. I said it's in the garage.

10          Q     Okay. Anything else?

11          A     No.

12          Q     Okay. If you saw a crime being committed, what  
13 would you do?

14          A     I would call 911 first.

15          Q     Why would you do that?

16          A     Well, it depends upon the type of crime and I  
17 wouldn't want to put myself in a life or death situation.

18          Q     I mean why would you call the police? Why would  
19 you bother with that, if it had nothing to do with you?

20          A     Well, because there's a crime being committed.

21          Q     Is it a duty to do that?

22          A     You bet it is.

23          Q     It sounds to me, sir, like you are confident you  
24 can be a fair juror to both sides?

25          A     I feel I can, yes.

1           Q     So if I don't prove the case the verdict is not  
2 guilty, right?

3           A     That's correct.

4           Q     But if I do prove the case, can you convict on a  
5 charge of first degree murder?

6           A     Yes.

7           Q     Is there any doubt in your mind?

8           A     No.

9           Q     You hesitated for a second there.

10          A     First degree is a pretty heavy crime. And the  
11 consequences of all of that can be quite devastating.

12          Q     Sure.

13          A     And I think you really need to be open-minded  
14 and have absolute certainty that the evidence had proven  
15 beyond a reasonable doubt that the defendant is guilty.

16          Q     Okay. Let me just touch on a couple of things  
17 there. You mentioned the consequences. You understand  
18 that that's not something you are supposed to think about?

19          A     I know.

20          Q     Can you set those aside?

21          A     Yes.

22          Q     Are you confident about that?

23          A     Yes.

24          Q     Here's my only chance to talk to you so I need  
25 to know if you can be fair in this case because I'm

1       entitled to a fair trial, too. And you said you have to  
2       be absolutely certain that the evidence proves the case  
3       beyond a reasonable doubt. I'm not exactly sure what that  
4       means but the judge will tell you what my burden of proof  
5       is. It's beyond a reasonable doubt. That means not  
6       beyond all doubt, just beyond a reasonable doubt.

7             A       Reasonable doubt, right.

8             Q       Okay? So if you are equating absolute certainty  
9       with guilt, I have no requirement to prove guilt to an  
10       absolute certainty. Can you appreciate the distinction  
11       there?

12            A       Yes, I do.

13            Q       Are you -- and the instruction, the proof beyond  
14       a reasonable doubt requirement, is the same thing I would  
15       have if this were a DWI case or a shoplifting case. It  
16       doesn't get higher because this is a first degree murder  
17       case. Are you going to expect something more of me  
18       because this is a first degree murder case?

19            A       No, I would not.

20            Q       Thank you, sir.

21                    MR. FURNSTAHL: We accept Mr. Dockter, Your  
22       Honor.

23                    THE COURT: All right. Mr. Dockter, you  
24       will be seated on this jury. I'm going to excuse you  
25       now, have you come back Monday morning right before

1 nine o'clock to this courtroom but remain in the hall  
2 and the clerk will come out to get you when we are  
3 ready, okay?

4 MR. DOCKTER: Okay. Thank you. And  
5 correct me if I'm wrong, I understood it may be a  
6 two-week --

7 THE COURT: Two weeks counting this week of  
8 selection, so next week we anticipate the case will  
9 be done but then the jury will get the case and how  
10 much time they take is totally up to them.

11 MR. DOCKTER: And it starts Monday morning.

12 THE COURT: Right.

13 MR. DOCKTER: At nine o'clock?

14 THE COURT: Nine o'clock.

15 (Mr. Dockter exits.)

16 THE COURT: We are going to take our recess  
17 now, and we'll be back at 10:35.

18 (Short recess.)

19 THE COURT: Counsel, why don't you  
20 approach, first.

21 (Off-the record discussion at the  
22 bench.)

23 THE COURT: Mr. Larson?

24 MR. BENSON: I'm sorry, which ones?

25 MR. FURNSTAHL: 32, 36, and 75.

1 (Mr. Larson enters.)

2 THE COURT: Good morning.

3 MR. LARSON: Morning.

4 THE COURT: Do you want to raise your right  
5 hand to be sworn today?

6 MR. LARSON: Yes.

7 (Mr. Larson is sworn.)

8 THE COURT: Go ahead and have a chair.

9 Mr. Larson, first of all, have you thought about  
10 the answers you made on this questionnaire on Monday?

11 MR. LARSON: Yes.

12 THE COURT: Anything you think you should  
13 change or add to?

14 MR. LARSON: No, sir.

15 THE COURT: Okay. First thing I'm going to  
16 ask you about is it's clear from your answers to  
17 several questions that you don't want to be on this  
18 jury, is that right?

19 MR. LARSON: It's not that I don't want to.  
20 I think it would be interesting, but it's not --  
21 financial standpoint it's not good for my family.

22 THE COURT: You are a carpenter?

23 MR. LARSON: Yes.

24 THE COURT: Are you self-employed?

25 MR. LARSON: No.

1 THE COURT: Okay. But you don't get paid  
2 by your employer while you are here, is that right?

3 MR. LARSON: No, sir.

4 THE COURT: What do you mean by when you  
5 said I would be without wife and kids. What does  
6 that mean?

7 MR. LARSON: Just, just because my wife is  
8 an attorney for the city of Minneapolis, not being  
9 able to talk to her, because of this, you know, I ask  
10 her what she does during the day, she asks me what I  
11 do during the day.

12 THE COURT: So it's just about  
13 communicating with your wife?

14 MR. LARSON: Yeah.

15 THE COURT: Your wife is an attorney for  
16 the city of Minneapolis, is that right?

17 MR. LARSON: Yes.

18 THE COURT: What kind of work does she do?

19 MR. LARSON: Prosecutes domestic, DUIs.

20 THE COURT: Okay. How long has she been  
21 with the city of Minneapolis?

22 MR. LARSON: Six or seven years. Six  
23 years.

24 THE COURT: How do you pronounce her last  
25 name?



1 MR. LARSON: Kruchowski.

2 THE COURT: Okay. So do you discuss with  
3 her her work then?

4 MR. LARSON: Just, you know, what calendars  
5 she has during the day and whatnot, what cases she  
6 has, about what law she's practicing that day, I  
7 guess.

8 THE COURT: She's had jury trials, I take  
9 it?

10 MR. LARSON: Yes.

11 THE COURT: And have you discussed with her  
12 how the jury trials work?

13 MR. LARSON: Yes.

14 THE COURT: And talked about juries in  
15 general?

16 MR. LARSON: Somewhat, yes.

17 THE COURT: Were you looking forward to  
18 being on a jury other than the, obviously the missing  
19 work?

20 MR. LARSON: Once again, I just think it  
21 would be very interesting but, you know, it's good  
22 and bad.

23 THE COURT: Okay. What kind of, are you --  
24 I mean what are you working on right now?

25 MR. LARSON: Remodeling houses. We got

1           three houses we're working on right now.

2                   THE COURT: You work with somebody else on  
3 these jobs?

4                   MR. LARSON: Yes. My boss and one other  
5 guy.

6                   THE COURT: What company is it that you  
7 work for?

8                   MR. LARSON: Carpentry Aspects.

9                   THE COURT: You are not the owner, just an  
10 employee?

11                  MR. LARSON: Just an employee.

12                  THE COURT: Now, you also answered a  
13 question that you testified in court before, you said  
14 on a military trial. Can you tell me about that?

15                  MR. LARSON: I, basically when I was in the  
16 military I punched a lieutenant and I was going to  
17 get court marshaled until I was -- the facts were out  
18 then I was admonished. It was done. Nothing  
19 happened.

20                  THE COURT: So you actually testified in  
21 your own defense?

22                  MR. LARSON: Yes.

23                  THE COURT: And you had an attorney then  
24 appointed to represent you?

25                  MR. LARSON: A JAG lawyer. That didn't

1 show up.

2 THE COURT: So you received your discharge,  
3 did you receive a discharge as a result of this  
4 incident?

5 MR. LARSON: No.

6 THE COURT: You had an admonishment. Were  
7 you reduced in grade?

8 MR. LARSON: No. It was just everything  
9 that -- I had been restricted to base, restricted to  
10 barracks up and to the point of my trial.

11 THE COURT: Okay.

12 MR. LARSON: And that was all I got.

13 THE COURT: How long did this trial last?

14 MR. LARSON: I was there for one day.

15 THE COURT: Okay. And in the military  
16 trial did you have a jury, or was it?

17 MR. LARSON: It's a panel of officers.

18 THE COURT: Okay. All right. Now, I need  
19 to ask you about one other question. I guess maybe  
20 you mentioned something similar in a couple of  
21 answers. You thought you were extra critical of the  
22 criminal justice system. You said you had watched  
23 your wife in some cases and you thought the system  
24 had too many appeals and no death penalty.

25 MR. LARSON: Yeah. I'm in favor of the

1 death penalty. Minnesota doesn't have it so it's not  
2 a question here.

3 THE COURT: What did you mean by too many  
4 appeals?

5 MR. LARSON: Just watching, you know,  
6 watching TV, you know, someone on death row can have  
7 up to so many appeals, or, but it's just, to me it's  
8 just a waste of money. There should be a set number,  
9 three, something like that, and, you know, if you are  
10 convicted every time, you know, there's obviously a  
11 reason for that.

12 THE COURT: Okay. So that's based  
13 primarily on things you've either read or seen on TV  
14 about --

15 MR. LARSON: Yes.

16 THE COURT: -- death row cases?

17 MR. LARSON: Um-hum.

18 THE COURT: Not based on Minnesota?

19 MR. LARSON: No.

20 THE COURT: Do you know how many appeals  
21 you are allowed in Minnesota?

22 MR. LARSON: No, I don't.

23 THE COURT: Okay. One of the questions  
24 here was, indicates that the defendant in this case  
25 is 16 and a half years old and asks you what reaction

you have to someone that age being charged with first degree murder, and your answer was that the 16-and-a-half-year-old should have thought about the consequences of his or her actions. And could you elaborate on that a little bit more?

MR. LARSON: If you are old enough to go  
and get yourself a gun and do whatever, whatever  
happens then you should basically face the crime.  
That's, you know, if I walk out today and did the  
same thing I would expect to be in a court and get  
caught.

THE COURT: So basically somebody that's 16-and-a-half years old has enough decision making ability to know what they are doing?

MR. LARSON: They can drive a car.

THE COURT: Okay. All right.

Mr. Benson, go ahead.

BY MR. BENSON:

Q Have you made any determination or judgment in your mind about whether Marvin Haynes committed this offense or not?

A No.

MR. BENSON: Your Honor, exercise a peremptory.

THE COURT: Okay. Mr. Larson, you'll be

1           excused from this jury. I would ask you if you would  
2           check in with the jury office downstairs.

3                     MR. LARSON: All right.

4                                     (Mr. Larson exits.)

5                     THE COURT: We are ready for Mr. Steinmetz.

6                                     (Mr. Steinmetz enters.)

7                     THE COURT: Good morning.

8                     MR. STEINMETZ: Good morning.

9                     THE COURT: How are you today?

10                    MR. STEINMETZ: Good.

11                   THE COURT: Would you raise your right hand  
12           to be sworn today, please?

13                                     (Mr. Steinmetz is sworn.)

14                   THE COURT: Go ahead and have a chair. Is  
15           it Steinmetz?

16                   MR. STEINMETZ: Steinmetz, yes.

17                   THE COURT: I grew up with some  
18           Steinmetzes. You are not -- where are you originally  
19           from?

20                   MR. STEINMETZ: The Minneapolis area.

21                   THE COURT: All right. We have your  
22           questionnaire you filled out on Monday, and do you  
23           have a, first of all do you have anything that you  
24           want to add or change on your answers?

25                   MR. STEINMETZ: No.

1 THE COURT: Okay. What is Sedexo?

2 MR. STEINMETZ: Sedexo is a food service  
3 company that -- international -- that does corporate  
4 food service, health care, pretty much runs the gamut  
5 on all the facilities.

6 THE COURT: Okay. The attorneys are going  
7 to be asking you some additional questions.

8 And Mr. Benson, you may proceed.

9 MR. BENSON: Thank you, Your Honor.

10 BY MR. BENSON:

11 Q Good morning.

12 A Good morning.

13 Q Sir, I want to follow-up on some of your  
14 questions in the questionnaire and then I have a few.  
15 First, you indicated that you wanted to be a juror in this  
16 case?

17 A Um-hum.

18 Q Why is that?

19 A Just something I haven't done. I've never been  
20 part of a jury trial or anything of the sort. I find it  
21 interesting just to see how the whole system works and  
22 being involved in something of that nature kind of  
23 interests me.

24 Q Okay. What were your thoughts when you found  
25 out this was a first degree murder case?

1           A     To be honest with you, it kind of made it a  
2     little more interesting because it's kind of going to be a  
3     little more detail oriented and kind of a lot of interest  
4     to me, you know. Lot of things going on and lot of things  
5     to see and hear.

6           Q     Okay. One of your responses, you indicated that  
7     as far as north Minneapolis you feel there was too much  
8     violence. What's the basis of that?

9           A     Just a lot of -- a sous chef that worked for me  
10    for a couple of years that lived in north Minneapolis,  
11    just interactions with him on a daily basis and just  
12    hearing what he was saying because he lived in north  
13    Minneapolis, just based upon what he would tell me at work  
14    and interactions.

15          Q     Okay. And had that person, had he been through  
16    anything personally himself that he related to you?

17          A     A few things, yes. I think he had an incident  
18    where somebody stole his car. He lived right on the  
19    corner of a, behind a gas station and somebody stole his  
20    car awhile back.

21          Q     Was he in the car at the time?

22          A     No.

23          Q     Did he report any kind of an, I suppose having  
24    some physical act done to him or violent act done in his  
25    presence?



1 A No.

2 Q I don't believe you indicated that you had  
3 experienced any threat for personal safety?

4 A No.

5 Q Did you have time to think about if anyone close  
6 to you experienced a threat to personal safety?

7 A No.

8 Q All right. Is there anything about, you know,  
9 you are not going to know all the evidence in the case  
10 until you hear it, but you can imagine that there will be  
11 possibly some emotional testimony in the context of a  
12 murder case?

13 A Um-hum.

14 Q Do you consider yourself an overly emotional  
15 person?

16 A No.

17 Q I expect that you would have some feelings of  
18 compassion for, you know, people who testify in this case,  
19 that would be normal. Do you feel that you would be able  
20 to set aside any feelings of compassion either for the  
21 victim's family, the deceased or if you have any concern  
22 whatsoever given the age of Mr. Haynes?

23 A Um-hum

24 Q Would you be able to set those concerns aside  
25 and focus on the evidence in the case?

1 A Yes.

2 Q What's the most important decision you've had to  
3 make in your life?

4 A Probably at this point it's getting married, I  
5 would say, having children, kind of rank up there on the  
6 top of importance as far as decision making goes.

7 Q Okay. Finally, you know a Jeff Boehler, a  
8 friend of yours, right?

9 A Yes.

10 Q And what law enforcement branch does he work  
11 for?

12 A He is -- I'm trying of think of his exact title,  
13 but he works for Plymouth police department as an  
14 investigator.

15 Q Has he talked to you about his cases at all?

16 A You know, I rarely see him. I think I've  
17 probably seen him once in the last year I would say and  
18 that was just kind of in passing at Target.

19 Q Okay. Has he ever, I imagine he has, but has he  
20 ever talked to you about testifying in court?

21 A No.

22 Q Ever talked to you about like his daily job?

23 A No, not at all.

24 Q Is there anything about his being a police  
25 officer that you think would impact the way you view

1 evidence in this case?

2 A Not at all.

3 Q I'm going to ask you more directly. You'll hear  
4 from some officers that will testify in this case. Do you  
5 think the fact that you know an investigator with the  
6 Plymouth police department, the fact that you know  
7 somebody like that, is that going to influence the way you  
8 look at law enforcement officers when they testify?

9 A No.

10 Q Okay. And you are going to get instructions  
11 from the Court as far as what standards you can look to to  
12 determine what the credibility of a witness is. What  
13 won't be in that instruction is the fact, or the mere fact  
14 that a person is a police officer or that they wear a  
15 badge. Would you be able to follow that instruction and  
16 hold the same civilian witnesses to the same standards as  
17 a police officer?

18 A Yes.

19 Q Is there anything else you think I need to know  
20 about you in determining whether you could be a fair  
21 witness in this case?

22 A I don't think I can add anything to it.

23 Q Okay. And as you sit here right now and look at  
24 Marvin Haynes, can you presume him innocent of these  
25 charges?

1 A Yes.

2 Q Thank you.

3 MR. BENSON: Your Honor, we'll accept Mr.  
4 Steinmetz.

5 THE COURT: Go ahead, Mr. Furnstahl.

6 MR. FURNSTAHL: Thank you.

7 BY MR. FURNSTAHL:

8 Q Good morning, sir.

9 A Good morning.

10 Q You mentioned that you grew up in the  
11 Minneapolis area. Did you ever live in Minneapolis  
12 itself?

13 A No.

14 Q All right. And then who was the person that you  
15 worked with that told you about his or her experiences in  
16 north Minneapolis?

17 A His name is Dominick --

18 Q Not the name, but was that another chef?

19 A Yes.

20 Q Okay. Now, you mentioned in your questionnaire  
21 that either now or in the past you've had supervisory  
22 responsibilities that included hiring, firing, and  
23 disciplining?

24 A Yes.

25 Q Did you ever have to fire somebody?

1 A Yes.

2 Q How did you feel about that?

3 A I felt that it was something that the employee  
4 brought on themselves and it was just my job as their  
5 supervisor in order to run the business that it was a  
6 necessary cause that I had to take.

7 Q How many people have you fired?

8 A I would probably say maybe ten, 12 people.

9 Q Lot of turnover in the food business?

10 A Yes.

11 Q But the emotional aspects of having to fire  
12 someone, take away their employment, how did you react to  
13 the emotional part of it?

14 A I tried to take that out of it and just keep it  
15 strictly business and keep to the facts, this is why this  
16 is happening to you, and try to keep the personal aspect  
17 out of it and keep it all fact oriented.

18 Q Okay. Can you do that here too?

19 A Oh yeah.

20 Q Counsel was talking about some of the emotional  
21 aspects. He talked about feelings of sympathy towards the  
22 victim. You recognize that if you are basing your  
23 decision in this case on sympathy towards the victim you  
24 can't give the defendant a fair trial?

25 A Um-hum.

1 Q And you are not going to do that, right?

2 A No.

3 Q There's also a concern of the defendant's age.

4 You've indicated that he's old enough, words to the affect  
5 that he's -- a person that age is old enough to make  
6 decisions --

7 A Um-hum.

8 Q They're old enough to be responsible for the  
9 decisions they make?

10 A Yes.

11 Q Will you base your decision solely and  
12 completely on the evidence and not, for example, on how  
13 the decision may affect the defendant or anybody else?

14 A Yes.

15 Q Appreciate how important that is?

16 A Yup.

17 Q All right. What feelings do you have about  
18 police officers, if any?

19 A I guess just on a personal level, I have a  
20 respect for them for the job that they do and kind of the  
21 vast variety of things they partake in that particular  
22 position from, you know, if it's a police emergency  
23 regarding health issues or fires or car accidents or  
24 whatever, I guess it's something that I wouldn't want to  
25 do personally, just the responsibility that lies on their

1       shoulders to try and assist people and kind of put their  
2       life in jeopardy in certain situations.

3               Q     Yeah. Counsel -- I'm going to jump around here  
4       a little bit. Counsel had asked you about your reaction  
5       to this case and you thought you were interested in being  
6       a juror and you thought it would be an interesting case to  
7       be a juror on?

8               A     Um-hum.

9               Q     Is there anything about the prospect of being a  
10      juror in a first degree murder case, about making a  
11      decision in a murder case that is intimidating or  
12      overwhelming to you in any way, shape, or form?

13              A     Not at all.

14              Q     All right. Have you ever experienced a  
15      startling situation?

16              A     Um, no, not that I can recall.

17              Q     Okay. Do you have guns?

18              A     No.

19              Q     Do you know the difference, when we're talking  
20      about handguns, do you know the difference between a  
21      revolver and a semiautomatic?

22              A     Yes.

23              Q     Okay. Ever shot a revolver or a semiautomatic?

24              A     No.

25              Q     One has a cylinder, right? Which one?

1           A     The revolver's got the cylinder.

2           Q     All right. Now, in here we have two judges, the  
3 judges of the facts and the judge of law. Wherever we  
4 have questions about the law we look to Judge Blaeser to  
5 resolve those disputes and we abide by his decision. Are  
6 you willing to follow the judge's instruction on the law?

7           A     Yes.

8           Q     And where we have questions of fact that's where  
9 we turn to the judges of the facts, the jurors, to resolve  
10 those disputes. Can you appreciate the distinction  
11 between the two?

12          A     Yes.

13          Q     All right. Now, you are -- you don't know any  
14 of the witnesses, correct?

15          A     No, I do not.

16          Q     One of the jobs you might have as judges of the  
17 facts is to decide the credibility or believability of the  
18 witnesses or their statements or their testimony. Can you  
19 appreciate how in a situation like this where you are  
20 judging the credibility of a stranger your own common  
21 sense might be the best tool that you have in making the  
22 kind of decisions we are going to ask you to make?

23          A     I believe so, yes.

24          Q     How do you feel about being asked to rely on  
25 common sense in a first degree murder case?



1           A     I think I've got a good deal of common sense.  
2     Like I said earlier, as far as a lot of turnover in the  
3     food service industry, I consider myself a good judge of  
4     people coming in for interviews, applying for jobs, kind  
5     of getting a feel for what that person is like, and kind  
6     of like you said their credibility, so I would say I would  
7     be a good judge of a person's credibility.

8           Q     If you were to meet someone in this forum that  
9     you didn't like personally, you didn't like their  
10    life-style, they're not someone that you would hang out  
11    with or allow your family to hang out with, do you think  
12    you could still judge that person's credibility fairly?

13          A     Yes.

14          Q     It sounds to me, sir, like you can be a fair  
15    juror to both sides?

16          A     I would say so, yes.

17          Q     So if I don't prove it the verdict is not  
18    guilty, right?

19          A     Um-hum.

20          Q     But if I do prove it, can you convict on a  
21    charge of first degree murder?

22          A     Yes, I believe so.

23          Q     Any doubt in your mind?

24          A     No.

25          Q     Thank you, sir.

1 MR. FURNSTAHL: We will accept Mr.  
2 Steinmetz, Your Honor.

3 THE COURT: Okay. Mr. Steinmetz, you will  
4 be seated on this jury. I'm going to excuse you  
5 today and ask you to come back Monday morning shortly  
6 before nine o'clock to this courtroom.

7 MR. STEINMETZ: Okay.

8 THE COURT: Remain in the hallway and the  
9 clerk will come out to get you when we are ready to  
10 go.

11 MR. STEINMETZ: All right. Thank you.

12 (Mr. Steinmetz exists. Mr.  
13 Piehowsky enters.)

14 THE COURT: Good morning.

15 MR. PIEHOWSKY: Good morning, sir.

16 THE COURT: Do you pronounce it Piehowsky?

17 MR. PIEHOWSKY: Yes, sir. Exactly right.

18 THE COURT: All right. Will you raise your  
19 right hand to be sworn today?

20 (Mr. Piehowsky is sworn.)

21 THE COURT: Go ahead and have a chair.

22 Mr. Piehowsky, the attorneys and I have your  
23 questionnaire that you filled out on Monday and we've  
24 had a chance to look at your answers. Is there  
25 anything you want to add or change to any of the

1           answers you made on this questionnaire?

2                   MR. PIEHOWSKY: Not that I can think of.

3                   THE COURT: Okay. All right.

4                   Mr. Benson, you may voir dire.

5                   MR. BENSON: Thank you.

6 BY MR. BENSON:

7           Q     Good morning.

8           A     Good morning.

9           Q     You indicated that you worked briefly -- is it  
10 Ross Carson?

11          A     Korson, yes.

12          Q     At the County Attorney's Office?

13          A     Yes.

14          Q     What did you do as far as --

15          A     I didn't actually work with him in the same  
16 office but I contacted him for information on criminal  
17 cases and he was like a mediator for the county.

18          Q     That's with your job at KSTP?

19          A     It was actually before that. I worked for Sun  
20 Newspapers.

21          Q     Okay. Is there -- I mean, generally he just,  
22 you would call him, get information and then use it for  
23 your --

24          A     Right. It would start, I would browse the  
25 police reports, pick out the ones that sounded

1 interesting, call him to see if there were charges, and he  
2 would fax me the charges, send me or give me any other  
3 relevant details that were public information.

4 Q Okay. Anything about that relationship that you  
5 think would affect the way you view this case or be on  
6 this case?

7 A No, not at all. In fact I think I only met him  
8 in person once. I talked to him about twice a week on the  
9 phone.

10 Q Okay. You also indicated that you have a friend  
11 Lashawn McQuire?

12 A Yes.

13 Q And how long have you known Mr. McQuire?

14 A Three years.

15 Q How long has he been an attorney?

16 A Probably 15 years.

17 Q All right. And has he ever done any criminal  
18 work?

19 A Not that I know of.

20 Q Okay. With respect to law enforcement, you  
21 indicated that you know Dan Mack or Don Mack?

22 A Dan.

23 Q Dan Mack, and that's a South St. Paul police  
24 officer?

25 A Correct.

1 Q And how long has he been a police officer?

2 A Less than two years, probably.

3 Q Okay. And how long have you known him?

4 A My whole life.

5 Q How do you think the fact that a friend of yours  
6 is a police officer would affect the way you listen to and  
7 view police testimony?

8 A I don't think that would have too much of an  
9 influence on it. I think that's his career that he chose.  
10 When I talk with him we don't talk too much about his  
11 work. We have other interests.

12 Q Okay. Is it a fair statement to say that police  
13 officers, like other professions, some are good at their  
14 job, some are not good at their job?

15 A Yeah, I think that's a fair statement.

16 Q And just like anyone else, any other person,  
17 some can be more candid than others?

18 A Um-hum. Absolutely.

19 Q Do you think -- and during the course of a first  
20 degree murder trial or any criminal trial you'll be able  
21 to look at the testimony of a police officer and weigh it  
22 in the same manner you would the testimony of a civilian  
23 witness?

24 A Yes.

25 Q All right. You mentioned a little bit about

1 news coverage on this particular case. You recall a  
2 little bit about it?

3 A Correct.

4 Q Since you've had time since you filled out the  
5 questionnaire, have any other details of the case come out  
6 to you as far as the news coverage?

7 A No.

8 Q All right. And with respect to that news  
9 coverage, I think that's your sole information at this  
10 point about the alleged facts of this case?

11 A Correct. And I was trying to recall it the  
12 other day and pertaining to the case or the alleged act,  
13 there was very little information. It was more after the  
14 fact information on the effect of the shop owners, their  
15 life now.

16 Q Okay. And that's the basis of the comment that  
17 you had that you had -- you felt bad for the owners of the  
18 shop?

19 A Yeah. It was a very sympathetic story.

20 Q And I want to ask you one other thing and run  
21 these two together. You also talked about having a little  
22 more sympathy for the accused when you were asked the  
23 question about what do you think about a  
24 16-and-a-half-year old who is charged with first degree  
25 murder?

1           A     Um-hum.

2           Q     How do you, how do you plan to compartmentalize  
3 or, you know, filter out the sympathy, you know, it's  
4 obviously, it's a human thing to have sympathy for the  
5 storeowners, the person who died, the 16-year-old who is  
6 charged with first degree murder, how would you go about  
7 or do you foresee any trouble in going about filtering  
8 that out and focusing on the evidence and things?

9           A     I think I have a pretty good understanding of  
10 the legal system. I understand that the job of a juror is  
11 to take or try and determine whether or not the accused  
12 has committed the crime they are charged with, and I think  
13 I would be able to do that, sympathy aside. In the  
14 business that I work in you have to understand how to do  
15 that and take facts and do things objectively and not let  
16 other outside emotions get in and sympathies get in and I  
17 think I could do that on a jury.

18          Q     Okay. I take it in your job, I imagine also  
19 your personal life, but in your job you have to make  
20 certain credibility determinations?

21          A     Yes.

22          Q     And do you feel that you are capable of doing  
23 that well?

24          A     Yes.

25          Q     All right. Do you think you could apply

1        whatever skills you use to determine credibility to a  
2        courtroom setting?

3            A        Yeah. I think I do that quite well. It's kind  
4        of helped me in my life. I think I'm a good judge of  
5        character and credibility.

6            Q        Okay. Is there anything else that you think I  
7        would need to know or we would need to know in determining  
8        whether you would be a good juror for this case?

9            A        At first I thought the fact that I worked for  
10       the media would automatically disqualify me, but as I  
11       thought about it I think I have maybe a better  
12       understanding of the criminal justice system than the  
13       layperson, plus my journalism training has taught me how  
14       to be more objective, how to see both sides of the story  
15       to understand the facts and filter unimportant or real  
16       emotional things out.

17          Q        Okay. All right. And I think you indicated  
18       that you did want to be a juror on this case?

19          A        Yes.

20          Q        All right. Tell me the most important decision  
21       that you have had to make in your life? Or the toughest  
22       decision.

23          A        Um, I wasn't ready for that one. When I was 18  
24       and I didn't have the money or the grades to go to  
25       college, I decided to join the military and that was a



1 very hard thing to do but it turned out to be the right  
2 decision because I was able to earn some money for college  
3 first, and second grow up a little and learn to be more  
4 responsible and it ended up working out for me so I look  
5 at that as probably the hardest and best decision I made  
6 in my life.

7 Q Thank you.

8 MR. BENSON: Your Honor, we'll accept this  
9 juror.

10 THE COURT: Okay. Mr. Furnstahl.

11 MR. FURNSTAHL: Thank you.

12 BY MR. FURNSTAHL:

13 Q Why did you think that you would be  
14 automatically excluded because you are a member of the  
15 media?

16 A Because like I said the station I work for has  
17 covered this story in the past, not necessarily the crime  
18 itself but from a different angle and knowing how we  
19 operate I would say after the trial ends I think we may  
20 report the results of the trial. I don't foresee anyone  
21 reporting on the trial but we may report the results.

22 Q You indicated that one of the tough decisions  
23 that you made was getting involved in the military?

24 A Yes, sir.

25 Q Are you still -- you are no longer in the

1 National Guard?

2 A Correct. I've been out for over a year.

3 Q What was the reason why you decided to leave?

4 A Um, my contract was up and it had become  
5 cumbersome and tedious for me. When I was in college it  
6 was good, it was a part-time job and it was extra money,  
7 but a few years ago I moved into my career, took on a  
8 house and a fiance and those are all things on top of my  
9 job I needed to manage, and when I would go on the  
10 weekends it would essentially turn into a 12-day work week  
11 for me and I didn't, I no longer needed the money like I  
12 did in college and it just, I just kind of got worn out on  
13 it. It became too much. Proud of what I did but it was  
14 time for me to be done.

15 Q Thank you, sir.

16 MR. FURNSTAHL: Your Honor, we'll exercise  
17 a peremptory.

18 THE COURT: All right. Mr. Piehowsky, I'm  
19 going to excuse you from this jury and I would ask if  
20 you would please check in with the jury office  
21 downstairs. Thank you very much.

22 MR. PIEHOWSKY: You are welcome.

23 (Mr. Piehowsky exits.)

24 THE CLERK: Are you ready for 37?

25 THE COURT: Yeah.

1 (Ms. Gruesner enters.)

2 THE COURT: Good morning. Do you pronounce  
3 it Gruesner?

4 MS. GRUESNER: Yes.

5 THE COURT: Ms. Gruesner, would you please  
6 raise your right hand to be sworn today?

7 (Ms. Gruesner is sworn.)

8 THE COURT: Go ahead and have a chair. Ms.  
9 Gruesner, we have the questionnaire you completed on  
10 Monday and in a minute the attorneys are going to ask  
11 you some questions about it, but first of all is  
12 there anything you thought of that you either want to  
13 add or change on any of your answers?

14 MS. GRUESNER: No, I don't think so.

15 THE COURT: Okay. Go ahead, Mr. Benson.

16 MR. BENSON: Thank you, Your Honor.

17 BY MR. BENSON:

18 Q Good morning.

19 A Hi.

20 Q Ma'am, you indicated that you had had a purse  
21 stolen?

22 A Um-hum.

23 Q How long ago was that?

24 A It was in January of 2001.

25 Q What were the circumstances that led to it?

1           A     My husband and I had gone to breakfast, we  
2     parked our car in a public lot, walked around, it was in  
3     downtown Minneapolis, walked around a little bit, came  
4     back and saw that the window had been broken, my purse had  
5     been stolen. We later found out that my identity was  
6     stolen and I got charged for a lot of things. We later  
7     found out that it was a group of people stealing  
8     identities, returning product that they hadn't paid for  
9     for drug money.

10          Q     Okay.

11          A     Basically. They caught the people eventually.

12          Q     Okay. I take it you gave a police report and  
13     called the police? What was your feeling as far as how  
14     the police handled the case?

15          A     They were policemen.

16          Q     Did you have a liaison or somebody you spoke  
17     with in the County Attorney's Office?

18          A     Yeah, there was, but I didn't want to go to the  
19     court. I didn't want to see the woman who thought she  
20     looked like me.

21          Q     Okay. And then have you been, as far as any  
22     losses that you have suffered as far as financial loss --

23          A     There was no financial loss.

24          Q     Okay. Is there anything with that experience  
25     that, you know, gives you a concern about being a juror in

1 a criminal case?

2 A No, not at all.

3 Q What was your reaction when you found out this  
4 case was a first degree murder case?

5 A Um, at first my first reaction was a little bit  
6 of oh boy and a little bit of fright, but in thinking  
7 about it over the past couple days I think it would be  
8 interesting.

9 Q What was the -- can you describe the fright?

10 A Can I describe the fright?

11 Q Yeah. What caused that?

12 A Just being responsible for such a decision that  
13 the jury will have to make.

14 Q Okay. Do you feel that you are up to making  
15 that decision?

16 A Absolutely.

17 Q Okay. Have you had occasions where you've had  
18 to work with other people that you didn't know to make a  
19 decision?

20 A Um-hum.

21 Q Can you tell me one?

22 A In my role at the Minneapolis Jewish Federation  
23 I was in charge of volunteers who I didn't necessarily  
24 know and we had to decide on certain programming aspects  
25 and funding aspects of programs and things like that, so I

1 was the staff person in charge of making sure that  
2 everything went smoothly and that the decisions were made  
3 properly.

4 Q Okay. How would you describe your interaction  
5 in a group?

6 A It pretty much depends on the other people. If  
7 there's a leader in the group I'll sit back. If there is  
8 no leader I'll take that role.

9 Q Okay.

10 A I don't enjoy taking the role but I have a  
11 certain sense of responsibility if I see that no one else  
12 is taking the role as leader.

13 Q Okay. If you are in a group and your opinion is  
14 different than say a leader, are you able to --

15 A I will state my opinion, definitely. That's  
16 only happened with age.

17 Q Okay. So in this context, if you are  
18 deliberating in this case and you have an opinion one way  
19 or another do you feel that you could, you know, stand and  
20 take the input from the other jurors but ultimately defend  
21 your own position?

22 A Um-hum.

23 Q And you did indicate I believe that you wanted  
24 to be a juror in this case?

25 A Yes.

1 Q And why is that?

2 A Well, I'm not working now, I have time, I've  
3 never been on a jury, I think it's my responsibility as a  
4 citizen. I've never done anything as a citizen before,  
5 and.

6 Q Tell me about a circumstance where you had to  
7 determine if someone was telling you the truth?

8 A Well, I have two kids so it was practically a  
9 daily experience.

10 Q All right. And anything, I don't know, of an  
11 important nature come to mind?

12 A Well, I was a supervisor for several people in a  
13 job, I can't think of a specific experience but I'm sure  
14 that I had to solve some kind of problems somewhere.

15 Q Okay. And do you feel that you are a good  
16 person as far as being able to judge credibility?

17 A Yeah.

18 Q In this trial there are going to be some police  
19 officers who testify as well as civilian witnesses; be  
20 some adults, there will be some juveniles. Do you feel  
21 that you can take whatever skills you have and determine  
22 credibility and apply that to each and every one of those  
23 witnesses?

24 A I hope so.

25 Q Okay. And specifically, are you able to, when a

1 police officer testifies, are you going to give them any  
2 greater weight just because they are police officers?

3 A I would hope not. Honestly? I'm not sure. I  
4 mean I've never been in that position so I don't know.

5 Q Okay. What are your general thoughts about  
6 police officers?

7 A That for the most part they are good, brave  
8 people who are doing a job for society.

9 Q Okay. And we can agree with that and we can  
10 agree that some police officers, like any other person in  
11 any other profession, some are better at their jobs than  
12 others?

13 A Absolutely.

14 Q And even good police officers make mistakes?

15 A Right.

16 Q Just like any other person?

17 A Right.

18 Q And some police officers may lie and some may  
19 not, just like any other person?

20 A Right.

21 Q Okay. But my question comes to this, the Court  
22 is going to give you certain factors to look at in  
23 determining credibility of a witness: Age, education,  
24 their ability to observe, their ability to relate, their  
25 motives or biases or, you know, whatever, there are



1       certain things the judge will give you and some of it will  
2       be common sense and experience that you base these things  
3       on. What won't be in that instruction is that if a person  
4       wears a badge or a person wears a uniform that they can  
5       get a leg up on anybody else. So could you follow an  
6       instruction such as that?

7           A       Sure.

8           Q       And when you look at a police officer and they  
9       testify, can you hold them in that sense to the same  
10      standard you would hold anybody else who walks in off the  
11      street?

12          A       Yes.

13          Q       Okay. As you sit here now and you look at  
14      Marvin Haynes, do you see an innocent person?

15          A       As a person?

16          Q       Do you see an innocent person?

17          A       Yes. Right now? Yes.

18          Q       Tell me the most important decision you've had  
19      to make in your life or the hardest decision that you can  
20      share with us.

21          A       Um, that's hard. Well, I'm sure my family would  
22      say my decision to travel to Israel eight times in the  
23      past four years. They didn't like that decision.

24          Q       Okay.

25          A       I didn't see it as a problem, but it was hard to

1 make because my family was so against it.

2 Q And if you can share with us, why were they  
3 against it and why --

4 A Because they thought that I wouldn't come home  
5 because of the troubles there.

6 Q And then given their concerns and the troubles  
7 there, why did you decide to go?

8 A Because I didn't see it as a threatening  
9 situation. I knew that I would be protected and I just  
10 didn't see it as a -- I didn't see it as a threatening  
11 situation.

12 Q Thank you. And is it Gruesner?

13 MS. GRUESNER: Yes.

14 MR. BENSON: Your Honor, we'll accept Ms.  
15 Gruesner.

16 THE COURT: Okay. Mr. Furnstahl.

17 BY MR. FURNSTAHL:

18 Q Good morning.

19 A Hi.

20 Q You were the victim of identity theft?

21 A Yes.

22 Q I'm told -- well, I know that that could be a  
23 real hassle for somebody who's been the victim of identity  
24 theft. Was it for you?

25 A It was a hassle but I don't generally focus on

1       hassles.

2           Q     Okay. What do you mean by that?

3           A     Well, I mean I don't, I don't dwell on them. I  
4       did what I needed to do, I called all the people I needed  
5       to call, and I put up with the baloney that went on  
6       afterwards.

7           Q     Okay. You just didn't let it get to you, is  
8       what you are saying?

9           A     Right.

10          Q     And it sounds like while the person was caught,  
11       it was part of a ring, you said?

12          A     Yeah.

13          Q     There was something in the paper about two years  
14       ago as I recall, a ring was caught doing this. Were you  
15       one of the victims of that?

16          A     I don't think so.

17          Q     All right.

18          A     I don't recall what you were recalling but this,  
19       I think this was solved more like three years ago.

20          Q     All right. And you had contact with some of the  
21       personnel from the Hennepin County Attorney's Office?

22          A     Just over the phone.

23          Q     All right.

24          A     And just once or twice.

25          Q     Do you remember who that person was?

1 A No idea.

2 Q All right.

3 A And you know what? It may not have even been  
4 Hennepin County. I think they caught them in Ramsey  
5 County.

6 Q Okay.

7 A I don't remember. To tell you the truth.

8 Q I was just wondering if it was somebody from  
9 Hennepin County, I wanted to make sure that they dealt  
10 with you appropriately if it came from my office.

11 A I was dealt with very appropriately.

12 Q Okay. You said in your questionnaire that  
13 you've had supervisory responsibilities that included  
14 hiring, firing, and disciplining in a job?

15 A Um-hum.

16 Q Ever have to fire somebody?

17 A Yes.

18 Q How did you feel about that?

19 A I felt that I had given her every chance to  
20 change her attitude and work ethic, and when I finally  
21 fired her I felt very -- not good about it but I felt  
22 right about it.

23 Q All right. The emotional aspects of making a  
24 decision like that, how did you deal with those?

25 A Like I said, I don't dwell on bad things like

1       that.

2           Q     Now, you grew up in Los Angeles, right?

3           A     Yes.

4           Q     What brought you to the snowy north country?

5           A     My husband grew up here. We met in Los Angeles,  
6 we had our two kids in Los Angeles and it just got too  
7 crowded and too hectic in LA and I'm the one who wanted to  
8 leave and this was the only place he wanted to go.

9           Q     Okay. Were there, when you said crowded and  
10 hectic, was rising crime rate, was that an issue for you  
11 folks?

12          A     Not really. We didn't live in a high crime  
13 zone. That really wasn't part of it. It was just so  
14 crowded. It took me an hour and a half to get from my  
15 house to the shopping center. It was just ridiculous.

16          Q     And you've got two girls, right?

17          A     Um-hum.

18          Q     You said on a daily basis you have to make  
19 credibility --

20          A     Maybe not a daily basis. Weekly.

21          Q     One of your daughters is graduated, correct?

22          A     Graduated from college, yeah. She's 24.

23          Q     What did she major in?

24          A     Political science.

25          Q     What does she want to do with that?

1           A     She's not doing anything with it. She had  
2 wanted to be a lawyer at one time.

3           Q     Fortunately cooler heads prevailed on that?

4           A     Right.

5           Q     And one is, she is just starting?

6           A     She's just starting. She just started last  
7 week.

8           Q     Other than the questions of voracity from time  
9 to time, any problems with your kids?

10          A     Not really. They are pretty good kids.

11          Q     You are close to them?

12          A     Very.

13          Q     All right. That's important to you, right?

14          A     Very.

15          Q     What do you think about kids that come up in a  
16 different environment, are runaways, get involved in  
17 drugs, things like that?

18          A     I think it's sad but I do believe in individual  
19 responsibility.

20          Q     Okay.

21          A     And it's hard for me to dismiss that feeling.

22          Q     I believe in the questionnaire you indicated  
23 that a person 16 and a half years old is old enough to  
24 know right from wrong. Do you believe strongly in that?

25          A     If they are --

1 Q Assuming they are competent and so forth?

2 A Yeah, I do.

3 Q Counsel had asked you your reaction when you  
4 found out this was a first degree murder case. You said  
5 initially it was kind of an oh boy reaction and afterwards  
6 you started to think about it, you thought that it would  
7 be interesting and you told us some of the reasons why you  
8 answered yes to the question about whether or not you  
9 wanted to be a juror. What I want to know is, is there  
10 anything about the prospect of being a juror in a first  
11 degree murder case that is overwhelming or intimidating to  
12 you in any way, shape, or form?

13 A No.

14 Q You understand that if we ask you to be on this  
15 jury you have to base your decision solely and completely  
16 on the evidence and nothing else?

17 A Yes.

18 Q Will you be able to do that?

19 A Yes.

20 Q It's natural to feel -- to have feelings of  
21 sympathy for the victims in the case, but you can set  
22 those aside and base your decision on the evidence?

23 A Yes.

24 Q Likewise the defendant being the age that he is  
25 and the way he looks, I have a concern that there might be

1 more expected of me because of how old he is. If you have  
2 any feelings along those lines can you set those aside and  
3 base your decision only on the evidence?

4 A I don't understand.

5 Q What my concern is is that some people may think  
6 that because the person is only 16 and a half years old or  
7 because they look so young, they are concerned about what  
8 affect their decision to find him guilty might have on  
9 him. All right? And in order to be a fair and just  
10 juror, while it's natural to recognize that your decision  
11 is going to effect somebody, you have to set it aside, set  
12 those feelings aside and base your decision on the  
13 evidence. What I'm wondering is can you do that?

14 A I think so.

15 Q Okay. Any experience with north Minneapolis?

16 A North Minneapolis.

17 Q The near north Minneapolis?

18 A Yeah. Like around Penn and 55?

19 Q Yeah.

20 A We bought our dog around there. The breeder  
21 lived on James and North 42nd, I think. Or North James  
22 and 42nd, something like that. So I'm not real familiar  
23 with it.

24 Q Any impression about what the neighborhoods are  
25 like in terms of the crime rate, socioeconomic --



1 A I know it's an African American community.

2 Q Uh-huh. Okay. Have you ever experienced a  
3 startling situation?

4 A Startling situation?

5 Q Right.

6 A Yeah.

7 Q Tell me about it.

8 A In Israel.

9 Q Okay.

10 A There was a big boom that happened and we were  
11 all pretty startled, but as I've said twice before I'm not  
12 generally, I don't generally give in to those feelings.

13 Q Okay. When you heard that, obviously you knew  
14 what was going on immediately because of your background.

15 A Right.

16 Q What I'm wondering is what kind of reaction did  
17 you have. Did you blank out, did you --

18 A No, I don't blank out. I usually rise and lead  
19 people.

20 Q Do you have any knowledge of guns?

21 A None.

22 Q If, do you know with respect to handguns,  
23 pistols, do you know the difference between a revolver and  
24 a semiautomatic?

25 A I think a revolver has the barrel and a

1 semiautomatic doesn't.

2 Q Okay. The cylinder, you mean?

3 A Yeah. The thing that you, when you are playing  
4 Russian roulette that you spin.

5 Q Will you follow all the judge's instructions on  
6 the law?

7 A Of course.

8 Q And you indicated that you don't know any of the  
9 potential witnesses, correct?

10 A No.

11 Q One of the jobs we might ask you to do as a  
12 juror is to judge the credibility or believability of  
13 individual witnesses. Given the fact that you are a  
14 stranger judging the credibility and believability of  
15 strangers, can you appreciate how important your own  
16 common sense might be in making that kind of evaluation?

17 A Absolutely.

18 Q How do you feel about being asked to rely on  
19 your common sense in a first degree murder case?

20 A Up to the task.

21 Q Okay. Some people would like this to be a lot  
22 more objective, but you'll see it's a lot more subjective  
23 and some people are a little bit intimidated about relying  
24 on their common sense. You had need to understand that we  
25 don't want 12 robots in this. We want 12 human beings.

1 We want you to bring the qualities that have made you who  
2 you are when you go back there and decide the evidence in  
3 this case. Will you did that?

4 A Yes.

5 Q You've raised two girls using your common sense?

6 A Absolutely.

7 Q All right. That draws on your common sense  
8 quite a bit, right?

9 A Yes.

10 Q You've exercised it throughout your life,  
11 personal and professional?

12 A Yes.

13 Q Can you do it here?

14 A Yes.

15 Q It sounds to me like you are confident you can  
16 be a fair juror to both sides?

17 A Yes.

18 Q So if I don't prove it, the verdict is not  
19 guilty?

20 A If you don't prove it?

21 Q If I don't prove it in this case --

22 A Right.

23 Q But if I do prove it, can you convict on a  
24 charge of first degree murder?

25 A Yes.

1 Q Any doubt in your mind?

2 A No.

3 MR. FURNSTAHL: We'll accept Ms. Gruesner.

4 THE COURT: Okay, Ms. Gruesner, you are  
5 going to be seated on this jury. I'm going to excuse  
6 you today and ask you to come back Monday morning  
7 shortly before nine o'clock to this courtroom and  
8 remain in the hall until the clerk comes out to get  
9 you. Okay,

10 MS. GRUESNER: Okay. Thank you.

11 (Ms. Gruesner exits.

12 Ms. Nelson enters.)

13 THE COURT: Would you remain standing and  
14 raise your right hand to be sworn, please?

15 (Ms. Nelson is sworn.)

16 THE COURT: Go ahead and have a chair.

17 MS. NELSON: Thank you.

18 THE COURT: Now, Ms. Nelson, the first  
19 thing I'm going to tell you is I notice that you have  
20 a very soft voice and we want to hear what you have  
21 to say so can you speak up a little bit?

22 MS. NELSON: I'll do my best.

23 THE COURT: Now, the attorneys and I have  
24 the questionnaire you filled out on Monday.

25 MS. NELSON: Yes.

1 THE COURT: Is there anything you want to  
2 add to that or change?

3 MS. NELSON: Yes, please.

4 THE COURT: Okay. Go ahead.

5 MS. NELSON: First of all, I am single. I  
6 am the sole provider for myself, and financially if I  
7 take the time off my employer doesn't pay for it and  
8 I feel that I would be in hardship financially. So  
9 that I should have added onto the questionnaire.

10 THE COURT: Okay. Now, you are a dental --

11 MS. NELSON: Assistant, correct.

12 THE COURT: Dental assistant. And so your  
13 employer is not going to pay for the time you've been  
14 off. Next week, if you are off the entire week you  
15 will receive no salary?

16 MS. NELSON: Correct.

17 THE COURT: You have an ex spouse but you  
18 are not currently sharing expenses with anybody else?

19 MS. NELSON: No. Sole provider.

20 THE COURT: Okay. Now, the estimate we  
21 kind of gave you at the beginning of this case is  
22 this, you know if you were seated on this jury you  
23 would be excused today and you could go to work  
24 tomorrow. We anticipate this case would be tried  
25 next week and be done next week, but then it would be

1 up to the jury to decide how long it takes them to  
2 come to a decision. So do you think from a financial  
3 standpoint, missing like a week of work is going to  
4 put you in a position where you are really going to  
5 be worried about that more than paying attention to  
6 this case?

7 MS. NELSON: Yes, I do believe it will.

8 THE COURT: Okay.

9 MR. FURNSTAHL: No objection.

10 MR. BENSON: No objection.

11 THE COURT: All right. I'll excuse you  
12 from this case.

13 MS. NELSON: Thank you.

14 THE COURT: Will you please check in with  
15 the jury office downstairs?

16 MS. NELSON: Absolutely.

17 THE COURT: Thank you.

18 (Ms. Nelson exits.)

19 MR. BENSON: Your Honor, can you address 43  
20 and -- I mean 43 is the big issue for this guy, 43  
21 and friend being stabbed, if you could address that.

22 THE COURT: Sure.

23 MR. BENSON: If that doesn't result in any  
24 cause grounds I'm going to strike him.

25 THE COURT: I couldn't hear the last part.

1 MR. BENSON: I'm saying if you can address  
2 that and there's no cause grounds I'm going to strike  
3 him.

4 THE COURT: Okay.

5 MR. BENSON: I'll just save you some time.

6 (Mr. Filiatrault enters.)

7 THE COURT: Good morning.

8 MR. FILIATRAULT: Morning.

9 THE COURT: Pronounce your last name for  
10 me, will you?

11 MR. FILIATRAULT: Filiatrault.

12 THE COURT: Mr. Filiatrault, will you raise  
13 your right hand to be sworn today?

14 (Mr. Filiatrault is sworn.)

15 THE COURT: Go ahead and have a chair. Mr.  
16 Filiatrault, we have your questionnaire you filled  
17 out on Monday. Have you thought of anything that you  
18 wanted to add or change on your answers to that  
19 questionnaire since then?

20 MR. FILIATRAULT: Um, I would like to go  
21 into a little more detail on the reason why being on  
22 this case would be difficult.

23 THE COURT: Okay. Why don't you do that?

24 MR. FILIATRAULT: I'm a student at the U of  
25 M and if I don't attend classes on the first day I

1           get kicked out of my classes, I lose my spot and so I  
2           wouldn't be able to take those classes which are like  
3           in a specific order so I wouldn't be able to -- I  
4           would fall behind. Plus I'm also on a Fulbright  
5           scholarship and there's a good possibility I would  
6           lose that if I was on this case.

7           THE COURT: When do your classes start?

8           MR. FILIATRAULT: The day after Labor Day.

9           THE COURT: So the 6th?

10          MR. FILIATRAULT: Yeah.

11          THE COURT: I want to ask you about  
12          something else. In answer to one of your questions,  
13          or maybe more than one, you indicated that you had a  
14          friend who was assaulted and stabbed?

15          MR. FILIATRAULT: Yes.

16          THE COURT: When did that occur?

17          MR. FILIATRAULT: That was, let's see, like  
18          six or seven years.

19          THE COURT: That was in high school?

20          MR. FILIATRAULT: It was junior high.

21          THE COURT: And were you present when this  
22          assault occurred?

23          MR. FILIATRAULT: I was sitting on the  
24          school bus and I saw it happen. Someone ran up and  
25          it was right in front of the school, they ran and



1 stabbed him and ran away.

2 THE COURT: Okay. So then were you asked  
3 to give a statement by the police?

4 MR. FILIATRAULT: No.

5 THE COURT: You were not?

6 MR. FILIATRAULT: There was so many people  
7 out there I'm sure they had other people that --

8 THE COURT: How did your friend do after  
9 this assault?

10 MR. FILIATRAULT: He survived, I guess,  
11 like by a very slim chance, like, say it was very  
12 close to death. And all I know is his personality  
13 and everything changed after that. He wasn't the  
14 same person.

15 THE COURT: Do you still see him on a  
16 regular basis?

17 MR. FILIATRAULT: No. The last time I saw  
18 him was probably high school.

19 THE COURT: Okay. Now, so you were not  
20 interviewed by the police because there were so many  
21 witnesses that saw this?

22 MR. FILIATRAULT: Yeah. There was like  
23 teachers right there when it happened.

24 THE COURT: So there was no doubt who had  
25 done it, is that right?

1 MR. FILIATRAULT: Yeah.

2 THE COURT: Was this person prosecuted?

3 MR. FILIATRAULT: I never actually found  
4 out. I think they knew who it was so I'm assuming  
5 they did.

6 THE COURT: Now, obviously this case  
7 involves a charge of first degree murder. Do you  
8 think your having witnessed a serious assault like  
9 that is going to make it difficult for you to sit  
10 through the kind of testimony that you are going to  
11 hear, emotional testimony about the charges in this  
12 case?

13 MR. FILIATRAULT: Um, I don't know. I  
14 think it might, just because I've seen that and I  
15 also mentioned another case where one of my teachers  
16 was assaulted and it's just like, you know, it's sad.

17 THE COURT: Okay.

18 MR. FILIATRAULT: I don't know.

19 THE COURT: Did you witness the assault on  
20 the teacher as well?

21 MR. FILIATRAULT: No.

22 THE COURT: Okay. That said that he was  
23 actually assaulted in the school, is that right?

24 MR. FILIATRAULT: It was right off the  
25 school property. He was actually my football coach

1           so I had a little bit closer connection than just a  
2           teacher.

3                     MR. FURNSTAHL: No objection.

4                     MR. BENSON: No objection.

5                     THE COURT: I'm going to excuse you from  
6           this jury and I would ask if you would check in  
7           downstairs at the jury office before you go, okay?

8                     MR. FILIATRAULT: Okay. Thank you.

9                                     (Mr. Filiatrault exits.)

10                    MR. BENSON: Actually, Judge, you can do 43  
11           on this next one?

12                    THE COURT: Okay.

13                                     (Ms. Sommers enters.)

14                    THE COURT: Good morning. Could you  
15           pronounce your last name for me again?

16                    MS. SOMMERS: Sommers.

17                    THE COURT: Why don't you raise your right  
18           hand to be sworn, please.

19                                     (Ms. Sommers is sworn.)

20                    THE COURT: Go ahead and have a chair. Ms.  
21           Sommers, I now have, as well as the attorneys, your  
22           questionnaire that you completed on Monday.

23                    MS. SOMMERS: Yes.

24                    THE COURT: First of all, is there anything  
25           you would like to add or change to any of your

1           answers?

2                       MS. SOMMERS: Yes. One thing I could add  
3 to the violent crimes of people I know, my -- just  
4 one thing I didn't add on there I was writing so fast  
5 and my, my cousin's brother-in-law was shot in a  
6 liquor store while he was an off duty police officer  
7 and he was attempting to apprehend the robber in the  
8 liquor store and the robber shot him dead. I forgot.  
9 I didn't put that because I was trying to embellish  
10 other things.

11                   THE COURT: That was in addition to the  
12 other things you listed on here?

13                   MS. SOMMERS: Yes. Four things. Four  
14 murders.

15                   THE COURT: I'm going to excuse from you  
16 this jury, okay? I'll ask you to check in downstairs  
17 at the jury office.

18                   MS. SOMMERS: Oh, yes. Thank you.

19                   THE COURT: All right. We're in recess  
20 until 1:30.

21                               (Noon recess. The  
22 following is outside the hearing of a jury panel.)

23                   THE COURT: We've got to address the  
24 additional jurors now. We have eight jurors so far,  
25 we have nine peremptory by the defense and five by the

1 State. We have nine left this afternoon, is that  
2 right?

3 THE CLERK: Correct.

4 THE COURT: So are we going to get five  
5 more out of these nine? Or should we ask the jury  
6 office to send us up some more jurors right now?

7 MR. FURNSTAHL: Let's get some more.

8 THE COURT: Okay. Six?

9 MR. FURNSTAHL: Can I suggest ten? Only  
10 because there's probably a lot of cause strikes down  
11 there, so.

12 THE COURT: Okay. Let's get ten then. And  
13 we'll have them come up and fill out the  
14 questionnaire so we have it, have them bring them up  
15 at 1:30, I'll swear them, have them fill out the  
16 questionnaire and give them the basic information.

17 MR. FURNSTAHL: This can be off the record.  
18 (Off-the-record discussion.)

19 MR. FURNSTAHL: I just want to let you know  
20 there's another witness we want to add to the witness  
21 list. Mr. Antoin Lee, A-N-T-W-O-I-N, last name  
22 L-E-E.

23 MR. BENSON: Your Honor, it's my  
24 understanding that the State just learned of this  
25 witness yesterday after talking to Anthony Todd for

1 the third time. They have provided me the name and  
2 the address so at this time I don't have any  
3 objection to adding that name at this point.

4 THE COURT: We need to make a note to put  
5 it on my witness list.

6 (Mr. Wilson enters.)

7 THE COURT: Good afternoon.

8 MR. WILSON: Good afternoon.

9 THE COURT: Mr. Wilson, would you raise  
10 your right hand to be sworn today?

11 (Mr. Wilson is sworn.)

12 THE COURT: Go ahead and have a chair. Mr.  
13 Wilson, first of all, since you filled out this  
14 questionnaire on Monday, have you thought about  
15 anything you should have added or anything you want  
16 to change on your answers?

17 MR. WILSON: Nope.

18 THE COURT: Okay.

19 Mr. Benson, you may voir dire.

20 MR. BENSON: Thank you.

21 BY MR. BENSON:

22 Q Afternoon.

23 A Hi.

24 Q You indicated your oldest sister works for  
25 National Crime Prevention?

1           A     Yeah.

2           Q     Do you know, how long has she been working  
3 there?

4           A     She's been there about five or six years.

5           Q     Okay. What does she do there?

6           A     Um, my understanding is that she writes grants,  
7 and actually right now I think they are involved in doing  
8 a lot of stuff with methamphetamines and stuff like that,  
9 awareness.

10          Q     Okay. Do you have a lot of discussions with her  
11 about, you know, her work and what she does?

12          A     Not very often. Just, you know, when we get  
13 together on the holidays and stuff, but.

14          Q     Would that position, her position, have any  
15 impact on the way you act as a juror in any criminal case?

16          A     I don't think so.

17          Q     Okay. You indicated on, I think question number  
18 58, when people do dumb things they should be held  
19 accountable. Can you elaborate on that?

20          A     I just, you know, I think the justice system, if  
21 you will, you've got to be accountable for your actions.  
22 But if you didn't do something, at the same time, you  
23 know, I mean that's going to be found out and I believe  
24 that's what will happen.

25          Q     You also had a comment regarding racial

1        profiling. So you have several black friends who have  
2        been profiled and you had some other remarks. Can you  
3        elaborate on that a little bit?

4            A        Um, I guess, you know, just listening to  
5        different, to me I don't think about race that often but,  
6        you know, in the position I'm in I probably don't get  
7        affected by it as much as other people. In talking with  
8        these guys they say yeah, it is very real so, you know,  
9        I'm aware of it, and I think it's very unfortunate that  
10       that happens. I feel bad for them that that happens.

11           Q        Okay. And once again, is there anything like  
12       the discussions you've had with them that will affect the  
13       way you might view evidence in this case?

14           A        No.

15           Q        I also see that you are a commissioned sales  
16       rep?

17           A        Yeah.

18           Q        Have you had an opportunity -- well, is this  
19       jury service going to interfere with that? You noted it  
20       on the last page of your questionnaire. Is that going to  
21       be a problem as far as --

22           A        I won't get fired. Actually it's interesting,  
23       our company is being acquired by Sun Micro Systems. It  
24       will be effective next week so there's a lot of changes  
25       going on. I suppose there is never a good time to be out



1 of work for a couple of weeks, so it's like everybody  
2 else.

3 Q Thank you.

4 MR. BENSON: Your Honor, I'm going to  
5 exercise a peremptory.

6 THE COURT: All right. Mr. Wilson, I'll  
7 excuse you from this jury and I would ask if you'd  
8 check in with the jury office downstairs.

9 MR. WILSON: All right.

10 THE COURT: Thank you very much.

11 MR. WILSON: Thanks.

12 (Mr. Wilson exits. Mr.  
13 Carlson enters.)

14 THE COURT: Good afternoon.

15 MR. CARLSON: Good afternoon.

16 THE COURT: How are you?

17 MR. CARLSON: I'm hanging in there.

18 THE COURT: Will you raise your right hand  
19 and be sworn today?

20 (Mr. Carlson is sworn.)

21 THE COURT: Go ahead and have a chair. Mr.  
22 Carlson, we have your questionnaire that you answered  
23 on Monday.

24 MR. CARLSON: Okay.

25 THE COURT: Have you thought of anything

1           that you either need to change or add to your answers  
2           on that?

3 MR. CARLSON: No, not that I can think of.

4 THE COURT: Okay. Now, let me just ask  
5 you, Mr. Carlson. Your wife has had a serious  
6 injury, is that right?

7 MR. CARLSON: That's right.

8 THE COURT: And she's at the Courage Center  
9 right now?

10 MR. CARLSON: That's correct.

11 THE COURT: And do you, we kind of  
12 explained to you on Monday a little bit, this case,  
13 it's anticipated we would start the trial on Monday  
14 of next week, we would be done with the trial itself  
15 by the end of the week but then the jury would have  
16 to deliberate and how long the jury takes to make the  
17 decision is entirely up to them.

18 MR. CARLSON: Uh-huh.

19 THE COURT: Now, do you think that's going  
20 to be an issue for you if you might be sequestered  
21 with the jury during the time you are deliberating?

22 MR. CARLSON: That I don't know. It's a  
23 possibility. I've got four children at home, three  
24 of them will be starting school next Thursday.

25 THE COURT: Okay. Do you have any other

1 people to help you with the children if you had time  
2 to make those arrangements? You would be home  
3 through Friday.

4 MR. CARLSON: What was that?

5 THE COURT: You'd be home through the time  
6 we were in trial, whatever time it took to get the  
7 case done.

8 MR. CARLSON: What time would it be  
9 starting in the morning?

10 THE COURT: Generally start at nine in the  
11 morning and quit at 4:30.

12 MR. CARLSON: Okay. Yeah. The only  
13 concern is I was just planning on being there when  
14 they left for school that first day, but whatever you  
15 need.

16 THE COURT: What ages are your children  
17 again?

18 MR. CARLSON: They are 12, 15, 17, and 19.  
19 The oldest one is setting up his arrangements for  
20 college and working on that on his own. It's the  
21 younger two I'm concerned about.

22 THE COURT: You've got two in high school  
23 and one in middle school?

24 MR. CARLSON: That's right.

25 THE COURT: Okay. Here's my concern. I

1 want you to be able to, if you are a juror on this  
2 case, I don't want you to be worried about your kids  
3 at home or getting the bus or getting home from  
4 school, because I'm going to want you to be able to  
5 devote your attention to listening to the evidence in  
6 this case. Do you think you would be able to  
7 concentrate and do that?

8 MR. CARLSON: Well, I would do the best  
9 that I could, yes.

10 THE COURT: Okay. And you don't have  
11 anybody helping you at home, I mean obviously a  
12 couple of them are older and can do some things  
13 around the house, but you are the one that prepares  
14 the meals in the evening and that type of thing?

15 MR. CARLSON: Yeah. It's basically up to  
16 me. She's at Courage Center, she's a resident there,  
17 in the program there going through rehab.

18 THE COURT: Okay. Counsel, why don't you  
19 approach?

20 (Off-the record discussion at  
21 the bench out of hearing of Mr. Carlson.)

22 THE COURT: Mr. Carlson, I'm going to  
23 excuse you from this jury. I would ask if you would  
24 check in with the jury office downstairs and maybe  
25 make sure you let them know your circumstance, too.

1 Talk to the woman in charge down there and let her  
2 know what your situation is, okay? Thank you very  
3 much.

4 MR. CARLSON: All right. Thank you.

5 (Mr. Carlson exits. Mr.  
6 Rodiles enters.)

7 THE COURT: Good afternoon.

8 MR. RODILES: Good afternoon.

9 THE COURT: Mr. -- how do you pronounce it?  
10 Rodiles?

11 MR. RODILES: Rodiles, yup.

12 THE COURT: Would you raise your hand to be  
13 sworn, please?

14 (Mr. Rodiles is sworn.)

15 THE COURT: Go ahead and have a chair. Mr.  
16 Rodiles, we have the questionnaire you filled out on  
17 Monday. Do you remember that?

18 MR. RODILES: Yes.

19 THE COURT: Anything you can think of that  
20 you forgot to mention on there you need to mention or  
21 any additions or changes you want to make to your  
22 answers?

23 MR. RODILES: Nothing that I can recall.

24 THE COURT: Okay. You were late today,  
25 right.

1 MR. RODILES: Yes, I was a couple minutes.

2 THE COURT: Okay. How did you get  
3 downtown?

4 MR. RODILES: I took -- I'm coming from  
5 Bloomington. I took 35.

6 THE COURT: You drove?

7 MR. RODILES: Yes.

8 THE COURT: Okay. All right. Do you think  
9 if you are on this jury that you can be here by  
10 nine o'clock every day?

11 MR. RODILES: Yes.

12 THE COURT: Okay. All right, go ahead Mr.  
13 Benson.

14 MR. BENSON: Thank you, Your Honor.

15 BY MR. BENSON:

16 Q Good afternoon.

17 A Good afternoon.

18 Q You indicated that you did not want to be a  
19 juror on this case?

20 A That's correct.

21 Q Why is that?

22 A Um, mainly kind of caught me off guard just  
23 because a lot of people I know, close people just have  
24 never been on a jury such as family members, stuff like  
25 that, and I'm only 19. I just turned 19 and that's kind

1 of it, just kind of caught me off guard, stuff like that,  
2 so that's the main reason.

3 Q Is that still your opinion today?

4 A Yes, it is.

5 Q Okay. Obviously this is a first degree murder  
6 case. The concern I have is given what you just said,  
7 whether you feel up to sitting on this kind of a case and  
8 making a decision ultimately one way or another?

9 A To be honest with you, when I heard it was a  
10 first degree case like that I was a little -- with the  
11 responsibility of the case, I was a little edgy with it  
12 because, just because I'm kind of young and stuff like  
13 that so it kind of did catch me off guard. I thought it  
14 was going to be kind of a low key case, to be honest with  
15 you.

16 Q All right. Tell me like a little more  
17 specifically what concerns you? What aspect of the case?

18 A Just the severity of it. It's obviously a big  
19 case so it's nothing to be taken lightly at all.

20 Q All right. What's the biggest decision you've  
21 had to make in your life?

22 A Um, for me probably was when I was about eight  
23 or nine I had to get heart surgery. Of course I was only  
24 eight, I think I was eight years old so I really didn't  
25 have a choice, but they told me that it could wait several

1 more years in order to get that operation but they kind of  
2 talked me into it so that's the only one that stands out  
3 in my mind, so of course it wasn't too much my choice  
4 because I was so young, but.

5 Q All right.

6 MR. BENSON: Your Honor, we are going to  
7 exercise a peremptory.

8 THE COURT: All right. Mr. Rodiles, I'm  
9 going to excuse you from this jury. You need to go  
10 downstairs and check in with the jury office  
11 downstairs. Thank you.

12 MR. RODILES: Okay. Thank you, sir.

13 (Mr. Rodiles exits.)

14 MR. FURNSTAHL: Judge, 87 and 89 on the  
15 next.

16 THE COURT: Okay.

17 THE CLERK: Ready?

18 THE COURT: Yeah.

19 (Ms. Sarff enters.)

20 THE COURT: Good afternoon.

21 MS. SARFF: Hello.

22 THE COURT: Ms. Sarff, would you raise your  
23 right hand to be sworn today?

24 (Ms. Sarff is sworn.)

25 THE COURT: Go ahead and have a chair. Do



1           you pronounce it Sarff?

2                   MS. SARFF: Yes.

3                   THE COURT: Okay. We have your  
4           questionnaire from Monday. Have you thought about  
5           the answers you gave there, is there anything you  
6           wanted to change or add?

7                   MS. SARFF: No.

8                   THE COURT: Okay. I'm going to ask you a  
9           couple questions and then the attorneys are going to  
10          ask you some additional ones.

11                  Now, one of the answers you gave was when the  
12          question was is there anything about the character or  
13          nature of this case that would make it difficult for  
14          you to sit as a juror, and you indicated it would  
15          scare me half to death, I think.

16                   MS. SARFF: Yes, I did.

17                   THE COURT: Is that because just you didn't  
18          expect to be called to a first degree murder case?

19                   MS. SARFF: Part of it.

20                   THE COURT: Okay. Tell me what else the  
21          rest of it is.

22                   MS. SARFF: Part of it because I remember  
23          some of it, some of the case.

24                   THE COURT: Okay.

25                   MS. SARFF: Not any details but a small

1 part of it.

2 THE COURT: Where did you see about the  
3 case, was that on TV?

4 MS. SARFF: More than likely.

5 THE COURT: Okay. And what do you remember  
6 from what you saw?

7 MS. SARFF: I remember a flower shop and an  
8 owner being murder and I didn't remember anybody  
9 else, but I just remember the flower shop having to  
10 close and it was around Mother's Day and I just  
11 thought it was quite emotional.

12 THE COURT: All right. Now, you have two  
13 sons, right?

14 MS. SARFF: Yes.

15 THE COURT: In your answer to another  
16 question you indicated you were needed at home to  
17 help your son?

18 MS. NELSON: Yes. We had a tree service  
19 for 40 years and January 1st my husband retired and  
20 Brian took over the business and so Robert is retired  
21 on social security, I'm retired, I don't draw a  
22 salary anymore but I told him for the first year I  
23 will do everything I did for his dad for free so he  
24 doesn't have to, such as answering the phone, the  
25 books.

1 THE COURT: Okay.

2 MS. SARFF: That sort of thing, because we  
3 office out of our house.

4 THE COURT: Okay. Now, I think we gave you  
5 a little bit of information about the timetable on  
6 this, but the first thing I want to ask you about is  
7 that. We anticipate starting this trial on Monday  
8 and being done by the end of the week next week, then  
9 it would be up to the jury to decide, but to  
10 deliberate and make your decision, the amount of time  
11 you take is up to you. That in and of itself  
12 wouldn't cause you a problem, would it?

13 MS. SARFF: No.

14 THE COURT: Let's talk about the other  
15 part. I think that's a normal reaction many people  
16 have to finding out that they are going to  
17 potentially be a juror on a case of that magnitude,  
18 but obviously we are looking for people, you know,  
19 that are able to do that and to be able to, you know,  
20 get over that fear, if that's what it is, listen to  
21 evidence as presented in court and follow the  
22 instructions I give and you make a decision on the  
23 evidence you hear. Now, do you think you are going  
24 to be able to do that?

25 MS. SARFF: I don't know. I suppose I

1           would try. I don't know.

2                   THE COURT: You've not been on jury duty  
3 before, right?

4                   MS. SARFF: No.

5                   THE COURT: Is it just because you are kind  
6 of concerned about the nature of the case, are you  
7 concerned for your personal safety, or are you just  
8 concerned about the nature of the case?

9                   MS. SARFF: I think a little bit of both.

10                  THE COURT: Okay.

11                  MS. SARFF: I would feel retaliation. I  
12 guess I thought I was a tougher person than I really  
13 am. That's all.

14                  THE COURT: Okay. And what makes you  
15 concerned about potential retaliation?

16                  MS. SARFF: I don't remember if this was a  
17 gang related activity. I don't remember, but as I  
18 had said in there too that I do have my mother  
19 (inaudible) lives --

20                  THE COURT: On Logan, I believe.

21                  MS. SARFF: On 2600 Logan and I've been  
22 there many times to visit her. She's 90 some years  
23 old and personally I just, I think it's very  
24 dangerous. I wouldn't have my mother live there.

25                  THE COURT: Okay.

1 MR. BENSON: Can we approach?

2 THE COURT: You may approach.

3 (Off-the record discussion at the  
4 bench out of hearing of Ms. Sarff.)

5 THE COURT: I'm going to excuse you from  
6 this case, Ms. Sarff. I want you to check in with  
7 the jury office downstairs, okay?

8 MS. SARFF: Okay. And I'm sorry I couldn't  
9 do it.

10 (Ms. Sarff exits.)

11 THE COURT: Let's bring in the panel,  
12 counsel, and introduce them, get them off to fill out  
13 the questionnaire then we'll go back to the ones we  
14 have left, okay?

15 MR. BENSON: Okay.

16 (The following is before  
17 a jury panel.)

18 THE COURT: Members of the jury panel, this  
19 is a criminal case. An indictment has been filed  
20 with this Court which alleges count one, that on or  
21 about May 16, 2004, in Hennepin County, Minnesota,  
22 Marvin Haynes, Jr., while using a firearm, caused the  
23 death of Harry Sherer, a human being, with intent to  
24 affect the death of Harry Sherer while attempting to  
25 commit the crime of aggravated robbery. Count two,

that on or about May 16, 2004 in Hennepin County, Minnesota, Marvin Haynes, Jr., while using or possessing a firearm, assaulted Cynthia McDermid. And count three, that on or about May 16, 2004 in Hennepin County, Minnesota, Marvin Haynes, Jr., while armed with a firearm, attempted to take personal property from the person or in the presence of Cynthia McDermid knowing that he was not entitled to the property, and used or threatened imminent use of force against Cynthia McDermid to overcome her resistance or powers of resistance or to compel acquiescence in the taking or carrying away of the property.

To this indictment, the defendant Marvin Haynes, Jr., has pled not guilty. This plea denies the charge and places upon the State of Minnesota the burden of proving the defendant's guilt beyond a reasonable doubt.

The State is represented by Michael Furnstahl.

Will you please rise, Mr. Furnstahl?

MR. FURNSTAHL: Good afternoon.

THE COURT: The defendant is represented by  
Kassius Benson. Will you please rise, Mr. Benson?

MR. BENSON: Good afternoon.

THE COURT: Would the defendant please

1 rise?

2 (Defendant complies.)

3 THE COURT: Now some general rules of law  
4 apply in a criminal case, I'm going to give you those  
5 rules now. In the questioning that will take place  
6 today and tomorrow you may be asked whether you will  
7 accept and follow the rules of law and you should  
8 have these instructions in mind when you answer those  
9 questions.

10 An indictment is not evidence. It creates no  
11 inference or presumption of guilt. No member of the  
12 jury should in any way be prejudiced against the  
13 defendant because an indictment has been filed  
14 against the defendant, because the defendant may have  
15 been arrested, or because the defendant is on trial.  
16 The defendant is presumed innocent. In order for you  
17 to find the defendant guilty, the State must prove  
18 guilt. The defendant does not have to prove  
19 innocence. The presumption of innocence remains with  
20 the defendant unless and until the defendant has been  
21 proven guilty beyond a reasonable doubt by evidence  
22 admitted in this trial.

23 In a little while I'm going to have you be sworn  
24 and you are going to be asked to complete a  
25 questionnaire. Attached to that questionnaire is a

1 list of persons who may be called as witnesses in  
2 this trial. Remember or jot down on the list anybody  
3 you may know or to whom you may be related. If you  
4 are called as a prospective juror, you should then  
5 inform me of your knowledge or relationship to those  
6 persons.

7 To ensure that both the defendant and the State  
8 receive a fair trial by an impartial jury, it will be  
9 necessary for me and for counsel for each party to  
10 ask you certain questions that you must answer under  
11 oath. Please do not take offense at any questions  
12 you are asked. Your contribution to this important  
13 and serious matter is best assured by your honest  
14 answers to those questions.

15 Some of you who are called to be questioned will  
16 be excused from serving on the jury. If you are  
17 excused, it does not mean that anyone doubts you are  
18 a fair person.

19 After you fill out your questionnaire the clerk  
20 is going to tell you when you are expected to come  
21 back and will get a phone number to get ahold of you  
22 in case that time has to be changed. In a minute the  
23 clerk is going to read your name and a number.  
24 Please remember your jury number and put it down on  
25 the bottom of your questionnaire, and we're going to,



1 after you are sworn we are going to take you to  
2 another courtroom where you may complete your  
3 questionnaire.

4 I want to give you one additional instruction  
5 and that's about your conduct as jurors. Do not let  
6 any outsiders influence you, do not discuss this case  
7 with other jury members during the trial. You will  
8 have plenty of time to do this at the end of the  
9 trial once you have heard all the evidence. If  
10 anyone tries to discuss this case with you outside  
11 the courtroom, report this to me. Do not read or  
12 listen to news reports about this case. Do not do  
13 your own investigation. Keep an open mind until  
14 you've heard or seen all the evidence. Remember, you  
15 cannot consider anything you hear or learn about this  
16 case outside the courtroom.

17 Now, the attorneys are acting under rules of  
18 professional responsibility and they are not going to  
19 talk to you when they see you in the hallway. That's  
20 not because they are trying to be unfriendly, it's  
21 because they are also governed and should not be  
22 discussing anything with you. So other than saying  
23 hello, that's about all they can say to you.

24 When your name is called, if we mispronounce  
25 your name tell us how to pronounce it.

1 Go ahead.

2 THE CLERK: Michael Staed, number 51.

3 Kelly Christenson King, number 52.

4 THE COURT: Cane, you said?

5 MS. CHRISTENSON KING: King. K-I-N-G.

6 THE CLERK: Barbara Boesser, number 53.

7 MS. BOESSER: It's Boesser.

8 THE COURT: Boesser.

9 MS. BOESSER: And you said number 53?

10 THE CLERK: Yes. Jennifer Freeburg, 54;

11 Andrew Guerling, number 55; Daniel Ohlberg, number

12                    56; Stacy Swalick, number 57.

13 MS. SWALICK: That's perfect.

14 THE COURT: How do we pronounce that one?

15 MS. SWALICK: Swalick.

16 THE COURT: Okay.

17 THE CLERK: Sarah Hendrickson, number 58;

18 Robert Adams, number 59; Nicholas Cairns, number 60.

19 THE COURT: Members of the jury panel, will  
20 you all stand and raise your right hands?

21 (Jury panel is sworn.)

22 THE COURT: The clerk is going to take you  
23 to another courtroom and give you your  
24 questionnaires. Be sure you write your number on the  
25 bottom, okay? Go ahead.

1 (Jury panel exits. Ms.  
2 Cassidy enters.)

3 THE COURT: Go ahead. Have a chair.

4 MS. CASSIDY: Thank you.

5 THE COURT: Is the last name Ann Cassidy?

6 MS. CASSIDY: No. My first name is Katy

7 Ann.

8 THE COURT: Cassidy is the last name?

9 MS. CASSIDY: Yes.

10 THE COURT: Ms. Cassidy, we have the  
11 questionnaire you filled out on Monday. Have you  
12 thought about the answers to these questions since  
13 then?

14 MS. CASSIDY: Little bit, yeah.

15 THE COURT: Anything you thought of that  
16 you wanted to add or change in your questionnaire?

17 MS. CASSIDY: No, I don't think so.

18 THE COURT: Okay. Mr. Benson, you may voir  
19 dire.

20 MR. BENSON: Thank you.

21 BY MR. BENSON:

22 Q Good afternoon.

23 A Good afternoon.

24 Q I see you are a student?

25 A Um-hum.

1 Q Okay. When do you start school again?

2 A September 8th, I think it starts. September 7th  
3 or 8th.

4 Q All right. As you know we expect this trial,  
5 the evidence portion, to end next week.

6 A Okay.

7 Q Deliberations, that will be as long as the jury  
8 takes.

9 A Okay.

10 Q But from your timetable, probably won't be a  
11 problem.

12 A Okay.

13 Q As far as getting back to school. But if you  
14 were to miss like a day or two is that a problem?

15 A Um, probably not because, well, my class  
16 schedule is kind of like, like it's kind of up in the air  
17 because I need more classes, but no, probably not like a  
18 day or two but not really more than that because it's kind  
19 of hard to make up college versus high school.

20 Q All right. In your questionnaire you had  
21 indicated that you followed a lawyer around for school?

22 A Um-hum.

23 Q Where was that at?

24 A In Anoka County.

25 Q Okay. Who was the lawyer?

1 A Karen Walden.

2 Q Okay. And what does she practice?

3 A She is a prosecuting attorney for Anoka County  
4 and she, I just followed her around because I was going to  
5 go into criminal justice for school.

6 Q You were going to?

7 A I was.

8 Q Okay.

9 A Obviously changed my mind.

10 Q All right. Why did you change your mind?

11 A Because I decided to go into nursing.

12 Q Okay.

13 A And then I changed again.

14 Q All right.

15 A Business marketing.

16 Q Okay. Did you get to see any trials while you  
17 were following her?

18 A Um-hum

19 THE COURT: Just one second. Will you, if  
20 you can, answer yes or no and not uh-huh or huh-uh  
21 because the court reporter is taking down your  
22 answers.

23 MS. CASSIDY: Okay. In the morning, we  
24 spent the morning in like criminal trials and then in  
25 the afternoon we saw like traffic violations and like

1           little things like that.

2       BY MR. BENSON:

3           Q     Okay. What did you think of -- how was that  
4       experience and what you saw?

5           A     I thought it was really interesting and I  
6       learned a lot. I learned that, I don't know, I learned  
7       more about the system than I like ever knew about it  
8       before, like the trial system and all that kind of stuff.

9           Q     Okay. You did indicate that you want to be a  
10      juror in this case?

11          A     Um-hum.

12          Q     Why is that?

13          A     I thought it would be an interesting case.

14          Q     Okay. What did you think when you heard first  
15      degree murder?

16          A     I guess I thought it was like, I don't know, it  
17      was kind of shocking and intense.

18          Q     Okay. Do you think, is there anything about it  
19      being a murder that is overwhelming for you?

20          A     I don't know if I would say overwhelming, but  
21      like kind of taken aback. I wouldn't say overwhelming,  
22      though.

23          Q     Do you think that once you hear evidence in the  
24      case you will be able to make a decision one way or  
25      another?

1           A     Yeah.

2           Q     All right. Tell me this, what's the most  
3 important decision you've had to make in your life?

4           A     Good one. Most important decision I had to make  
5 in my life was probably where to go to school, where to go  
6 to college.

7           Q     How did you make that?

8           A     By like finding out what was good about both  
9 schools and what was not good about both schools and what  
10 I like about it. Where I could live, how much money I  
11 would have to live at a place, and being on my own  
12 basically what my parents would give me and what they  
13 wouldn't give me.

14          Q     Where's the other school?

15          A     U of M.

16          Q     Okay. Let me ask you this. Do you feel that  
17 you are capable of judging the credibility of people?

18          A     Yeah.

19          Q     Okay. And I'm sure throughout your life you've  
20 had many occasions to do so?

21          A     Um-hum. Yes.

22          Q     All right. What kind of things do you look for  
23 when you are doing that?

24          A     Like how honest they are and like I guess how  
25 honest they are and like the way they present themselves

1 or act in a certain situation.

2 Q Okay. Anything else you think I need to know  
3 about you?

4 A I don't think so, no.

5 Q Do you think you would be a good juror?

6 A Yeah.

7 Q Okay. Tell me why?

8 A Um, probably because, um, because I'm credible  
9 and honest and I've never been through jury duty before,  
10 so it would be a new experience, I guess.

11 Q Okay. As you sit here right now and you look at  
12 Marvin Haynes, do you see an innocent person?

13 A Um-hum. Because I don't know anything about the  
14 case, so yeah.

15 Q All right. Thank you.

16 MR. BENSON: Your Honor, we'll accept Ms.

17 Cassidy.

18 THE COURT: Okay. Mr. Furnstahl.

19 BY MR. FURNSTAHL:

20 Q Good afternoon.

21 A Good afternoon.

22 Q When did you spend the time with Ms. Walden?

23 A Um, I think it was my freshman year in college,  
24 so probably two years ago.

25 Q Okay. And how much time did you spend with her?



1           A     Well, she lived right next door to me so  
2 actually at the courthouse, a day, but I like talked to  
3 her about other stuff all the time.

4           Q     Does she work for the City of Anoka or Anoka  
5 County?

6           A     Anoka County.

7           Q     So she does felony prosecutions?

8           A     I believe so.

9           Q     Do you know what kind of cases she handles?

10          A     Like when I was with her that day she just kind  
11 of like went we went to trials that had to be continued  
12 and stuff and like we went to a bunch of different things,  
13 so I don't know exactly what she handles, but.

14          Q     When you started out at St. Cloud you were going  
15 to be a criminal justice major?

16          A     Uh-huh.

17          Q     With ideas of becoming a lawyer or something?

18          A     Something, yeah, something along that line. I  
19 wasn't exactly sure what I wanted to be, but.

20          Q     Did you have any interest in being a cop?

21          A     No.

22          Q     A prosecutor or defense attorney, or, I mean in  
23 the criminal area or what?

24          A     Just something in the courthouse. I don't know  
25 exactly what, but.

1 Q Okay. Maybe a probation officer or something  
2 like that?

3 A Maybe.

4 Q All right. Then you changed your major?

5 A Um-hum.

6 Q Now, are you -- do you live up in St. Cloud or  
7 do you drive back and forth?

8 A I live in St. Cloud.

9 Q You live in dorms or apartment?

10 A An apartment.

11 Q All right. Are you involved in any kind of  
12 college activities, student government, things like that?

13 A I was my first year but not anymore because I  
14 got too busy with school.

15 Q What did you do freshman year?

16 A I played lacrosse and I played volleyball and we  
17 did like, kind of like I guess you would call it New  
18 Christian Ministry like church things but it wasn't like  
19 really intense or anything like that because it's a state  
20 university so it wasn't like --

21 Q Uh-huh.

22 A Really everyday kind of thing.

23 Q Uh-huh. Tell me what kind of extra curricular  
24 activities you did in high school, if any?

25 A I pitched for the fast pitch softball team and I

1       played on the volleyball team.

2               Q       How good a team did you have at softball?

3               A       We had our good days. We were pretty good,  
4       actually. We went to state my freshman year and then I  
5       broke my leg so I couldn't pitch anymore.

6               Q       Do you have brothers and sisters?

7               A       Yeah, I do. I have a younger brother. He's in  
8       high school. He just graduated and he'll be at St. Cloud  
9       State this year with me.

10              Q       The two of you can get in trouble up there and  
11       drive your parents crazy?

12              A       I don't know if my mom and dad will like that.  
13       We'll try not to.

14              Q       Okay. You got a speeding ticket once. Nothing  
15       about that is oing to affect your ability to be fair in  
16       this case, is it?

17              A       No. It was a long time ago.

18              Q       Sometimes people are mad at cops because of  
19       stuff like that.

20              A       I was definitely speeding.

21              Q       Okay. You were asked a question about the  
22       defendant's age and whether that is going to have any  
23       affect on your decision. You said no.

24              A       No.

25              Q       Do you want to stick with that decision, or that

1 answer?

2 A I don't think it really has anything to do --  
3 no, his age doesn't affect me.

4 Q Okay. So, and the fact that you are 21, right?

5 A Um-hum.

6 Q You are 21?

7 A Yes.

8 Q I'm assuming, do you know anybody who's ever  
9 been on a jury before?

10 A Yeah, my mom and dad.

11 Q They both have?

12 A Um-hum.

13 Q Is that a yes?

14 A Yes. Sorry.

15 Q What kind of cases did they sit on?

16 A My mom a civil case, and my dad did a civil case  
17 too that didn't last very long.

18 Q So you talked to them a little bit about their  
19 experiences?

20 A Yeah. I talked to my dad about it. My mom's  
21 settled before they even got to it and my dad is like two  
22 days he said.

23 Q You get called in, you are 21 years old on a  
24 first degree murder case.

25 A Um-hum.

1 Q Is that a little overwhelming or not?

2 A I thought it was kind of interesting, actually.  
3 I wouldn't say overwhelming, I don't know.

4 Q Are you intimidated at all about making a  
5 decision in a murder case?

6 A No, I don't think so. I would be intimidated  
7 once I knew everything about the case like maybe now,  
8 yeah, I wouldn't say intimidated but I guess I was not  
9 like, not what happened or like anything about the case.

10 Q Okay. Here's kind of the deal in here. In here  
11 we have, I guess you would call it restrictions on the way  
12 that we communicate to the jurors. We communicate to them  
13 by introducing evidence through the witnesses. Okay?

14 A Yes.

15 Q We have these rules that are called the rules of  
16 evidence. That tends to restrict what we can and cannot  
17 do in terms of communicating to you folks or introducing  
18 evidence. Sometimes it might be a little bit frustrating  
19 for people who aren't used to being in here. I mean we're  
20 used to this so it comes as, you know, second nature to  
21 us.

22 A Okay.

23 Q Might be a little bit frustrating for somebody  
24 who's new to this because we might not ask the question  
25 that you think we should or go in a certain direction that

1       you think we should.

2           A       Yes.

3           Q       And if you are going to be a fair and impartial  
4       juror here you have to base your decision only on the  
5       evidence that you hear. Appreciate the distinction?

6           A       Okay. Yeah, I understand.

7           Q       Okay. Now, if you get frustrated because we  
8       don't ask questions that you think we should ask, you  
9       recognize that there might be a very good reason why we  
10      don't do that, because we know the rules prohibited us  
11      from doing that, and can you still base your decision  
12      solely on the evidence you hear?

13          A       Yeah.

14          Q       Can't base it on speculation.

15          A       Okay.

16          Q       And it's natural to feel sympathy in a case like  
17      this. Would you agree with that?

18          A       Yes.

19          Q       People are naturally sympathetic towards the  
20      victim or the victim's family.

21          A       Yes.

22          Q       Also there's a factor that I'm concerned about,  
23      the defendant being young and so forth. In order to be a  
24      fair and impartial juror, while you might recognize your  
25      decision is going to affect somebody you have to set those

1 feelings aside and base your decision only on the  
2 evidence. Can you do that?

3 A Yes.

4 Q Okay. Do you have much contact with north  
5 Minneapolis?

6 A Um, other than to go to the bar there, no.

7 Q Which bar do you go to there?

8 A We go to the Gasthof and we went to -- I can't  
9 even remember what it was called.

10 Q Do you do that very often or just one time or?

11 A We've gone a couple times.

12 Q Okay. What are your feelings about cops?

13 A I think they are good. I think they are good  
14 people. I think they are out just to make it safer.

15 Q Okay. Any of your friends in high school ever  
16 get into trouble with drugs or running away, stuff like  
17 that?

18 A No. I mean there was like people that got in  
19 arguments with their parents but none of my like close  
20 friends ever like went and ran away or anything. There  
21 was a couple kids that like have gone to rehab but it  
22 wasn't like I was close to them or anything.

23 Q Okay. All right. You would be able to follow  
24 the judge's instruction on the law?

25 A Yeah.

1           Q     All right. Even if by chance you might disagree  
2 with something that Judge Blaeser says, you can set those  
3 feelings aside and still follow his instructions?

4           A     Yeah, I guess I have to, yeah.

5           Q     You recognize now -- you don't know any of the  
6 potential witnesses, correct?

7           A     No.

8           Q     And one of the things we ask you to do, see,  
9 there's two judges in here, the judge of the law and the  
10 judge of the facts. So whenever we have questions about  
11 the law Judge Blaeser answers those questions and we  
12 always abide by his decision. When we have questions  
13 about the facts, we look to jurors to decide those as  
14 judges of the facts. Do you appreciate the distinction  
15 there?

16          A     Yeah, I understand.

17          Q     Just, for example, nothing to do with this case,  
18 Witness A says this is what happened, Witness B says no,  
19 this is what happened. It's up to the jury to decide  
20 which witness is telling the truth about what happened.  
21 Okay?

22          A     Yes.

23          Q     So one of your jobs as judges of the facts is to  
24 decide the credibility or believability of the individual  
25 witnesses, okay?



1           A     Um-hum.  Yes.

2           Q     And you indicated that you don't know any of the  
3 potential witnesses, right?

4           A     No.

5           Q     Do you think it's easier or harder to judge the  
6 believability of someone that's a stranger to you as  
7 opposed to someone that you know?

8           A     I think it's easier when you don't know them  
9 because you've never seen like them in a certain  
10 situation or anything, so when you see them for the first  
11 time.

12          Q     Okay.

13          A     And how they react to something, I think it's  
14 easier to understand because if you know them you know  
15 what they are thinking and what they could --

16          Q     Right.  If you know them like your brother lying  
17 to you, don't you have a pretty good idea he's lying to  
18 you because of your past with him and your knowledge of  
19 how he lies to you, right?

20          A     Yeah.  But sometimes -- I don't know.

21          Q     Okay.

22          A     It all depends on the situation I guess and what  
23 he's lying about.

24          Q     Sure.  But where I'm going with this is this,  
25 can you appreciate how in a forum like this where we have

1 strangers judging the credibility of strangers?

2 A Yes. Yeah.

3 Q And where the communication in here is different  
4 from what you are used to, that your own common sense  
5 might be the best tool you have in making the kinds of  
6 decisions that you have to make?

7 A Yes.

8 Q Are you okay with relying on common sense for a  
9 case like this?

10 A Yeah. I think it's pretty good.

11 Q I take it you are confident that you can be fair  
12 to both sides?

13 A Yeah.

14 Q If I don't prove the case the verdict is not  
15 guilty, right?

16 A Yeah.

17 Q But if I do prove the case can you convict on a  
18 charge of first degree murder?

19 A Yeah.

20 Q Is there any doubt in your mind?

21 A No.

22 MR. FURNSTAHL: We accept Ms. Cassidy, Your  
23 Honor.

24 THE COURT: All right. Ms. Cassidy, you  
25 will be seated on this jury and what I'm going to do

1           now is I'm going to excuse you and have you come back  
2           Monday morning before nine o'clock, wait in the  
3           hallway outside this courtroom and the clerk will  
4           come and get you when we are ready to go, okay?

5                       MS. CASSIDY: Um-hum. Yes, sir.

6                       THE COURT: All right. You are excused.

7                                       (Ms. Cassidy exits. Mr.  
8           Addington enters.)

9                       THE COURT: Good afternoon, Mr. Addington.  
10           Come right on up here. How are you today?

11                       MR. ADDINGTON: I'm good. How are you,  
12           Judge?

13                       THE COURT: Would you raise your right hand  
14           to be sworn today?

15                                       (Mr. Addington is sworn.)

16                       THE COURT: Go ahead and have a chair.

17                       MR. ADDINGTON: Thank you.

18                       THE COURT: You are a partner at Best and  
19           Flanagan?

20                       MR. ADDINGTON: I am.

21                       THE COURT: All right. I hadn't had a  
22           chance to read your questionnaire until today, and  
23           counsel will you approach, please?

24                                       (Off-the record discussion at  
25           the bench out of hearing of Mr. Addington.)

1 THE COURT: I'm going to excuse Mr.  
2 Addington. My fiance is a partner at Best and  
3 Flanagan.

4 (Mr. Addington exits.)

5 THE COURT: We are going to take our  
6 afternoon break a little early. 15 minutes,  
7 deputies.

8 (Recess. Mr.  
9 Ruhland enters.)

10 THE COURT: Good afternoon.

11 MR. RUHLAND: Hi.

12 THE COURT: Do you pronounce it Ruhland?

13 MR. RUHLAND: Ruhland, yes.

14 THE COURT: Mr. Ruhland, would you raise  
15 your right hand to be sworn today?

16 (Mr. Ruhland is sworn.)

17 THE COURT: Go ahead and be seated. Mr.  
18 Ruhland, we have your questionnaire from Monday.

19 MR. RUHLAND: Okay.

20 THE COURT: Have you thought of anything  
21 that you wanted to add or change on your answers?

22 MR. RUHLAND: No, I have not.

23 THE COURT: Go ahead, Mr. Benson.

24 MR. BENSON: Thank you.

25 BY MR. BENSON:

1 Q Good afternoon.

2 A Hi.

3 Q Where are you in school when you are at graduate  
4 school?

5 A I'm doing my MBA part-time at the University of  
6 Minnesota.

7 Q And you had indicated that longer than two weeks  
8 would impact school?

9 A Right.

10 Q And as you know the case itself we expect to  
11 finish up the evidence portion, should finish next week,  
12 by the end of next week and then the jury deliberation is  
13 as long as the jury needs.

14 A Okay.

15 Q Do you anticipate that schedule having any  
16 impact on your school?

17 A I don't expect that that would have any impact.  
18 School starts right after Labor Day.

19 Q All right. What were your thoughts when you  
20 found out this was a first degree murder case?

21 A In all honesty I was a little less than thrilled  
22 at being involved in this case. I feel it's my civic duty  
23 to be involved and I want to learn things about how the  
24 justice system works, but I don't know if this case is  
25 quite what I want.

1           Q     Can you elaborate on that a little bit? What  
2     about this case?

3           A     It's difficult for me to comprehend killing  
4     someone, basically, and it's difficult and I don't know --  
5     well, particularly with someone who is a juvenile, it's  
6     difficult for me to say if they are going to be or if they  
7     have the judgment necessary to really be tried as an  
8     adult.

9           Q     Okay. All right. Well, we're here and --

10          A     Right.

11          Q     -- it's adult court. Do you think that that  
12     opinion as far as a juvenile being tried as an adult, do  
13     you think that's going to impact whether you could reach a  
14     decision in this case if you are put on the jury?

15          A     I like to think I will be able to set that aside  
16     but in all honesty I can't say with a hundred percent  
17     certainty that I would be able to.

18                   THE COURT: All right. I'm going to excuse  
19     you from this case, Mr. Ruhland. Will you please  
20     check in with the jury office downstairs?

21                   MR. RUHLAND: Okay.

22                                   (Mr. Ruhland exits. Mr.  
23     Peterson enters.)

24                   THE COURT: Good afternoon.

25                   MR. PETERSON: Afternoon.

1 THE COURT: It's Mr. Peterson, right?

2 MR. PETERSON: Yup.

3 THE COURT: Mr. Peterson, would you raise  
4 your right hand to be sworn, please?

5 (Mr. Peterson is sworn.)

6 THE COURT: Go ahead and be seated. Mr.  
7 Peterson, we have your questionnaire. Have you had  
8 time to think about what you put on here and if so do  
9 you have any changes or additions you would like to,  
10 make?

11 MR. PETERSON: Yeah, I do have one change.

12 THE COURT: Okay. Go ahead.

13 MR. PETERSON: I have an uncle that's a  
14 lawyer and said I didn't know any lawyers. I didn't  
15 think about it at the time.

16 THE COURT: Who is your uncle?

17 MR. PETERSON: Jerry Lucas.

18 THE COURT: He does criminal defense work?

19 MR. PETERSON: I don't think he does  
20 criminal.

21 THE COURT: Do you know what kind of work  
22 he does?

23 MR. PETERSON: I think he does a lot of  
24 like house fire, insurance company stuff.

25 THE COURT: What firm is he with, do you

1 know?

2 MR. PETERSON: You know, I really don't  
3 know. It's out of St. Peter.

4 THE COURT: Okay. Mr. Benson.

5 MR. BENSON: Thank you.

6 BY MR. BENSON:

7 Q Good afternoon.

8 A Good afternoon.

9 Q You indicated you have a hardship because you  
10 are not getting paid for being here?

11 A Correct.

12 Q What do you do for a living?

13 A I put in irrigation systems. I'm a foreman for  
14 a crew.

15 Q Are you working on -- so you are not getting  
16 paid?

17 A Not getting paid and I run the crew so I mean  
18 it's kind of hard when I'm not there too, also.

19 Q Okay. And do you have money saved up for the  
20 next couple of weeks?

21 A Not necessarily, no.

22 Q All right. So if you are to -- obviously the  
23 schedule is that if you are selected on the jury in the  
24 next week you would come back, have a trial all week, and  
25 at the end of the week you would be sequestered until the



1 jury is done deliberating. How are you going to provide  
2 for yourself?

3 A Um, I guess I just have to play it by ear and  
4 see what happens.

5 Q Is that going to distract you as far as being  
6 able to pay attention to the case?

7 A No, it shouldn't distract me, you know.

8 Q Okay. I want to ask you about a couple of your  
9 other responses in the questionnaire. When asked about  
10 defendant being 16 and a half years old, what reaction do  
11 you have to someone that age being charged with first  
12 degree murder, you said it's shocking that a kid his age  
13 would be out murdering people, where were his parents.  
14 Can you elaborate on that a little bit?

15 A Just 'cause I kind of know what I was doing when  
16 I was 16 and a half years old and it's just hard to think  
17 about, you know.

18 Q Have you made any judgments about Mr. Haynes?

19 A Not really, no.

20 Q Thank you.

21 MR. BENSON: Your Honor, I'll excuse Mr.  
22 Peterson.

23 THE COURT: All right. Mr. Peterson, I'll  
24 excuse you from this jury. Will you please check in  
25 with the jury office downstairs?

1 MR. PETERSON: Okay.

2 (Mr. Peterson exits.)

3 MR. BENSON: Your Honor, could you ask Ms.  
4 Schnurr about 89?

5 THE COURT: Sure.

6 (Ms. Schnurr enters.)

7 THE COURT: Good afternoon.

8 MS. SCHNURR: Afternoon.

9 THE COURT: Do you pronounce it Schnurr?

10 MS. SCHNURR: Schnurr. Um-hum.

11 THE COURT: Ms. Schnurr, would you raise  
12 your right hand to be sworn today?

13 MS. SCHNURR: Sure.

14 (Ms. Schnurr is sworn.)

15 THE COURT: Go ahead and be seated. I want  
16 to ask you, first of all we have your questionnaire  
17 that you answered on Monday. Anything that you would  
18 like to add or change to your answers on that?

19 MS. SCHNURR: No, I don't believe so.

20 THE COURT: Okay. Now, it indicated when  
21 you answered this that you are an LPN but you are on  
22 medical leave, is that right?

23 MS. SCHNURR: Um-hum.

24 THE COURT: Yes?

25 MS. SCHNURR: Yes I'm sorry.

1 THE COURT: The court reporter is taking  
2 down your answers and uh-huh and huh-uh sometimes get  
3 confusing.

4 MS. SCHNURR: Yes, I'm sorry.

5 THE COURT: It also says you've been  
6 looking for a job for six months so you are actively  
7 looking for work, so it seems a little conflicting  
8 there. Are you looking for work other than as an  
9 LPN?

10 MS. SCHNURR: No. I'm looking for a job at  
11 a clinic instead of being back at the hospital  
12 because I can't work on the floor anymore with my  
13 back.

14 THE COURT: I see. What is your back  
15 condition?

16 MS. SCHNURR: I've got two degenerative  
17 areas and I've got some other bulging areas, but all  
18 my nerve openings are open and so I don't need to  
19 have surgery and they would like to keep it that way.

20 THE COURT: So there is no impingement  
21 right now?

22 MS. SCHNURR: No.

23 THE COURT: So you can sit, right?

24 MS. SCHNURR: I can sit and stand but just  
25 not huge lengths of time on either one.

1 THE COURT: Okay. All right. I understand  
2 that perfectly. So you need to change positions and  
3 if you have a break say every two hours to get up and  
4 move around is that sufficient for you?

5 MS. SCHNURR: Yeah. And if you don't mind  
6 me maybe kind of moving, can I, if I can do that I'm  
7 fine then.

8 THE COURT: Okay. All right. And then  
9 what about the job application process? We're going  
10 to, this trial is going to start on Monday. We  
11 anticipate it will be done by the end of the week  
12 then it will be up to the jury as to how long they  
13 deliberate to make a decision. Do you anticipate any  
14 problems with that schedule?

15 MS. SCHNURR: Well, I had one call to  
16 interview, and yeah, I got one call and they said  
17 that that was already taken. I just don't know about  
18 the other two, if they are going to end up calling,  
19 you know, while I'm here or not, so.

20 THE COURT: If they call you back and want  
21 you to come in for an interview could you schedule  
22 that for the week after next?

23 MS. SCHNURR: I could ask.

24 THE COURT: Okay. All right. Mr. Benson,  
25 go ahead.

1 MR. BENSON: Thank you.

2 BY MR. BENSON:

3 Q Good afternoon.

4 A Good afternoon.

5 Q I want to ask you about a few of your responses.  
6 You were asked do you believe the jury system in this  
7 country is fair and you said yes and no. You indicated  
8 that you think we could be too lenient when it comes to  
9 our murders, murderers' time to serve. And then you  
10 talked about other, you know, murderers, child molesters  
11 and rapists getting out too soon. So to some extent could  
12 you elaborate on that and also let me know what the basis  
13 of your thoughts are?

14 A I don't know, I just, of course television, you  
15 see so much television but I just, I just think hearing on  
16 the news with some other cases that they just, they just  
17 -- some just don't get enough time for some of the things  
18 that they have done, um, you know, and then they are out  
19 so soon and then you hear them, you know, that they have  
20 done another crime. And if they would have gotten the  
21 larger sentence, you know, another person could be alive.  
22 That's kind of how I feel.

23 Q Okay. And you also indicated you think it turns  
24 out that the victims turn out to be the ones that suffer  
25 most. Do you have any thoughts that you might, given this

1 opinion, you might identify maybe too much for the  
2 purposes of a criminal trial with the victim in this case  
3 or the family of the victim when they come in and testify?

4 A With this case?

5 Q With this particular case.

6 A Oh, no. No.

7 Q How do you propose to compartmentalize the  
8 opinion you just expressed which is, it's your valid  
9 opinion, it's your opinion, how do you separate that from  
10 what you need to do as a juror in this case?

11 A Well, I would, you know, listen to the case, you  
12 know, and judge as the evidence I have heard, you know,  
13 because he is innocent until proven guilty and you listen  
14 to all the evidence.

15 Q Okay. And what are your thoughts about being a  
16 juror on a first degree murder case in actually the most  
17 serious criminal charge there is versus on some other type  
18 of criminal case?

19 A Well, it's scary. Because I've never been on  
20 this but, I mean, I feel it's, you know, my civic duty to  
21 be called to do something like this, but.

22 Q Okay. Thank you.

23 MR. BENSON: Your Honor, we'll excuse Ms.  
24 Schnurr.

25 THE COURT: Ms. Schnurr, you are excused

1 from this case and I would ask if you would please  
2 check in with the jury office downstairs.

3 MS. SCHNURR: Okay.

4 THE COURT: Thank you very much.

5 MS. SCHNURR: Um-hum.

6 (Ms. Schnurr exits.)

7 THE COURT: We can be off the record.

8 (Off-the-record discussion.)

9 THE COURT: Okay. We'll recess until four,  
10 then.

11 (Recess. The following  
12 is outside the presence of a jury panel.)

13 THE COURT: All right. Mr. Furnstahl, you  
14 want to proceed?

15 MR. FURNSTAHL: We'll call Sergeant  
16 Mattson.

17 Whereupon,

18 DAVID MATTSON,  
19 after having been first duly sworn, was examined  
20 and testified as follows:

21 THE CLERK: Please have a seat in the  
22 witness stand. Please state your full name and spell  
23 your last name for the record.

24 THE WITNESS: David Mattson, M-A-T-T-S-O-N.

25 THE COURT: Okay, Mr. Furnstahl.

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Q Sergeant, how are you employed?

A By the city of Minneapolis police department.

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

A Yes.

Q How long have you been a licensed peace officer?

A Oh, 20 plus years.

Q And how long with the city of Minneapolis?

A 18 and -- about 18 and a half.

Q So you were employed by them in May and June of 1992?

A Yes.

Q Were you assigned to the homicide unit at that time?

A Yes.

Q Was Sergeant Keefe your partner?

A Yes.

Q And were you, the two of you assigned to investigate the alleged murder of Harry Sherer at the video store in north Minneapolis?

A Yes.

Q As part of your investigation, did you interview a person identified to you as Isiah Harper?



1 A Yes.

2 Q And that was on May 28, 2004?

3 A I believe that's correct.

4 Q You also identified Timothy Clif -- or, I'm  
5 sorry, you also interviewed a Timothy Clifton?

6 A Yes.

7 Q On June 9, 2004?

8 A I don't remember the date. If that's what it  
9 says on his statement, that would be the date it was then.

10 Q Okay. Now, with respect to the interview of  
11 Isiah Harper, where did that interview take place?

12 A Downtown at our police headquarters, room 108,  
13 it's called.

14 Q How did Mr. Harper get down there?

15 A Sergeant Keefe and I drove him down.

16 Q And prior to doing that, did you obtain the  
17 permission of any adult that supervised him to speak to  
18 Mr. Harper?

19 A Yes. We asked his mother and she agreed to let  
20 us go down and take a, or talk to him.

21 Q So you went and picked him up and brought him  
22 downtown?

23 A Yes.

24 Q And you took a taped statement from him, is that  
25 right?

1 A Yes, sir.

2 Q Did you talk to him before you turned the tape  
3 on, do you recall?

4 A Probably. I don't recall.

5 Q All right. Now at any rate, at any time during  
6 the course of taking that taped statement did you  
7 threaten -- did you or Sergeant -- when I say "you" I'm  
8 talking about you and Sergeant Keefe, okay, in these  
9 questions, did you threaten him in any way, shape, or form  
10 in order to get him to speak to you?

11 A No.

12 Q Did you make any promises to him in order to get  
13 him to speak to you?

14 A No.

15 Q Did he appear to be under the influence of any  
16 alcohol or any kind of intoxicant?

17 A No.

18 Q Was he there under arrest or voluntarily?

19 A Voluntarily.

20 Q When you were done did you give him a ride home?

21 A Yes.

22 Q Did you make any, did you put any pressure on at  
23 all in any way, shape, or form to get him to speak to you  
24 and take the taped statement?

25 A No.

1 Q Now, when you took the taped statement, did you  
2 have the tape recorder in front of him so he could see it?

3 A I believe we did.

4 Q All right. Did he at any time indicate that he  
5 did not want to talk to you?

6 A Not that I recall.

7 Q Then next with respect to your interview of  
8 Timothy Clifton, how is it that you came to know about Mr.  
9 Clifton as it relates to this case?

10 A Um, Mr. Clifton had called over from the county  
11 jail and left a message that was then relayed to us that  
12 he wanted to speak with the investigators about this  
13 flower shop shooting.

14 Q Did you, had you heard his name before this?

15 A No.

16 Q You had heard, prior to your interview of Isiah  
17 Harper on May 28, 2004, did his name come up as part of  
18 your investigation?

19 A Mr. Clifton, you mean?

20 Q No. Mr. Harper.

21 A Repeat the question.

22 Q Yeah. I'm going back to Mr. Harper. Well,  
23 first of all, with respect to Mr. Clifton, his name had  
24 surfaced for the first time when he called you folks,  
25 correct?

1           A     Yes.

2           Q     So his name was kind of a surprise with respect  
3 to the investigation?

4           A     Yes.

5           Q     But with respect to Mr. Harper, was that the  
6 same situation or had you had some knowledge of his name  
7 prior to the interview of him on May 28, 2004?

8           A     I can't remember if, when we talked to a kid by  
9 the name of Daquan if he had mentioned a kid by the name  
10 of Poopey which was determined to be Isiah, other than  
11 that I don't recall.

12          Q     Okay. Let me move on to Mr. Clifton. You said  
13 that he called you folks?

14          A     Yes. We had a message that he called us and  
15 wanted to go, wanted us to go over and meet him at the  
16 county jail about this case.

17          Q     Did you talk to him, or did you just get a  
18 message that he wanted to talk to you?

19          A     We got a message, you know, like when we were  
20 out of the office at some point and then we went over and  
21 spoke with him but we didn't talk to him on the phone.

22          Q     You brought a tape recorder with you?

23          A     I think we did.

24          Q     You got a Q and A, right?

25          A     Yeah. I don't remember if we had to come back

1 and get one or if we had it with us. We probably had it  
2 with us.

3 Q Did you have any idea that he had knowledge  
4 about this case before you got the message that he wanted  
5 to talk to you?

6 A We didn't know what exactly he was going to tell  
7 us.

8 Q All right. And then you took a statement from  
9 him, correct?

10 A Yes.

11 Q Did you threaten him in order to get him to  
12 speak to you?

13 A No.

14 Q Did you make him any promises, anything like  
15 that, in order to get him to speak to you?

16 A No.

17 Q He indicated that he was interested in getting  
18 some consideration from the prosecutor on a case that he  
19 had pending, is that correct?

20 A Yeah, he wanted to be able to finish some sort  
21 of treatment program.

22 Q But in spite of expressing that interest he  
23 still provided you with information, correct?

24 A Yes.

25 Q Now he, in the statement, you identified him as

1       Witness D as his name, correct?

2           A     I believe so, yes.

3           Q     Was that done by his request? Do you recall?

4           A     I think he wanted to remain anonymous at that  
5 point so I think that's how we told him we could do that.

6           Q     Okay. And did you or Sergeant Keefe put any  
7 pressure on him in order to get him to speak to you?

8           A     No.

9                       MR. FURNSTAHL: Thank you, sir. That's all  
10 I have.

11                    THE COURT: Mr. Benson.

12                    MR. BENSON: Thank you, Your Honor.

13                               CROSS-EXAMINATION

14 BY MR. BENSON:

15           Q     Sergeant Mattson, turning your attention to the  
16 Isiah Harper statement, was that your first conversation  
17 with Isiah Harper, on May 28th?

18           A     No. I believe we had met him and I don't  
19 remember what day but sometime prior to that.

20           Q     Okay. It was -- was it prior to, it was prior  
21 to May 28th, it would have been after you spoke with  
22 Daquan Bradley? Would that have been the first statement?

23           A     I don't remember the first day that we met Mr.  
24 Harper. That sounds about right but I don't know what day  
25 we first talked with Mr. Harper.

1 Q Let me -- would looking at Daquan Bradley's  
2 statement, which I have, supplement 28 dated May 21st,  
3 would that at least help you figure out the timeframe?

4 A It might.

5 MR. BENSON: May I approach?

6 THE COURT: You may.

7 BY MR. BENSON:

8 Q I'll just show you this supplement 28. I'll  
9 leave it with you. When you are finished look up, and  
10 actually if you have a chance look at page three as well.

11 A Okay.

12 Q So on May 21st you spoke with Daquan Bradley?

13 A Yes, sir.

14 Q And on that date Daquan Bradley told you that  
15 Marvin had told him that Marvin had committed this  
16 shooting or robbery -- and robbery with his cousins, Six,  
17 S-I-X, and Poopey, P-O-O-P-E-Y, right?

18 THE COURT: What was the first name? Six?

19 MR. BENSON: Six. S-I-X.

20 THE WITNESS: I'm sorry, would you repeat  
21 your question, sir?

22 BY MR. BENSON:

23 Q Okay. On that date of May 21st, Daquan Bradley  
24 told you that Marvin told him that Marvin committed the  
25 robbery and the shooting at the flower shop with his

1 cousins, Six and Poopey?

2 A I think the way the question was put to him was  
3 did he tell you who could have. I don't know that, I  
4 don't remember if he specifically said they did it with  
5 him or could have.

6 Q Okay. There's a highlighted portion there. Can  
7 you read those?

8 A Yes.

9 Q Question and answer?

10 A The question is, on page three, what did Marvin  
11 tell you when you saw him at JDC? Answer: That he hit a  
12 sweet lick and came up. Next question: Did he tell you  
13 who could have done this robbery with him? Answer: Him,  
14 his cousins, Six and Poopey.

15 Q Okay. And at that time you had not heard --  
16 that was the first time you heard Poopey or Isiah Harper  
17 brought up in the investigation, is that right?

18 MR. FURNSTAHL: Objection. It's been asked  
19 and answered.

20 THE COURT: Overruled. You can answer.

21 THE WITNESS: As far as I recall it's the  
22 first time those names came up.

23 BY MR. BENSON:

24 Q Okay. May I retrieve that? Thank you, sir.

25 Okay. And then shortly after May 21st, after talking



1 to Daquan Bradley you went and talked with Isiah Harper?

2 A Sometime between apparently the 21st and when we  
3 actually took Mr. Harper's statement. We had spoken with  
4 him one time.

5 Q Where did that statement take place, not the  
6 recorded one that we've been discussing, the one that  
7 happened before the recorded one?

8 A I think that would have also been down at our  
9 office.

10 Q Did you record that one?

11 A No.

12 Q Did you take notes?

13 A Not that I recall.

14 Q Do you have any record of it whatsoever?

15 A Not that I know of.

16 Q Is there any reason you didn't record that  
17 statement?

18 A I didn't know what he was going to say at that  
19 point, so.

20 Q Okay. But you knew he was a suspect, or at  
21 least his name had been brought up in a murder case?

22 A The nickname Poopey had come up in the  
23 investigation so's that somebody we wanted to talk with,  
24 but he wasn't necessarily a hard suspect yet and so we  
25 wanted to talk with him.

1 Q Okay. And how long did you talk to him?

2 A I don't know, sir.

3 Q Did you talk to him by yourself?

4 A No, I think Sergeant Keefe and I both spoke with  
5 him.

6 Q Okay. At the same time?

7 A Yeah. I mean sometimes, for example, if  
8 somebody that we're talking to gives us information one of  
9 us might leave the room to go check something on a  
10 computer or pull up a photograph and come back in, so the  
11 two of us could be coming and going, but by and large the  
12 two of us were interviewing him.

13 Q Okay. But you would have been talking to him  
14 about this investigation, right?

15 A Yes.

16 Q And his name came up -- well, he was at least a  
17 potential suspect at the time you talked to him on that  
18 first occasion?

19 A Well, we didn't know if he was going to be a  
20 suspect or a witness or what, so.

21 Q A witness had told you -- or someone had told  
22 you that he may have been involved in the murder?

23 A I guess you have the supplement exactly how it  
24 was put and what the answer was.

25 Q Okay. All right. It's not your normal practice

1 not to record witness statements, is it?

2 A I'm sorry?

3 Q Normally you record witness statements, correct?

4 A Normally if a witness will let us, yes, we will.  
5 We talk to them first and then we ask them for a  
6 statement.

7 Q Okay. And did you -- you didn't do that the  
8 first time you spoke with Isiah Harper, right?

9 A We didn't get a statement the first time,  
10 correct.

11 Q But you did take him down to the police station  
12 and talk to him?

13 A I didn't personally bring him down that first  
14 time. I don't know he got down there the first time.

15 Q You were at the police station?

16 A Yes.

17 Q He was at the police station?

18 A I don't know how he got there, that's my point,  
19 yes.

20 Q And he was in one of the interview rooms?

21 A Yeah.

22 Q Okay. All right. And you don't -- do you  
23 recall how long that interview lasted?

24 A I'm sorry, I don't.

25 Q Okay. Do you recall how he got home?

1           A     I don't remember if we gave him a ride or if we  
2     had somebody else do that. I don't recall.

3           Q     All right. Eventually on May 28th you brought  
4     him down to the station again?

5           A     Yes.

6           Q     And you had a conversation with him before you  
7     turned on the tape recorder again?

8           A     I'm sure we chit-chatted and, you know, went  
9     over, you know, what he had already told us before we put  
10    it on tape.

11          Q     When you say what he had already told you, are  
12    you referring to the conversation the last time he was at  
13    the station?

14          A     Yes, and any other time. I don't remember if he  
15    was talking about it on the way down in the car or  
16    whatever.

17          Q     On the 28th you were in the car with him?

18          A     Yeah, I believe Sergeant Keefe and I both went  
19    and picked him up and talked to his mother.

20          Q     Regarding Tim Clifton's statement, somehow you  
21    got a message that Tim Clifton wanted to talk to you,  
22    right?

23          A     Yes.

24          Q     And he was pretty clear about he wanted to give  
25    some information but he also wanted a deal, right?

1           A     He was willing to give us the information and  
2     tell us what he knew, but he did want some treatment that,  
3     I don't know if he was being allowed to continue at that  
4     time or not. We told him we couldn't make any promises,  
5     it wasn't up to us.

6           Q     And he was looking, I mean, and he told you he  
7     was looking at 18 months in prison?

8           A     I don't remember if that's in his supplement, if  
9     that's in that interview, I don't recall.

10          Q     Okay. And you are aware that shortly after he  
11     spoke to you, I'm sorry, on June 17th, he actually called  
12     back to the police station and said he didn't want to  
13     testify or he didn't want to cooperate, right?

14                   MR. FURNSTAHL: Objection. Vague. Did he  
15     call?

16                   MR. BENSON: I'm sorry. I'll rephrase.

17     BY MR. BENSON:

18          Q     You finished your discussion on June 9th with  
19     Tim Clifton, right?

20          A     If that's the date on the supplement I would  
21     agree with that.

22          Q     Okay. After that, about a week later, Tim  
23     Clifton called you back, right?

24          A     At some point he called and I don't remember if  
25     he had left us a message right on my voice mail or if he

1 just called the front desk. I don't remember how that  
2 happened, but yes, he did.

3 Q Okay. What did he say?

4 A I would have to look at the supplement to  
5 refresh my memory.

6 MR. BENSON: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. BENSON:

9 Q Showing you supplement 43.

10 A Okay. What's your question?

11 Q What did he tell you?

12 A Okay. This message stated he had already gone  
13 to court earlier in the week and he had already settled  
14 his case and he did not wish to testify anymore.

15 MR. BENSON: Nothing further, Your Honor.

16 MR. FURNSTAHL: Couple questions.

17 THE COURT: Let me just ask him one quick  
18 question.

19 Is that a message you got from him on your  
20 recorder or from the dispatch or what?

21 THE WITNESS: I don't remember if -- the  
22 way it's worded I think I actually got a phone call  
23 directly from him. I just don't remember.

24 THE COURT: Okay. Go ahead, Mr. Furnstahl.

25 REDIRECT EXAMINATION

1 BY MR. FURNSTAHL:

2 Q With respect to Clifton's calling you after you  
3 talked to him on June 9th, a message was left that he  
4 didn't want to testify, right?

5 A Yes.

6 Q Not that what he told you on June 9th was a lie,  
7 just that he didn't want to testify?

8 A That's correct.

9 Q All right. Now, with respect to the  
10 conversations with Isiah Harper, you had a conversation  
11 with him, a first conversation with him sometime after  
12 your May 21st conversation with Daquan Bradley?

13 A I believe so. I don't know what date that would  
14 have been offhand.

15 Q Do you know if it was before or after your  
16 conversation, your May 21st conversation with Daquan  
17 Bradley?

18 A I believe it was after that.

19 Q And you indicated in response to counsel's  
20 questions that that statement or that conversation with  
21 Isiah Harper was not tape-recorded?

22 A Correct.

23 Q Why is that?

24 A Well, he was a witness after he told us what --  
25 he was willing to talk to us but he didn't want to go on

1 tape and we asked him and he didn't want to at that point.

2 Q What transpired then between that first  
3 conversation and the conversation on May 28th that  
4 resulted in your tape-recording him on the 28th?

5 A Um, well, basically we went up and told his  
6 mother, you know, that he's an important person in this  
7 case and we would like to get his statement and we need to  
8 speak with him, and she gave us permission to bring him  
9 down as long as we, you know, of course brought him back  
10 and treated him well, so.

11 Q Okay. Now, the time that you talked to him on  
12 the -- the first non-recorded statement, did you threaten  
13 him or make any promises to him at that time in order to  
14 get him to speak to you?

15 A No.

16 Q Did he provide the same or different information  
17 from that which was contained in the tape-recorded  
18 statement?

19 A As far as I recall it was the same type of  
20 information, the same information, he just didn't want to  
21 go on a tape recorder at that time.

22 Q Then did you, on the 28th when you tape-recorded  
23 the statement, did you discuss with him about the need to  
24 tape-record it, do you recall?

25 A I'm sure we did. I don't recall.



1 Q Okay. But was there anything, any threats, any  
2 promise, any threats of prosecution or threats of arrests  
3 that took place in this first non-recorded statement that  
4 resulted in his speaking to you?

5 A No.

6 Q Thank you, sir.

7 MR. FURNSTAHL: That's all I have.

8 MR. BENSON: Briefly, Your Honor.

9 THE COURT: Go ahead.

10 RE CROSS-EXAMINATION

11 BY MR. BENSON:

12 Q This non-recorded statement, as you said this  
13 was the first time you spoke to Isiah Harper?

14 A I believe that's correct, sir.

15 Q And it's after Daquan Bradley said he may be  
16 involved in this murder, right?

17 A Sometime after we talked with Daquan is when we  
18 got the, or when we identified Poopey.

19 Q And you had already determined in your mind that  
20 Marvin Haynes was a suspect, right?

21 A I'm sorry?

22 Q You already determined Marvin Haynes was a  
23 suspect, obviously?

24 A Yes, I believe so.

25 Q Okay. So is it your position that when you

1 spoke to Isiah Harper, you spoke to him as a witness and  
2 not a potential suspect?

3 A Yeah, I guess I was looking at him as a witness.

4 Q Despite the information you had, the only  
5 information you had at that point was that he may have  
6 been involved in a robbery-murder?

7 MR. FURNSTAHL: Objection. That's not a  
8 question.

9 THE COURT: What's the objection?

10 MR. FURNSTAHL: Object to the form of the  
11 question, because it's not a question.

12 THE COURT: Overruled. You can answer.

13 THE WITNESS: Could you repeat what you --

14 BY MR. BENSON:

15 Q Despite the fact that Isiah Harper, the only  
16 information that you had about Isiah Harper was that he  
17 was a, he was named as a potential suspect in a  
18 robbery-murder, you were treating him as a witness, is  
19 that your position?

20 A Until we knew otherwise we were going to treat  
21 him as a witness unless he said something that suggested  
22 anything incriminating on his part.

23 Q Okay. And you didn't record that, correct? As  
24 you said, it was an unrecorded conversation, right?

25 A Correct, sir.

1           Q     According to you, you asked him if he wanted to  
2     have it recorded and he told you no?

3           A     I don't think we put it to him, ask him do you  
4     want it recorded. We wanted it recorded because he had  
5     information. He didn't want it recorded.

6           Q     But in any event with that now recorded, you not  
7     only didn't record it but you didn't take any notes?

8           A     I may have at some point. I don't recall.

9           Q     Okay. Well, do you normally keep your notes?

10          A     No.

11          Q     You normally generate a police report from your  
12     notes?

13          A     Yes, sir, that's correct.

14          Q     You didn't generate a police report regarding  
15     that conversation, did you?

16          A     I don't think so.

17          Q     Okay. And why is that?

18          A     I don't remember.

19          Q     Well, that's apart from your general practice  
20     and your policy, right?

21          A     I'm sorry?

22          Q     Not generating a police report would be, would  
23     be a variance from your normal policy or practice?

24          A     No, not necessarily.

25          Q     Okay. But you normally would record information

1 from either witnesses or potential suspects in a homicide  
2 investigation, right?

3 A If they are willing.

4 Q Well, I mean, you record at least notes about  
5 the conversation.

6 A Typically. Not every single person we talk to  
7 do we necessarily record or do something with.

8 Q Typically, if it's a potential suspect?

9 A Yes.

10 Q Okay. And in this case you don't know whether  
11 you did or you didn't?

12 A I don't recall.

13 MR. BENSON: Nothing further, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. FURNSTAHL:

16 Q I want to go back about the decision not to  
17 record in that first conversation with Isiah Harper.

18 Now, this was, the conversation was shortly after the  
19 murder took place, is that right?

20 A Yes, relatively.

21 Q The murder took place on May 16th at about 11:30  
22 in the morning?

23 A Yes.

24 Q All right. And were you and Sergeant Keefe in  
25 the process of building a case at that point in time?

1           A     Yes.

2           Q     Did you have some information that a member of  
3     the black community had provided, had named the defendant  
4     as a person that was involved in the murder? Do you  
5     remember that?

6           A     We had an anonymous tip that gave us the name  
7     Marvin or Little Marvin that gave us something to work  
8     with.

9           Q     And from that you found out that he had a  
10    warrant out for him in juvenile court?

11          A     Yes, I think that's how that happened.

12          Q     Then he was arrested on that juvenile warrant  
13    while you did follow-up investigation, is that right?

14          A     I believe so.

15          Q     Now, when you spoke to Isiah Harper, did you at  
16    any point in time determine that he was a blood relative  
17    of Marvin Haynes?

18          A     Yes, I believe he's a cousin.

19          Q     All right. So when you are investigating this,  
20    you are speaking to a cousin of the suspect and trying to  
21    get information from the cousin that might implicate his  
22    own cousin, his own blood relative, correct?

23          A     Yes.

24          Q     And in a situation like that -- now, you  
25    mentioned that in this situation you deferred to Isiah

1 Harper's wishes not to record that first conversation?

2 A Yes.

3 Q Were you in the process of developing some  
4 rapport with Mr. Harper such that --

5 MR. BENSON: Objection, leading.

6 THE COURT: Sustained. It is leading.

7 MR. FURNSTAHL: Okay.

8 BY MR. FURNSTAHL:

9 Q Well, tell us what your thought processes were  
10 in terms of the decision making, the decision that you  
11 made not to record that first conversation?

12 A Um, well, at that time we were, like I say  
13 talking to him as a witness because if a person is brought  
14 down, for example, and told they are a suspect they don't  
15 necessarily want to tell us anything and we didn't know,  
16 so until we find out otherwise we try to assume the best  
17 for them and assume that they might be useful or have  
18 information as a witness.

19 After he told us what he told us, you know, we wanted  
20 to record it. He didn't want to so we didn't push that  
21 issue. I think we, after we brought him home I think we  
22 talked with our lieutenant the next day and told him this  
23 is what the kid had to say but doesn't want to go on tape,  
24 and I think the lieutenant said well we really need to get  
25 him on paper, as it were.

1 Q Now, how long have you been a police officer  
2 with Minneapolis?

3 A Since April of 1987.

4 Q Have you investigated other crimes in the near  
5 north side of Minneapolis?

6 A Yes.

7 Q Is it easy or difficult to obtain cooperation  
8 from witnesses in that area?

9 A It's usually not, not an area forthcoming with  
10 information. It's kind of a closed community.

11 Q And do you, are you able to use the same kind of  
12 techniques in dealing with witnesses in that area as in a  
13 different area of Minneapolis that maybe doesn't have  
14 those kinds of issues?

15 A You have to treat each case separately, so we  
16 have to be kind of more gentle with some of the witnesses  
17 that, you know, came up in this case.

18 Q All right. Thank you, sir.

19 MR. FURNSTAHL: That's all I have.

20 MR. BENSON: Just a couple questions, Your  
21 Honor.

22 THE COURT: Go ahead.

23 RE CROSS-EXAMINATION

24 BY MR. BENSON:

25 Q Sergeant, who was your lieutenant during the

1 period of time between May 21st and May 28th?

2 A That would have been I believe Mike Carlson.

3 Q And he's the person that you and Sergeant Keefe  
4 may have talked to to discuss Isiah Harper not wanting to  
5 be taped?

6 A You know, I believe so. I don't remember  
7 specifically how that conversation went but that's the  
8 person we report to, so.

9 Q Wouldn't it have been anybody else?

10 A Not that I can think of.

11 Q Okay. And Sergeant Keefe, as far as you know,  
12 did he take any notes regarding this?

13 A I'm sorry, I don't know.

14 Q You don't know.

15 MR. BENSON: Nothing further, Your Honor.

16 MR. FURNSTAHL: Just one follow-up  
17 question.

18 REDIRECT EXAMINATION

19 BY MR. FURNSTAHL:

20 Q Were you also reporting to Captain Stanek on  
21 this case during that time period?

22 MR. BENSON: Sorry, counsel, Captain what?

23 BY MR. FURNSTAHL:

24 Q Stanek.

25 A I don't remember if Captain Stanek was in charge



1 of CID or if it was Captain Martin at that time. I'm not  
2 sure.

3 Q Thank you.

4 MR. FURNSTAHL: That's all I have.

5 THE COURT: All right. You can step down,  
6 officer. Sergeant. Thank you.

7 (Witness excused.)

8 THE COURT: Well, I guess we can discuss  
9 these issues with regard to these various statements.

10 I've looked at counsel's memorandum on this  
11 issue and the cases involved. I'm going to give you  
12 my general feeling on the admissibility of these  
13 various statements depending on certain sub decisions  
14 within each one of these, and some of those I may not  
15 be able to and I may not do it today but we'll start  
16 with Mr. Harper.

17 Mr. Harper has testified before the grand jury.  
18 If Mr. Harper is subpoenaed here, then there's no  
19 issue with regard to Crawford. In other words, he's  
20 available, and I'll get to the second part of that in  
21 a minute. But his statement to the grand jury under  
22 oath would be admissible under 801(d)(1)(A) as  
23 substantive evidence not merely to impeach because  
24 it's not hearsay, so that would not be a Dexter issue  
25 with regard to the grand jury testimony.

1           Now, if he takes the fifth amendment, in other  
2 words the subs of that would be, number one, can he  
3 take the fifth amendment because he's already  
4 testified at the grand jury, and the answer to that  
5 from the cases I read today appears to be yes, it's a  
6 separate proceeding, he may take the fifth amendment.  
7 There may have to be a court determination of whether  
8 or not what he says may be incriminating. If there's  
9 any chance at all that it might be incriminating or  
10 be a link to incriminating evidence, then he's  
11 entitled to take the fifth amendment. If he's given  
12 immunity, obviously that takes care of the not being  
13 available because if he takes the fifth amendment  
14 he's not available for cross-examination. Since  
15 there was no cross-examination at the grand jury that  
16 would be a Crawford issue if he takes the fifth  
17 amendment and is not given immunity.

18           With regard to his police statement and Mr.  
19 Clifton's police statement, in order to use those  
20 under the, under 803(24), the catch-all exception as  
21 substantive evidence, the Court must first find,  
22 number one, it is material evidence; number two, that  
23 the statement is more probative than any other  
24 evidence that could be produced on that issue and  
25 that it serves the general purposes for interests of

1 justice; number four, that the defendant is available  
2 for cross-examination. There's no dispute he made  
3 the statement, and the Court would have to find that  
4 the statement is reliable and it is consistent with  
5 other evidence that is introduced by the State.

6 Now, in looking at that, that means, number one,  
7 the declarant must be available for  
8 cross-examination, and obviously before his statement  
9 would be more probative than his live testimony, he  
10 would have to be on the stand and say something  
11 contrary to what his statement is because if he gets  
12 on the stand and reiterates what he said in his  
13 statement, that is more probative than his statement.  
14 So if he were to get on the stand and say something  
15 contrary to what his statement indicates, then the  
16 statement may be more probative than his current  
17 testimony, assuming the reliability and other prongs  
18 of 803(24) are met.

19 And I'm not going to comment on the reliability  
20 until I get through the statements, and maybe I  
21 should listen to the tape before I actually comment  
22 on that.

23 All right? Counsel with me so far?

24 MR. BENSON: Yes, sir.

25 MR. FURNSTAHL: Just one thing. You said

1 the declarant must testify and say something contrary  
2 to their statements otherwise the --

3 THE COURT: That goes to the second prong.  
4 The statement is more probative than any other  
5 evidence that the person offering it could produce.

6 MR. FURNSTAHL: Yes.

7 THE COURT: And obviously if the declarant  
8 is here and can get on the stand and say that, the  
9 statement would not be more probative unless he gets  
10 on the stand and he doesn't say that. I mean, he  
11 says something else, then the statement may be more  
12 probative on that issue than the actual live  
13 testimony.

14 MR. FURNSTAHL: Okay.

15 THE COURT: Then the reliability of the  
16 statements themselves are the only thing I haven't  
17 commented on and obviously we don't know about the  
18 fifth amendment or the immunity issue.

19 MR. FURNSTAHL: You said you can't comment  
20 on reliability until you --

21 THE COURT: Well, I need to review the  
22 statements in complete --

23 MR. FURNSTAHL: That was the word I was  
24 missing. Review the statements.

25 THE COURT: Because then I can talk about

1 reliability and I have read, you know, some of them  
2 already but I'm wondering if I ought to listen to the  
3 tapes.

4 MR. FURNSTAHL: I could bring those down  
5 and you can do that.

6 THE COURT: That would probably be a good  
7 idea. You got a machine that I can --

8 MR. FURNSTAHL: Yeah. I'll bring that  
9 down, too.

10 THE COURT: All right. Then we'll be in  
11 recess until nine -- you got something else?

12 MR. BENSON: Real quick. I want to talk to  
13 Mr. Furnstahl about this, but until I decide  
14 otherwise I would like to add Lieutenant Mike  
15 Carlson, I'm not sure if he's on the witness list yet  
16 or not. What is Stanek's first name?

17 MR. FURNSTAHL: Rich Stanek.

18 THE COURT: Yeah.

19 MR. BENSON: That's S-T-A-N --

20 MR. FURNSTAHL: I believe it's E-K.

21 THE COURT: So Stanek and Carlson?

22 MR. BENSON: Yeah.

23 THE COURT: All right. We'll be in recess  
24 until nine o'clock tomorrow and we'll have the rest  
25 of our jurors here.

1 (Whereupon, the proceedings  
2 conclude for this day.)

3 \* \* \*

4 STATE OF MINNESOTA)

) ss.


REPORTER'S CERTIFICATE

5 COUNTY OF HENNEPIN)

6 I, Jolyn R. Lund, Official Court Reporter, do  
7 hereby certify that the above and foregoing is a true and  
8 accurate transcription of my original stenographic notes  
9 in said matter.

10 Date:

3-1-06

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

04035635  
A052444<sup>531</sup> (5)

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FILED

DISTRICT COURT

FOURTH JUDICIAL DISTRICT  
06 MAR -3 PM 12:41

State of Minnesota,

DEPT. V  
RE. CO. DISTRICT  
COURT ADMINISTRATOR  
File No. 04035635  
S.Ct. File A05-2444

Respondent/Plaintiff,

vs.

**TRIAL TRANSCRIPT**

MARVIN HAYNES, JR.,

VOL. IV, pp. 531-713

Appellant/Defendant.

The above-entitled matter came duly on for trial before The Honorable Robert A. Blaeser, a judge of the above-named Court, at 659-C Hennepin County Government Center, Minneapolis, Minnesota, on the **26th day of August, 2005.**

APPEARANCES:

MICHAEL FURNSTAHL, ESQ., Assistant Hennepin County Attorney, appeared as counsel for and on behalf of the State.

KASSIUS BENSON, ESQ., Attorney at Law, appeared as counsel on behalf of the DEFENDANT, who was also personally present.

CLERK: Andrea Martin

REPORTER: Jolyn R. Lund

04035635

1 (Whereupon, the following  
2 proceedings occur.)

3 MR. BENSON: Your Honor, on Mr. Staedy, can  
4 you address number 84 and number 88?

5 THE COURT: 84 and 88.

6 (Mr. Steady enters.)

7 THE COURT: Good morning.

8 MR. STAEDY: Good morning.

9 THE COURT: Would you raise your right hand  
10 to be sworn?

11 (Mr. Steady is sworn.)

12 THE COURT: Do you pronounce it "Stay-dee?"

13 MR. STAEDY: "Stay-dee," correct.

14 THE COURT: Mr. Steady, we have your  
15 questionnaire you filled out on Monday, or yesterday,  
16 I mean. Do you have any additions or corrections you  
17 want to make?

18 MR. STAEDY: I don't think so.

19 THE COURT: Okay. Now, one of the  
20 questions on here was at this time do you have any  
21 feeling of bias or prejudice for or against any of  
22 the parties in this case, and you checked yes and  
23 your explanation was if the defendant allegedly  
24 killed someone in an armed robbery I have a problem  
25 with that.



1                   Now, I want you to explain that a little bit so  
2 I can understand where you are.

3                   MR. STAEDY: Um, I guess the part that  
4 bothers me -- and I hear about a lot of these stories  
5 -- is somebody robs somebody at gunpoint, to me  
6 that's bad enough, but to kill an innocent person  
7 after you've gotten their money and that, I just  
8 don't understand why people have to do that. I don't  
9 know all the details of the case and the facts and  
10 stuff, I don't remember a lot about it but, so I may  
11 not be, you know, understanding what the whole case  
12 is about. Like I say I put in I saw it on the news  
13 back awhile ago.

14                  THE COURT: Right. Let me ask you this. I  
15 mean, not understanding why somebody could do it is  
16 not an abnormal reaction. Do you think that you can  
17 set that aside and when I instruct you with regard to  
18 this case that you listen to the evidence and you  
19 make your decisions only on the evidence you hear  
20 coming in this courtroom, are you going to be able to  
21 do that?

22                  MR. STAEDY: I could do that.

23                  THE COURT: Okay. It's normal you are  
24 going to have feelings both for the victim and the  
25 victim's family and potentially for the defendant who

1 is a very young person in this case.

2 MR. STAEDY: Exactly.

3 THE COURT: But those feelings will have to  
4 be set aside. You will have to make your decision on  
5 the evidence you are going to hear. Do you think you  
6 can do that?

7 MR. STAEDY: I think I could. I mean, I  
8 could understand if the clerk behind the counter  
9 pulled a gun or something, you know, that type of  
10 thing and it was self-defense, but sometimes it still  
11 gives me a sick feeling in my stomach.

12 THE COURT: Now, I've seen you before  
13 apparently, huh?

14 MR. STAEDY: Yes, you have.

15 THE COURT: When was that?

16 MR. STAEDY: 1996. In August of '96.  
17 Yeah, as soon as she said your name I just kind of  
18 started laughing. I'm like small world. That was  
19 out at Brookdale when you were there.

20 THE COURT: Obviously you've done well  
21 since then; you haven't had any issues?

22 MR. STAEDY: (Knocks on wood.)

23 THE COURT: Is there anything about that  
24 experience, number one, having had me as a judge on  
25 your misdemeanor case that's going to make it



1 MR. FURNSTAHL: Judge, she's got a few  
2 issues. Do you want to address them? I'm going to  
3 get rid of her if there's not cause, so I've got  
4 questions 39, 47, 64, 68 --

5 THE COURT: 68?

6 MR. FURNSTAHL: 68 and 87.

7 THE COURT: Okay. Wait, now a second. I  
8 remember this one.

9 MR. BENSON: Why don't you go ahead, go  
10 ahead and ask 33.

11 THE COURT: You don't feel the same way  
12 about this one, do you?

13 MR. BENSON: No, Your Honor.

14 THE COURT: Go ahead and bring her in then.

15 (Ms. Christensen enters.)

16 THE COURT: Go ahead and be seated. First  
17 of all, when you answer questions if you could use  
18 yes or no and not uh-huh or um-hum, that would be  
19 much better for the court reporter, okay?

20 MS. King CHRISTENSEN: Okay.

21 THE COURT: Now, is your last name King  
22 Christensen or just Christensen?

23 MS. KING CHRISTENSEN: King Christensen.

24 THE COURT: Okay. Do you have any  
25 additions or corrections you've thought of since you

1 filled this questionnaire out yesterday?

2 MS. KING CHRISTENSEN: No.

3 THE COURT: Okay. I've got a couple  
4 additional questions for you then the attorneys might  
5 have some questions. First of all, you said that  
6 your mother used to work in the Minneapolis police  
7 department?

8 MS. KING CHRISTENSEN: Yes.

9 THE COURT: Her name is Carol King?

10 MS. KING CHRISTENSEN: At that point, yes.

11 THE COURT: Okay. What's her name now?

12 MS. KING CHRISTENSEN: Carol Lynn  
13 Blakemore.

14 THE COURT: Blakemore. Does she still work  
15 in the Minneapolis police department?

16 MS. KING CHRISTENSEN: No.

17 THE COURT: What did she do there?

18 MS. KING CHRISTENSEN: It was before I was  
19 born so as far as I know it was patrolling down like  
20 the Riverside area.

21 THE COURT: She was a patrol officer?

22 MS. KING CHRISTENSEN: As far as I know,  
23 yes.

24 THE COURT: When she left the Minneapolis  
25 police department, approximately when was that?

1 MS. KING CHRISTENSEN: She was still in  
2 college so I'm thinking early '70s.

3 THE COURT: She was a Minneapolis police  
4 officer and she was in college?

5 MS. KING CHRISTENSEN: Um --

6 THE COURT: Or was she on some kind of a --

7 MS. KING CHRISTENSEN: I don't know. It  
8 was before I was born.

9 THE COURT: All right. Do you ever talk to  
10 her about her work as a police officer?

11 MS. KING CHRISTENSEN: No.

12 THE COURT: Now, you thought that you were  
13 -- you actually weren't sure, you thought your father  
14 might have been charged with a crime when you were  
15 young?

16 MS. KING CHRISTENSEN: Right.

17 THE COURT: Do you know approximately when  
18 and what it was?

19 MS. KING CHRISTENSEN: Um, it was during  
20 like a custody hearing but I'm not sure. I actually  
21 tried to look up the files last night and couldn't  
22 find it in Hennepin County so I have to do some more  
23 research.

24 THE COURT: Okay. And how old were you at  
25 the time this would have occurred?

1 MS. KING CHRISTENSEN: Seven.

2 THE COURT: Seven? So you really don't  
3 know what it was or much about it?

4 MS. KING CHRISTENSEN: No.

5 THE COURT: What makes you think he might  
6 have been?

7 MS. KING CHRISTENSEN: Because I think my  
8 mom brought it against him.

9 THE COURT: Okay. Do you think like maybe  
10 it was a domestic abuse type of situation?

11 MS. KING CHRISTENSEN: I'm really not sure  
12 what the charges were, if they were even filed. I  
13 couldn't find it.

14 THE COURT: Do you have any memories of  
15 that when you were that young age?

16 MS. KING CHRISTENSEN: I remember this  
17 (indicating witness stand), and --

18 THE COURT: Okay. All right. You actually  
19 think you testified in a custody trial?

20 MS. KING CHRISTENSEN: Yes.

21 THE COURT: And you were only seven?

22 MS. KING CHRISTENSEN: Yes.

23 THE COURT: Actually on the witness stand  
24 there, or did you just go back and talk to the judge  
25 in chambers?

1 MS. KING CHRISTENSEN: No. I was on the  
2 witness stand.

3 THE COURT: Really. Okay. What do you  
4 remember about that experience?

5 MS. KING CHRISTENSEN: It was pretty  
6 stressful. There were people, like two ladies who  
7 tried to help me and like draw pictures on the chalk  
8 board, and that's basically what I remember.

9 THE COURT: Were they asking you whether  
10 your father hit you and that kind of stuff?

11 MS. KING CHRISTENSEN: I don't remember  
12 what they were asking me, really.

13 THE COURT: Do you think anything about  
14 that experience would make it difficult for you to  
15 sit as a juror on this kind of case and be fair and  
16 impartial to both the State and the defendant?

17 MS. KING CHRISTENSEN: I don't have to sit  
18 back here anymore, right?

19 THE COURT: No, you don't. You'll be  
20 sitting over there.

21 MS. KING CHRISTENSEN: I would probably be  
22 okay.

23 THE COURT: It's being in the witness stand  
24 that is kind of concerning to you?

25 MS. KING CHRISTENSEN: Yes.



1 THE COURT: You understand there's going to  
2 be a lot of witnesses in this case and if you are  
3 going to be a juror you are going to be asked to  
4 judge their credibility and you are going to have to  
5 listen to the evidence they give and set aside  
6 emotions and make your judgment based on evidence  
7 that you hear in this case. Do you think you are  
8 going to be able to do that?

9 MS. KING CHRISTENSEN: I think I should be  
10 capable of doing that.

11 THE COURT: Okay. Now, there's a question  
12 on here about whether or not you have any social or  
13 religious beliefs or other feelings that would  
14 prevent you from sitting in judgment of another  
15 person or being a juror in this kind of case. And  
16 you said, you said no, yes is kind of crossed out  
17 then no is checked and you say I don't think it is  
18 on --

19 MS. KING CHRISTENSEN: Okay.

20 THE COURT: -- to judge another human being  
21 but I guess this is okay because we are judging only  
22 based on evidence not because we are being  
23 vindictive.

24 Can you explain that?

25 MS. KING CHRISTENSEN: Yes. I'm a

1 Christian and I believe judge not lest you be judged,  
2 but I had a discussion with a couple of other like  
3 the people in my community and we talked about it and  
4 it doesn't really apply to as much a courtroom  
5 setting as like in your heart, when you are judging  
6 someone like because you just don't like them.

7 THE COURT: Okay. So you don't think your  
8 beliefs would interfere with you being able to make a  
9 judgment on the facts you hear in this case?

10 MS. KING CHRISTENSEN: No, I don't think  
11 so.

12 THE COURT: And I mean that either way, if  
13 you find that the State has not proven this case  
14 beyond a reasonable doubt, can you find the defendant  
15 not guilty?

16 MS. KING CHRISTENSEN: Yes.

17 THE COURT: And likewise if the State has  
18 proven the case beyond a reasonable doubt, would you  
19 have hesitation in finding the defendant guilty of a  
20 first degree murder case?

21 MS. KING CHRISTENSEN: No. I just need the  
22 evidence to be there and like truthful, you know what  
23 I mean, like.

24 THE COURT: Okay.

25 MS. KING CHRISTENSEN: Be able to decide,

1 have enough to think about.

2 THE COURT: Now, you also have, you have  
3 been diagnosed with depression, is that right?

4 MS. KING CHRISTENSEN: Yeah, when I was 13.

5 THE COURT: Okay. So are you not currently  
6 being treated in any way?

7 MS. KING CHRISTENSEN: No.

8 THE COURT: No medication right now?

9 MS. KING CHRISTENSEN: No.

10 THE COURT: Okay. So this is not going to  
11 be a, you know, there's going to be emotional  
12 testimony in this kind of a case, that's not going to  
13 be a problem for you? Let me rephrase that  
14 differently.

15 There's normally going to be a reaction by a lot  
16 of people to the testimony, the emotional kind of  
17 testimony. That would be normal. But the issue is  
18 can you, you know, apart from how you react  
19 emotionally to it, can you set aside that reaction  
20 when you look at it and base your judgment based on  
21 evidence that's presented?

22 MS. KING CHRISTENSEN: I'm not cold but I  
23 think I'm logical.

24 THE COURT: Okay. Now, you also have been  
25 a victim of a crime?

1 MS. KING CHRISTENSEN: Yes.

2 THE COURT: Can you tell me about that?  
3 First of all how long ago it was?

4 MS. KING CHRISTENSEN: Last year I was  
5 mugged in the Phillips neighborhood on 26th Street.  
6 No charges were filed. I called as soon as I got  
7 home. Like I was robbed at gunpoint I guess, but I  
8 had no cash, I offered him (unintelligible) stamps,  
9 he didn't want them, and I called the police and they  
10 just asked for a description.

11 THE COURT: So you weren't hurt though?

12 MS. KING CHRISTENSEN: I was not hurt.

13 THE COURT: But did they show you a gun or  
14 did they tell you they had a gun?

15 MS. KING CHRISTENSEN: He showed me a gun.

16 THE COURT: How many people was it that  
17 robbed you?

18 MS. KING CHRISTENSEN: Just one.

19 THE COURT: Just one person? Okay. And  
20 what time of day or night did this happen?

21 MS. KING CHRISTENSEN: This happened at  
22 six p.m.

23 THE COURT: Six p.m.? All right. And you  
24 called the Minneapolis police when you got back to  
25 your home?

1 MS. KING CHRISTENSEN: Yeah, which was just  
2 a couple blocks away.

3 THE COURT: What response did you get from  
4 the police department?

5 MS. KING CHRISTENSEN: They asked for a  
6 description and basically nothing else.

7 THE COURT: Were you able to give them a  
8 description?

9 MS. KING CHRISTENSEN: Yes.

10 THE COURT: And after that the police never  
11 contacted you again?

12 MS. KING CHRISTENSEN: I saw the mugger  
13 again on the street.

14 THE COURT: Did you call the police after  
15 you saw him?

16 MS. KING CHRISTENSEN: No. Obviously it  
17 didn't help.

18 THE COURT: Okay. That being the case,  
19 now, there's going to be, you know, obviously police  
20 officers that would be witnesses in this case. Do  
21 you think that you would be able to treat them like  
22 you would any other witnesses in terms of  
23 believability and give them the chance to present  
24 their testimony and judge them the same way you would  
25 any other witness? Or would you feel like because

1           they didn't really respond that well in your case  
2           that you might hold that against them?

3                       MS. KING CHRISTENSEN: I think every person  
4           is different and they deserve, like everybody  
5           deserves a hearing, like hearing them out. Even  
6           though it didn't come through for me on that  
7           situation, I do believe that there is honest people  
8           who are working very hard to protect us or whatever.

9                       THE COURT: You didn't call the police back  
10          again and say I saw this guy that mugged me on the  
11          street?

12                      MS. KING CHRISTENSEN: No.

13                      THE COURT: Why?

14                      MS. KING CHRISTENSEN: Because it was the  
15          same day about 20 minutes after I got mugged.

16                      THE COURT: The same day?

17                      MS. KING CHRISTENSEN: Yeah.

18                      THE COURT: Why did you not call them back?  
19          Did you think they wouldn't respond?

20                      MS. KING CHRISTENSEN: I was just like  
21          whatever. I didn't get hurt, nothing was taken and  
22          being he was scareder (sic.) than I was, or more  
23          scared than I was.

24                      THE COURT: Okay. How do you feel about  
25          police in general?

1 MS. KING CHRISTENSEN: I don't know. Mixed  
2 feelings. My mom was one, obviously. I haven't had  
3 really run-ins with the law too much, just a couple  
4 warnings like on traffic stuff. I mean, I've heard  
5 stories of brutality and ridiculous things happening  
6 but I don't know, I haven't had it happen to me.

7 THE COURT: Now, you also indicate that you  
8 are moving next week, is that right?

9 MS. KING CHRISTENSEN: Well, the gal who is  
10 closing on the house said that it will probably be  
11 between the 5th and the 15th that I'll be moving,  
12 that they had shoved it back.

13 THE COURT: Okay. And if this case lasts  
14 through next week and then it's given to the jury by  
15 the end of next week that should not cause you a  
16 problem, right?

17 MS. KING CHRISTENSEN: It shouldn't. I'm  
18 packed.

19 THE COURT: Okay. All right.

20 MR. FURNSTAHL: State will exercise a  
21 peremptory, Judge. Thank you.

22 THE COURT: All right. Ms. King  
23 Christensen, I'm going to excuse you from this jury.  
24 I would ask that you check in with the jury office  
25 downstairs. Thank you very much.

1 (Ms. King Christensen exits.

2 Ms. Boeser enters.)

3 THE COURT: Is it Ms. Boeser?

4 MS. BOESER: Yes.

5 (Ms. Boeser is sworn.)

6 THE COURT: Go ahead and have a chair. Ms.  
7 Boeser, have you thought of anything that you wanted  
8 to add or change to your questionnaire you filled out  
9 yesterday?

10 MS. BOESER: No, I have not.

11 THE COURT: Okay. You have gone, you  
12 worked for the same employer for a long time, through  
13 three name changes.

14 MS. BOESER: Yes.

15 THE COURT: Okay. The attorneys are going  
16 to ask you some additional questions.

17 MS. BOESER: Okay.

18 THE COURT: And we're going to start with  
19 Mr. Benson.

20 Go ahead, Mr. Benson.

21 MR. BENSON: Thank you, Your Honor.

22 BY MR. BENSON:

23 Q Good morning.

24 A Good morning.

25 Q Is it Ms. Boeser?



1 A Yes.

2 Q You grew up in north Minneapolis?

3 A Yes, I did.

4 Q And you indicated that you were familiar with  
5 the flower shop in this case?

6 A Right.

7 Q Ever shopped there?

8 A No, I just walked by it.

9 Q Would your familiarity with the store in growing  
10 up in north Minneapolis impact the way you view evidence  
11 in this case?

12 A No.

13 Q You also indicated that you, that the police you  
14 say chased a suspect or something through your front lawn?

15 A Right.

16 Q How long ago was that?

17 A Last fall.

18 Q And did you actually witness them chasing?

19 A No. Just woke up the next morning and our  
20 bushes were taken out, so.

21 Q All right. Did you find out anything about the  
22 circumstance?

23 A Just that they had had a police chase and that  
24 the suspect didn't have any insurance and that the police  
25 department doesn't cover the damages, so we just were

1 looking to get our bushes replaced, basically.

2 Q Okay. You also indicated that your cousin had  
3 been shot in a hunting accident?

4 A Yes.

5 Q How long ago was that?

6 A Probably about 40 years.

7 Q So can I take it that there's nothing about that  
8 incident that would impact for you?

9 A No. My family still hunts a lot. My kids, my  
10 husband, and -- yup.

11 Q Okay. Is there anything about possibly being a  
12 juror on a first degree murder case that you find  
13 overwhelming or intimidating?

14 A No.

15 Q You indicated that you did want to be a juror in  
16 this case.

17 A Um-hum.

18 Q Why is that?

19 A It's just my son is studying to be a lawyer so I  
20 think it would give me a good feel for the judicial system  
21 and how it works. I really got into corporate law but I  
22 think it all kind of links together, so.

23 Q He just took the bar. Where did you go to law  
24 school?

25 A I went to Creighton University in Omaha.

1 Q Do you think you would be a good juror?

2 A I think I would be impartial. Never done this  
3 before, so I don't know.

4 Q Okay. Do you have any concerns about voicing  
5 your opinion with a lot of people that you don't know?

6 A No, not at all.

7 Q Do you think that you have good common sense?

8 A I believe so.

9 Q How do you gauge your ability to judge the  
10 credibility of a witness in the sense of whether they are  
11 telling you the truth or not?

12 A Well, I would listen to all the evidence on both  
13 sides and try to make the best decision I could based on  
14 that.

15 Q Is there any other information that you think I  
16 would need in determining whether you would be a good  
17 juror?

18 A I don't believe so.

19 Q All right. Then last question. Tell me what is  
20 the most important decision you've made in your life?

21 A Probably to retire was a big decision. It  
22 wasn't really a time that I was ready to go. My kids were  
23 still in college and I just had to make that decision, so.

24 Q Okay. All right. If it's not too personal can  
25 I ask why it was hard to make that decision?

1           A     It was basically I was having a conflict with  
2 one of my supervisors at work and they were going to  
3 change my position and I was kind of at the end of my  
4 career and didn't really want to learn something brand  
5 new, so that was pretty much the decision making process,  
6 so.

7           Q     Okay. All right. Thank you, ma'am.

8                     MR. BENSON: Your Honor, we'll accept Ms.  
9 Boeser.

10                    THE COURT: Mr. Furnstahl.

11                    MR. FURNSTAHL: Thank you.

12 BY MR. FURNSTAHL:

13           Q     Good morning.

14           A     Good morning.

15           Q     When did you move out of north Minneapolis?

16           A     It was probably, probably about 1968, '69, when  
17 the freeway started taking houses down in that area.

18           Q     Okay. And from your address you were pretty  
19 close to where the flower shop was?

20           A     Right. Right.

21           Q     Did you know who owned it at that time?

22           A     I believe the same family owned it for a lot of  
23 years. I don't know that for sure but I think the same  
24 family owned it.

25           Q     Do you know if any member of your family ever

1 frequented that place and bought flowers?

2 A No.

3 Q At any rate, nothing about you walking by that  
4 flower shop is going to affect your ability to be fair to  
5 either side?

6 A No. I know the location. That's about all.

7 Q Okay. And the police chase?

8 A Yes.

9 Q Was that done on foot or by car?

10 A By car.

11 Q So somebody drove their car through your bushes?

12 A Um-hum. The perpetrator and also the police  
13 officers, so several people.

14 Q Must have lost a few bushes.

15 A Just a couple. It wasn't really too much  
16 damage, so.

17 Q Was it the Minneapolis police department?

18 A It was Robbinsdale. We live right on the  
19 Robbinsdale-Crystal border, so.

20 Q Okay. Anything about that, given the fact that  
21 the police said we are not paying, is that going to affect  
22 your ability to be fair?

23 A No, not at all.

24 Q And it looks like your husband is retired too?

25 A Yes.

1 Q From the same company?

2 A Northwest Airlines, he worked for. He was a  
3 house husband. He retired when my first child was born,  
4 so.

5 Q Okay. And it looks like you worked your way up  
6 through Quest?

7 A Yes.

8 Q And were at one time managing two hundred-plus  
9 people?

10 A Right.

11 Q Had responsibilities for hiring and firing and  
12 disciplining?

13 A Yes.

14 Q Did you have occasion where you had to fire or  
15 discipline somebody?

16 A Oh, yes.

17 Q How many times did you have to fire somebody?

18 A Probably about three. Not a pleasant situation.

19 Q Was it an easy call or difficult call?

20 A Well, a couple, two of them were easy and one  
21 was more difficult. We had to build a case. It was an  
22 attendance problem so we had to build a case and it was a  
23 long-term employee, so those are always more difficult.

24 Q There's always an emotional aspect to --

25 A Yes.

1           Q     -- releasing someone. Were you able to set  
2 those feelings aside, compartmentalize them and base your  
3 decision only on the evidence?

4           A     Yes.

5           Q     Do you understand that's basically what we are  
6 going to ask you to do here?

7           A     Yes, I do.

8           Q     There is some emotions involved in a murder  
9 case; the defendant is very young.

10          A     Right.

11          Q     And everybody recognizes that the decision you  
12 make is going to affect somebody.

13          A     Yes.

14          Q     But in order to be a fair and just juror, we ask  
15 you to base your decision only on the evidence and you  
16 have to set those other feelings aside and base your  
17 decision on the evidence.

18          A     Correct.

19          Q     What I'm hearing from you is that you can do  
20 that?

21          A     I believe so.

22          Q     It sounds like you've had to make a few tough  
23 decisions in your personal and professional career?

24          A     Yes.

25          Q     It says you like to fish and golf?

1 A Yes.

2 Q Do you folks have a cabin?

3 A No, we rent up in Detroit Lakes.

4 Q What kind of fishing do you like to do?

5 A Walleye.

6 Q And, let's see, one son just graduated from law  
7 school, the other one is a music major?

8 A Yes.

9 Q Where does he go to school?

10 A NDSU, Fargo.

11 Q Where did your son, the lawyer, where did he go  
12 to college?

13 A Creighton University in Omaha.

14 Q Okay. It said many adopted children from  
15 various races with respect to the question on what  
16 experiences do you have with persons whose race is  
17 different from your own.

18 A Right.

19 Q Tell me more about that.

20 A My husband comes from a family of ten children  
21 and we have probably about sixty immediate family members  
22 and several people have gone to China and adopted  
23 children, and we have some biracial marriages and so we  
24 have a kind of a Heinz 57, United Nations.

25 Q Nice diverse background.



1 A Yes.

2 Q Tell me about your siblings. Do you have any  
3 siblings?

4 A Yes, I have two sisters and a brother.

5 Q What do they do?

6 A My one sister works for the Moundsvew school  
7 district, my one other sister works for a daycare center,  
8 and my brother is a roofer.

9 Q And you said your husband has nine siblings?

10 A Yes.

11 Q I don't think we'll go there.

12 A No. Most of them are retired. He's the end of  
13 the line, so.

14 Q Do you hunt with your husband and sons?

15 A I walk in the field. I don't carry a gun.

16 Q Okay.

17 A I do enjoy the wildlife, so.

18 Q Now, you were asked a question about the  
19 defendant's age and whether or not that would have an  
20 effect on your decision. You said no matter what age if  
21 there was just cause they should be charged?

22 A Yes.

23 Q So at his age and the way he looks, he looks  
24 young, that is not going to be a factor here?

25 A No.

1           Q     Okay. And you mentioned that in respect to  
2 whether or not serving will cause any personal, business,  
3 or family hardship, you said it depends on when it starts,  
4 several weekend commitments in September.

5           We anticipate starting on Monday and using up the  
6 bulk of the week with testimony, then the jury deliberates  
7 for however long it takes to reach a verdict.

8           A     Okay.

9           Q     Given those time parameters, and I understand  
10 lawyers are notorious for getting it wrong so it might be  
11 a little bit longer than what we are predicting but we've  
12 been working real hard behind the scenes to kind of deal  
13 with some of the legal issues so that we can keep the flow  
14 going.

15          A     Yes.

16          Q     But given those parameters, is the timing going  
17 to be a problem for you?

18          A     The only thing I have really pending is I have a  
19 women's fishing trip that goes like the weekend after  
20 Labor Day and I'm the organizer of it so that would be the  
21 only thing I have going on, so.

22          Q     Who's going on that trip with you?

23          A     30 women.

24          Q     30 women? Okay. Let me ask you what your  
25 reaction was when you got your notice for jury service.

1           A     Well, I had just talked to my neighbor and I  
2     have never been on jury duty and she's gone a couple times  
3     and I was wondering how the selection process happens, and  
4     the next thing I know I got one in the mail. I thought  
5     she gave them my name, really. I just have never been on  
6     jury duty and I was kind of curious on how it really all  
7     works.

8           Q     Other than the neighbor, do you know anybody  
9     else who's been on a jury?

10          A     No. My nephew is coming next week. He got a  
11     summons after I did, so.

12          Q     What kind of cases was your neighbor on?

13          A     I don't think she ever got on a case. I think  
14     she was on call-in status and never really got on a case.

15          Q     So we brought you in here the first time and you  
16     find out it's a first degree murder case?

17          A     Yeah.

18          Q     Right from the --

19          A     Right from the get-go.

20          Q     What do you think about that?

21          A     Well, it all happened so fast I really didn't  
22     have time to think about it at all.

23          Q     Now, you've had kind of a week -- no, you  
24     haven't. You've had a day.

25          A     One night.

1           Q     Yeah. Well, now that you have had the night to  
2 think about it, do you have any reaction?

3           A     I was talking to my husband a little bit about  
4 it last night because it's just -- it all is going pretty  
5 fast and he told me that he is familiar with a couple of  
6 the brothers that own the shop and I thought I better say  
7 that out loud, but I don't know them and I don't, I don't  
8 know if he's, he's not real good friends with them, he  
9 just is aware of them and knows who they are and I think  
10 that they would know his name, but I don't know them at  
11 all.

12          Q     Now, the judge will instruct you that you are  
13 not to talk to anybody about the case until you go back to  
14 deliberate.

15          A     Okay.

16          Q     That would include your husband.

17          A     Okay.

18          Q     So could you make sure that --

19          A     Yes.

20          Q     Promise us that you will abide by that?

21          A     Yes.

22          Q     The reason I was asking about your reaction to  
23 the case is I'm wondering whether or not there's anything,  
24 given you're a first time juror, a lot of jurors think  
25 that we are going to start them slow in a DWI or a civil

1 case, now you know we are not.

2 A Right. You probably don't have that opportunity  
3 with people coming and going so fast, so.

4 Q Is there anything about the prospect of making a  
5 decision in a first degree murder case that is  
6 intimidating or overwhelming to you?

7 A No.

8 Q All right. What's your feeling about police  
9 officers? Do you have any?

10 A I think it's a tough job. I think it's a real  
11 tough job these days, so.

12 Q Okay. Did you ever have any trouble with your  
13 boys when they were growing up?

14 A No.

15 Q Have any feelings about kids that take a  
16 different path than the path your kids took?

17 A No. I just feel like we were real lucky.  
18 Having my husband home with them I think helped a lot,  
19 having one of us there, so.

20 Q Yeah. Have you ever experienced a startling  
21 situation?

22 A As far as?

23 Q Like being involved in a car accident, things  
24 like that, victim of a violent crime?

25 A I haven't been a victim of violent crime, but I

1 did have a car accident. I used to work in St. Paul and I  
2 got hit on the way to work just on the rearend of my car  
3 and it turned around completely and was facing the  
4 opposite direction. That was pretty horrendous.

5 Q Was that on a freeway?

6 A Yes, on 94. Right.

7 Q So you had spun around on 94 and could see the  
8 cars coming at you?

9 A Yeah. That was very scary.

10 Q When that happened did you black out?

11 A Oh no. My eyes were wide open.

12 Q Kind of got your attention, right?

13 A Yeah, it sure did.

14 Q So you were, I imagine you can probably still  
15 see the cars coming at you right now?

16 A Yup.

17 Q Now, in here we have two judges, the judge of  
18 the law and the judge of the facts. Wherever we have  
19 legal disputes we look to Judge Blaeser to resolve those  
20 disputes and we all must abide by his decision. Are you  
21 willing to do that?

22 A Yes.

23 Q So you will follow his instructions on the law?

24 A Yes.

25 Q Even if perchance it is different from what you

1 believe or you disagree with it?

2 A Yes.

3 Q And the judges of the facts, wherever we have  
4 disputes of fact that's where we look to the judges of the  
5 facts to resolve those disputes. So, for example -- this  
6 is just an example, it's got nothing to do with this  
7 case -- one person says the car is red, the next person  
8 says no, the car is blue, it's up to the jury to decide  
9 which color the car is, if that's something that's  
10 relevant.

11 A Okay.

12 Q Follow me?

13 A Yes.

14 Q See the distinction there?

15 A Um-hum.

16 Q Now, you don't know any of the witnesses,  
17 correct?

18 A I do not.

19 Q So do you think it's easier or more difficult to  
20 judge the -- one of the things we are going to ask you to  
21 do as judges of the facts is to judge the credibility or  
22 believability of the individual witnesses. Do you think  
23 it's easier or more difficult to judge the believability  
24 of a stranger as opposed to someone, say your sons?

25 A Well, it's probably more difficult to judge the

1       strangers because I know my sons pretty well.

2           Q       Okay. And given this kind of a forum then we  
3       have strangers judging the credibility of strangers. Can  
4       you appreciate how important your own common sense is in  
5       making the kinds of decisions we're asking you?

6           A       Right.

7           Q       How do you feel about being asked to rely on  
8       your common sense in a murder case?

9           A       I think I've got pretty good common sense.

10          Q       Something you've used in your personal and  
11       professional life?

12          A       Yes.

13          Q       I take it -- and then, you know, as a part of  
14       the credibility and believability of an individual  
15       witness, can you recognize that a witness could be  
16       believable or not believable for a variety of reasons?

17          A       Yeah.

18          Q       Maybe they are connected to one side or the  
19       other, maybe they don't remember very good, or maybe they  
20       are just flat-out lying?

21          A       Yes.

22          Q       Just because people come in here and raise their  
23       right hand and swear before god to tell the truth, that's  
24       no guarantee that they will do that?

25          A       Correct.



1 Q Would that surprise you?

2 A No, not at all.

3 Q It sounds to me you are confident you can be  
4 fair to both sides?

5 A I'll try.

6 Q If I don't prove it, the verdict is not guilty,  
7 right?

8 A Right.

9 Q If I do prove it, can you convict on a charge of  
10 first degree murder?

11 A Yes.

12 Q Is there any doubt in your mind?

13 A No.

14 Q Thank you, ma'am.

15 MR. FURNSTAHL: Your Honor, we accept Ms.  
16 Boeser.

17 MR. BENSON: Your Honor, can we approach  
18 for just a moment?

19 THE COURT: You may.

20 (Off-the record discussion at  
21 the bench out of hearing of Ms. Boeser.)

22 THE COURT: Ms. Boeser, you are going to be  
23 seated on this jury and I gave you some instructions  
24 yesterday but I just want to remind you that, number  
25 one, people will ask you, you know, you are not

1           supposed to read any news articles or pay any  
2           attention to news coverage on this case and you can't  
3           talk to anybody about the case, including your  
4           husband. If he asks, which it would be normal to be  
5           curious, he's going to ask you what kind of case,  
6           what's going on, tell him you are a juror on a  
7           criminal case and that's all you can tell him. You  
8           can't answer any questions, you can't give him any  
9           information. Are you comfortable with that?

10                   MS. BOESER: I am.

11                   THE COURT: I'm going to excuse you now. I  
12           want you to come back to this courtroom at five to  
13           nine Monday morning and remain in the hallway until  
14           the clerk comes to get you.

15                   MS. BOESER: Okay. Sounds good. Thank  
16           you.

17                   THE COURT: You are excused.

18   (Ms. Boeser exits.)

19                   THE COURT: Any questions on Ms. Freeburg?

20                   MR. BENSON: Your Honor 64, 73 and 74.

21   (Ms. Freeburg enters.)

22                   THE COURT: Good morning. It's Ms.  
23           Freeburg, right?

24                   MS. FREEBURG: Yup.

25                   THE COURT: Would you raise your right hand

1 to be sworn, please?

2 (Ms. Freeburg is sworn.)

3 THE COURT: Go ahead and have a seat. Ms.  
4 Freeburg, have you had a chance to think about your  
5 answers on the questionnaire overnight and is there  
6 anything you think you might have forgot to write  
7 down or want to add?

8 MS. FREEBURG: The only thing I have to add  
9 is I have a trip to Europe planned at the end of  
10 September, so.

11 THE COURT: Okay. If these guys are still  
12 here at the end of September we are going to have  
13 some issues. That should not be a problem. Anything  
14 else you can think of?

15 MS. FREEBURG: Nope.

16 THE COURT: Let me ask you a couple  
17 questions here. Now, one of the questions asked you  
18 about if you had any social or religious beliefs or  
19 other feelings that would prevent you from sitting in  
20 judgment of another or being a juror on this case.  
21 You checked yes, and you indicated that there's  
22 always that small fear of retaliation if found guilty  
23 and probably influence of the media. And so what is  
24 it that makes you think in that line; there's nothing  
25 about this particular case that you have heard in the

1 media, or just a general feeling?

2 MS. FREEBURG: It's just a general feeling.  
3 I really haven't heard anything about this case.

4 THE COURT: Can you explain what it is you  
5 heard that makes you concerned that way?

6 MS. FREEBURG: I think it's probably just  
7 news stories of, you know, there was that, I don't  
8 remember what date it was but the judge's family who  
9 was retaliated against and other stories in the media  
10 like that.

11 THE COURT: The judge in Chicago, that was  
12 shot?

13 MS. FREEBURG: Um-hum.

14 THE COURT: Okay. All right. But nothing  
15 in particular in this case, and I understand that  
16 this is, you know, this is a first degree murder  
17 case, you know, and it's the normal reaction of  
18 someone is going to be that this is kind of  
19 overwhelming to start with and that's part of it.

20 MS. FREEBURG: Yeah.

21 THE COURT: Okay. Do you think that, you  
22 know, that being a normal reaction of a lot of  
23 people, that emotional part to just the fact that you  
24 are sitting as a juror or potentially sitting as a  
25 juror on a first degree murder case, that's the most

1 serious kind of case we can have, do you think you  
2 can get over that part and kind of put that emotional  
3 part aside, listen to the evidence that's presented  
4 to you in this case, talk to your fellow jurors and  
5 come to a decision based on the evidence and only the  
6 evidence?

7 MS. FREEBURG: I would try my best.

8 THE COURT: Do you have any doubt about  
9 that?

10 MS. FREEBURG: I don't think so.

11 THE COURT: Okay. Now, your uncle was shot  
12 and killed when you were young, it says.

13 MS. FREEBURG: Yes.

14 THE COURT: Can you tell me, number one,  
15 how long ago that was?

16 MS. FREEBURG: You know, I don't remember  
17 exactly but I was probably in grade school so it's  
18 been 38 years or so.

19 THE COURT: Where did that happen?

20 MS. FREEBURG: He was in an apartment of  
21 his friend's and another man came who he didn't know  
22 but his friend knew and apparently an argument ensued  
23 and he was kind of an innocent bystander of this man  
24 who came. He was standing in the balcony and he shot  
25 him and killed him.

1 THE COURT: Was that in Minneapolis?

2 MS. FREEBURG: I think it was in a suburb  
3 of Minneapolis.

4 THE COURT: Okay. And was that person  
5 prosecuted that shot your uncle?

6 MS. FREEBURG: Yeah, he was.

7 THE COURT: Was he convicted?

8 MS. FREEBURG: Yes.

9 THE COURT: Okay. Did you attend any part  
10 of the proceedings or anything?

11 MS. FREEBURG: No. Just the funeral.

12 THE COURT: Anything about that experience  
13 that you think would make it difficult for you to sit  
14 on a case involving a charge of first degree murder?

15 MS. FREEBURG: I don't know. I mean, I  
16 know how it affected my dad who was his brother, so  
17 in that sense.

18 THE COURT: Obviously that's part of what  
19 you are going to see here. I mean, you know, there's  
20 -- you are going to see some emotional testimony.  
21 There will clearly be, you know, relatives of the  
22 victim that will be in court and there is normally  
23 going to be an emotional reaction to that. There's  
24 also the fact that the defendant is only 16 and a  
25 half years old and that also may cause an emotional

1 reaction in the fact that he's so young. Can you set  
2 aside the emotional part when I -- if I instruct you  
3 to make your decision based on only the evidence you  
4 hear and not your emotional reaction? Can you do  
5 that?

6 MS. FREEBURG: I would try.

7 THE COURT: Okay. When you say you'll try,  
8 I mean I don't want to -- I just want you to give the  
9 best answer you can, and do you think you are going  
10 to be able to do that? Or do you think that you have  
11 some doubt about it?

12 MS. FREEBURG: I guess I might have a  
13 little doubt.

14 THE COURT: Is that based on your uncle's,  
15 the reaction of your family to your uncle's death?

16 MS. FREEBURG: Partly, yeah, and just the  
17 emotional nature of this type of a crime.

18 THE COURT: Okay. How do you think that  
19 would affect you?

20 MS. FREEBURG: Um, I guess I would just, am  
21 a person who would tend to kind of internalize and  
22 personalize conflict in general, you know. That  
23 happens to me at work and in personal situations so  
24 it's, I'm just an emotional feeling person so it's  
25 hard sometimes for me to do that.

1 THE COURT: Does that mean you would  
2 empathize more with the victim's family? Is that  
3 what you are saying?

4 MS. FREEBURG: Potentially.

5 THE COURT: Okay. All right. Counsel.

6 MR. FURNSTAHL: Can I ask a couple  
7 questions?

8 THE COURT: You may.

9 BY MR. FURNSTAHL:

10 Q Ma'am, the question is this, the judge will  
11 instruct you that you have to base your decision solely  
12 and completely on the evidence, and it's all right for you  
13 to have these kinds of feelings. But in order to be a  
14 fair and just juror, you have to set them aside and base  
15 your decision only on the evidence and you'll have the  
16 opinions of 11 other people helping you with that. Will  
17 you be able to follow the judge's instruction on the law?

18 A Yes.

19 Q All right. Thank you.

20 MR. FURNSTAHL: That's all I have.

21 THE COURT: I'm not quite sure. Okay. So  
22 if you can follow my instructions, can you set aside  
23 the emotional reaction and just make your decision  
24 based on the facts and the evidence you hear coming  
25 out of that chair?



1 MS. FREEBURG: I would have to, yeah.

2 THE COURT: So you do think you could.

3 MS. FREEBURG: Yeah.

4 THE COURT: Okay. Now, that's not the only  
5 violence that's occurred in your family. You also  
6 have a second cousin who was in a murder-suicide when  
7 you were a preteen.

8 MS. FREEBURG: Um-hum.

9 THE COURT: Can you tell me about that one?

10 MS. FREEBURG: It was my mom's cousin who  
11 she grew up with, so kind of like a brother to her  
12 and he was an alcoholic and he lived in Texas and his  
13 girlfriend broke up with him and he went over and  
14 shot her and then killed himself.

15 THE COURT: Okay. And so that person was  
16 very close to your mom, more like a brother than a  
17 first cousin?

18 MS. FREEBURG: Um-hum.

19 THE COURT: Yes?

20 MS. FREEBURG: Yes.

21 THE COURT: Again, did you witness the  
22 emotional impact on your mom?

23 MS. FREEBURG: Yes.

24 THE COURT: Do you think that that's going  
25 to be something again that you can keep, you know,

1       aside and make your decision on the facts that you  
2       hear in this case? Or do you think that emotional  
3       reaction is going to be something that is going to  
4       affect your ability to do that?

5               MS. FREEBURG: It's tough, you know. I  
6       mean it's, in a way it's kind of the other side  
7       because I see how it affects the people who were part  
8       of a crime as well so it's, you know.

9               THE COURT: I mean, and I know there's not  
10      a, you know, we're not trying to -- not trying to put  
11      words in your mouth, I'm just trying to give you a  
12      chance to give us your honest feelings. That is all  
13      you can do.

14              MS. FREEBURG: Yeah.

15              THE COURT: What the attorneys want is just  
16      to know that you can, you know, set that aside and  
17      make your decision based on the evidence, and if you  
18      feel like you can't that's all we can ask you to do  
19      is tell us that.

20              MS. FREEBURG: Obviously you just don't  
21      know how, when it actually happens how I would do, so  
22      you know. I think that I'm objective and I would,  
23      you know, do my best to do that but it's hard to know  
24      what, you know, when it gets to that point.

25              THE COURT: Okay.

1 MR. BENSON: Can we approach?

2 THE COURT: Pardon me?

3 MR. BENSON: Can we approach?

4 THE COURT: Yes, you may.

5 (Off-the record discussion at  
6 the bench out of hearing of Ms. Freeburg.)

7 MR. BENSON: May I proceed?

8 THE COURT: Go ahead, Mr. Benson.

9 BY MR. BENSON:

10 Q Ma'am, I've got just a couple questions for you  
11 and I don't want to beat a dead horse but I've got to ask  
12 you some questions about this. You've indicated a few  
13 things going on emotionally as far as thought process.  
14 You've obviously experienced, you know, family members  
15 dying violent deaths. You indicated that you might -- you  
16 may sympathize with the victim's family, possibly you may  
17 sympathize with someone else in the case, but you did  
18 characterize yourself as an emotional person. You also,  
19 and this is a concern for me, you say that you might have  
20 a small fear or some fear of retaliation and that's just  
21 from what you've heard from other cases. Now, are all  
22 those true statements?

23 A Um-hum.

24 THE COURT: You have to answer yes or no.

25 MS. FREEBURG: Yes.

1 BY MR. BENSON:

2 Q And as you sit here right now are you still  
3 experiencing fear of this position that you are in?

4 A Not particularly, no.

5 Q Okay. Whatever emotions that you are feeling,  
6 do you have any belief -- this is the only time I get to  
7 ask you -- that it's going to impair the way you look at  
8 evidence in this case, for example if a member of the  
9 victim's family comes in and testifies, is that going to  
10 cause such a reaction in you that you can't focus on the  
11 rest of the evidence?

12 A No.

13 Q Okay. If you see photos of the deceased, crime  
14 scene photos, is that going to create such emotions in you  
15 that you won't be able to focus on the evidence?

16 A Possibly.

17 Q Okay. When it comes time to deliberate with  
18 other jurors, in the back of your mind is there going to  
19 be an idea that if you vote the wrong way there's going to  
20 be a consequence, not just on one of the parties but  
21 possibly on you?

22 A Possibly, yes.

23 Q All right. Thank you.

24 MR. BENSON: Your Honor, I would move for  
25 cause.

1 THE COURT: I'm going to excuse you, Ms.  
2 Freeburg, and I'll ask you to check back in with the  
3 jury office downstairs.

4 MS. FREEBURG: Okay. Thank you.

5 (Ms. Freeburg exits.)

6 MR. BENSON: Your Honor, Mr. Gerling has an  
7 employment issue, if you could address that.

8 THE COURT: All right.

9 (Mr. Gerling enters.)

10 THE COURT: Go ahead and be seated. It's  
11 Gerling, right?

12 MR. GERLING: Yup. That's right.

13 THE COURT: Mr. Gerling, you are a  
14 financial planner, huh?

15 MR. GERLING: Yes, sir, I am.

16 THE COURT: And is that the old Aid  
17 Association to Lutherans merged with Lutheran  
18 Brotherhood?

19 MR. GERLING: One and the same, yeah.

20 THE COURT: All right. And it said in  
21 answer to one of your questions here that you had  
22 cleared your calendar for next week, which is what we  
23 think this trial will go through next week.

24 MR. GERLING: Okay.

25 THE COURT: And we'll be done by the end of

1 next week.

2 MR. GERLING: Okay.

3 THE COURT: It's then up to the jury to  
4 deliberate, and obviously we don't know, the jury  
5 takes however amount of time they feel they need to  
6 make a decision. Is that going to be an issue for  
7 you?

8 MR. GERLING: Not if next week is the  
9 extent of it. I could go a couple of days after  
10 that. Any longer than that it kind of starts to be  
11 difficult for my business because I'm the only guy  
12 there.

13 THE COURT: Any additions or corrections  
14 that you have since you answered this questionnaire?

15 MR. GERLING: Not that I can think of, no.

16 THE COURT: Go ahead, Mr. Benson.

17 MR. BENSON: Thank you, Your Honor.

18 BY MR. BENSON:

19 Q This is your first jury service?

20 A Yes, sir, it is.

21 Q And what were your thoughts when you found out  
22 that you were being asked to possibly be a juror in a  
23 first degree murder?

24 A Well, you know, I have to admit that, you  
25 know, I don't take that lightly. I mean, I understand

1       that it's a serious situation and I've always kind of  
2       considered myself a politico kind of guy and find the  
3       process interesting so I intend to apply myself if chosen  
4       and don't take it lightly.

5           Q     Okay. And can you understand that sometimes  
6       people when they come into a first degree murder case  
7       there is an emotional aspect to it?

8           A     Um-hum.

9           Q     One, because of the seriousness of the charge,  
10      two, in this case because Marvin Haynes is young?

11          A     Um-hum.

12          Q     Then also of course because someone is dead?

13          A     Right.

14          Q     And because of the victim's family, you know,  
15      there's some emotions there?

16          A     Right.

17          Q     Would any of those emotions interfere with the  
18      way you would objectively view evidence?

19          A     I don't think so. I mean, part of my job is  
20      dealing with, you know, people in situations that can be  
21      stressful with money and things like that, so dealing with  
22      emotional situations is more or less part of my daily  
23      life. So no, I don't think that will be an issue at all.

24          Q     You indicated that you are the only person at  
25      your job?

1           A     Right.

2           Q     Do you work with like groups of people at all in  
3 your profession?

4           A     You mean like clients, or?

5           Q     I know you work with clients.

6           A     Clients, yup.

7           Q     Generally you are giving advice to your clients?

8           A     Correct.

9           Q     They are of course giving you information?

10          A     Correct.  Yup.

11          Q     But do you have any situation, I suppose if not  
12 at work, socially where you were working with a group of  
13 people to make a decision?

14          A     Yeah.  I mean we do joint work frequently in our  
15 business.  My area of specialty is kind more in retirement  
16 and estate planning so if I have people that fall into  
17 categories outside of that, you know, just younger  
18 families or something like that, I'll work with another  
19 person that that's kind of more their area that they work  
20 in, so that's very common.

21          Q     All right.  And do you feel you are a good judge  
22 of telling when someone is telling the truth?

23          A     I like to think so, yeah.

24          Q     Any recent experiences where you have had to  
25 make that determination?



1           A     If someone is being truthful with me or not?

2           Q     Yes.

3           A     Actually yeah, frequently. When we go through  
4 life insurance applications and we ask people medical  
5 questions and the, you know, they have to respond and I've  
6 had scenarios where I ask people if they use tobacco and  
7 it's very obvious that they do and they say that they do  
8 not. Yeah, I mean that happens. Luckily not very often  
9 but it certainly does happen.

10          Q     Okay. And you feel you can take those skills  
11 and apply them in a courtroom setting?

12          A     I would think so, yeah.

13          Q     During the course of this trial you are going to  
14 hear testimony from police officers and hear testimony  
15 from civilian witnesses, some adults, some juveniles. Do  
16 you think that you can apply your, whatever skills you  
17 use, to determine if someone is telling you the truth  
18 equally to any one of those parties?

19          A     I would think so. I mean, I like to, you know,  
20 consider myself to take it, you know, objectively and  
21 think about exactly what is going on, but yeah, I think  
22 so.

23          Q     Okay. Now, you indicated that you did not want  
24 to be a juror. Is that because of work?

25          A     Yeah. I mean, I think the main reason I would

1 not want to be a juror is just the time scheduling aspect  
2 of it, you know. I want to make sure that, you know, that  
3 I would still be able to have the necessary time to take  
4 care of my clients and things, but at the same time I do  
5 consider this part of a civic duty, as crazy as that  
6 sounds. But, you know, that's the only reason I would not  
7 want to be a juror is just if it got to be lengthy. That  
8 can not only affect my business but affect my income,  
9 affect my family and my life-style so that makes it kind  
10 of difficult. Outside of that I have no other objection  
11 at all.

12 Q So the timeframe we've talked about --

13 A That would be fine. That would be fine.

14 Q Okay. All right. Tell me the most important  
15 decision that you have had to make in your life.

16 A In my life?

17 Q Yes, in your life.

18 A I think the most important decision that I had  
19 to make in my life was after I got out of college, I was  
20 presented with an opportunity -- I worked in the White  
21 House when I was in college and I was presented with an  
22 opportunity to go follow a dream of working in the airline  
23 industry, because I have a pilot's license, I really like  
24 airplanes, but at the same time I was presented with a  
25 business opportunity to do financial planning and that was

1 a very difficult decision to make was do something you  
2 love as a hobby but do something you know you are going to  
3 be really good at, and so obviously I chose to do the  
4 financial planning and it has been the best decision I  
5 ever made in my life, so.

6 Q Okay. When did you get your pilot's license?

7 A 1997.

8 Q Okay. And where did you get that at?

9 A I got it at Flying Cloud airport over in Eden  
10 Prairie.

11 Q Okay. And then when you were at the White  
12 House, what were you doing there?

13 A I worked in the travel office so we organized  
14 the press travelling with the president, so I was an  
15 intern.

16 Q Okay.

17 A I didn't know Monica Lewinsky, in case you're  
18 just curious.

19 Q Okay. How did you like that position?

20 A That was probably one of the best experiences in  
21 my life. I mean, to see politics from behind the scenes,  
22 it's much different than you would assume it to be. Just  
23 like any other office building I've been in in my life.

24 Q Okay. All right. Let me ask you this. Have  
25 you, yourself, ever been personally threatened or in fear

1 of your own personal safety?

2 A No, not that I can think of.

3 Q Anyone close to you that you can think of?

4 A Not that I can think of, no.

5 Q Were you aware of any of the parties on that  
6 witness list in the back?

7 A No. I mean, the only time anyone in my family  
8 or anyone I know has even been in any kind of danger, my  
9 brother was a captain in the army and spent time in Iraq  
10 so, I mean that's, spent nine months there, that's the  
11 only time anyone in our family has ever been in a position  
12 of danger.

13 Q Thank you, sir.

14 MR. BENSON: Your Honor, we will accept Mr.  
15 Gerling.

16 THE COURT: Okay. Mr. Furnstahl.

17 MR. FURNSTAHL: Judge, can I look at your  
18 copy? Part of mine didn't copy.

19 THE COURT: Go ahead and approach.

20 MR. BENSON: What's the Million Dollar  
21 Round Table?

22 MR. GERLING: The Million Dollar Round  
23 Table? It's the top one percent of all financial  
24 planners in the country.

25 MR. BENSON: All right.

1 BY MR. FURNSTAHL:

2 Q Thank you. How long have you been doing that?

3 A I'm in my sixth year now.

4 Q I want to ask you about your experience in the  
5 White House.

6 A Sure.

7 Q You said that politics behind the scenes is much  
8 different?

9 A Yeah.

10 Q Tell me about that.

11 A Well, you know, I think kind of going into it  
12 being just a wide-eyed kid from Minnesota, you know,  
13 thinking I can't believe I'm actually working in the White  
14 House, I assumed to be very, very formal. And of course  
15 the security obviously is very formal but, you know, the  
16 most interesting place to meet people is in the men's room  
17 and, you know, which seems really odd. That's where you  
18 ran into everybody so, you know, that was, it was just a  
19 wonderful experience to see, you know, how, you know, you  
20 just see the president on TV and you see those people on  
21 TV all the time and then to actually see them in person  
22 and to see that, you know, the scheduling required and  
23 just to, you know, a visit from the president to go have  
24 dinner down the street is just unbelievable and it was a  
25 lot of fun just to see how it all worked behind the

1 scenes. I think it was just different because I assumed  
2 that everyone would be very stand-offish, not real  
3 friendly, and it wasn't like that at all. People were  
4 very outgoing, especially to interns. Very nice, fun to  
5 talk to. It just was an overall fantastic experience.

6 Q How did you get that job?

7 A You know, I think it's one of those things it  
8 just kind of fell in my lap. I had a buddy of mine in  
9 college that was going to do a semester in D.C. and we  
10 were registering for classes and I asked him what classes  
11 he was taking and he said well I think I'm going to do  
12 this D.C. semester and I was looking at the list of  
13 classes and thought hey, that looks good, I'll try that.  
14 So I decided to do the D.C. semester, and then the  
15 organization that puts it all together sent me a list of  
16 potential places to be an intern and one of them was the  
17 White House and I just kind of thought, you know, okay  
18 this sounds cool, I'll apply there. I didn't think I had  
19 any opportunity to get the position and I ended up getting  
20 it so I kind of almost stumbled in it really more than I  
21 planned for it.

22 Q So you didn't have any like party backing, or?

23 A I had no political -- I still to this day have  
24 no political contacts at all so I think I just got to be  
25 lucky. I think they needed a body and I was that guy, you

1 know.

2 Q How long were you there?

3 A I was there about five months, from January of  
4 1999 until spring of '99.

5 Q Okay. Your father has a lawsuit. Anything  
6 about that that causes you to have feelings about lawyers  
7 such that you are not going to be fair?

8 A Not at all. I have a lot of clients that are,  
9 you know, that have been in similar situations and my dad,  
10 it was a contract, a contractual dispute between a former  
11 person that worked for him and some commission that was  
12 paid that was never told about to my dad and so that was  
13 all settled out I think, I guess it was probably about a  
14 year ago.

15 Q Okay. You were asked a question about whether  
16 or not there were any areas in Minneapolis that you would  
17 prefer not to go and you said north Minneapolis after  
18 dark.

19 A Yeah. You know, I kind of hesitate to say that  
20 but I'm trying to be honest to the best of my ability, you  
21 know. I don't know that I would want to find myself down  
22 in those parts of town after dark. I mean I go there, you  
23 know, for different items during the daytime and my fiance  
24 volunteered at a child care center up on Penn and Plymouth  
25 and so, you know, I've been up there. But again just

1 looking out for my own welfare I just kind of thought  
2 that's not the kind of place I want to spend a lot of  
3 time.

4 Q If you saw any violent crime being committed,  
5 what would you do?

6 A I think that's a tough question to answer. The  
7 truth of the answer is I don't know what I would do. I  
8 consider myself to, you know, if I saw that there was  
9 somebody in danger that I actually felt like I could help  
10 I certainly would do that, but if I also felt I was  
11 putting myself at risk or, you know, members of my family  
12 I honestly don't know what I would do. I think that's the  
13 kind of question I think I can only answer if it actually  
14 happened to me.

15 Q Sure. In terms of contacting the police, would  
16 you contact the police?

17 A Absolutely. Yeah. That I would do without a  
18 doubt.

19 Q Do you think there may be a portion of the  
20 people that live in north Minneapolis that doesn't share  
21 that view?

22 A I would definitely agree with that statement.

23 Q Do you think that maybe makes investigations a  
24 little bit tougher?

25 A Absolutely, yeah.



1           Q     Tell me a little bit about your family, your  
2 siblings.

3           A     Sure.

4           Q     You have one brother that --

5           A     Yeah, I have a twin brother. He went to West  
6 Point and was a captain in the army until just this past  
7 May. Moved back, he just got married last summer, moved  
8 back here and lives in Waconia now and he works at an  
9 investment banking firm, Green, Holcomb and Fisher  
10 downtown here. We get along well. He's a great guy.  
11 He's the kind of guy I always thought that, you know, if  
12 he had a son that's who he would want to be like. I mean,  
13 to go through West Point and do all that stuff and win a  
14 bronze star when he was over in Iraq.

15          Q     Really. Did he get hurt at all?

16          A     Fortunately he did not. He came home completely  
17 unscathed.

18          Q     Okay. Doesn't sound to me like anything about  
19 being on a jury in a first degree murder case is  
20 intimidating to you?

21          A     I consider myself maybe to be, to be okay with  
22 that. I don't get intimidated by too much. I mean, you  
23 know, like I said I've sat down and organized million  
24 dollar transactions with clients and I don't think I would  
25 be intimidated at all, no.

1           Q     And you will be able to follow the judge's  
2 instructions on the law?

3           A     Absolutely.

4           Q     Even if perchance you might disagree with it or  
5 you heard a different --

6           A     Certainly.

7           Q     Just, for example, you know, you know the State  
8 has the burden of proof beyond a reasonable doubt?

9           A     Right.

10          Q     You've heard the phrase "proof beyond a  
11 reasonable doubt" before you came in here.

12          A     I have. I had a couple of law classes in  
13 college, but business law, so I mean I'm sort of familiar  
14 with it.

15          Q     And everybody who's watched TV has heard proof  
16 beyond a reasonable doubt.

17          A     Yup.

18          Q     If you have ever heard a definition of proof  
19 beyond a reasonable doubt or if you have started to  
20 conceptualize what that must mean, and understand that  
21 Judge Blaeser will give you the definition.

22          A     Okay.

23          Q     If that differs from what Judge Blaeser gives  
24 you, can you set that aside and use his definition?

25          A     Certainly. Like I said, I would not take this

1 situation lightly at all.

2 Q Okay. And we ask you to base your decision only  
3 on the evidence.

4 A Um-hum.

5 Q It's natural to recognize that your decision is  
6 going to affect somebody.

7 A Um-hum.

8 Q But you've got to set that aside.

9 A Yup.

10 Q Will you be able to do that?

11 A I don't think I would have any trouble with that  
12 at all.

13 Q All right. Just generally, what's your opinion  
14 about police officers?

15 A You know, luckily in my life I haven't had too  
16 many encounters with police officers. Couple of speeding  
17 tickets I got in college, but I would say overall, you  
18 know, at least the police officers that I see around my  
19 neck of the woods I always kind of feel once in awhile,  
20 you know, I'm in a hurry to get somewhere and I drive  
21 around a corner and there he is sitting right there, but  
22 luckily I haven't gotten into that situation too  
23 frequently. But I would say my overall situation is that  
24 police officers, especially in inner city areas of  
25 Minneapolis have got their hands full and I respect the

1 things that they do, so especially in the inner city.

2 Q All right. Now, you don't know any of the  
3 witnesses here, right?

4 A No, I do not.

5 Q One of the jobs we are going to ask you to do is  
6 there are two judges, a judge of the facts and a judge of  
7 the law. One of the jobs we ask the judges of the facts  
8 or the jurors to do is judge the credibility and  
9 believability of the individual witnesses. Given the fact  
10 that this is a situation with strangers judging the  
11 credibility of strangers, can you appreciate your own  
12 common sense might be the best tool that you have?

13 A Definitely.

14 Q Are you all right with relying on your common  
15 sense?

16 A Yeah. Like I said, I mean I think it's  
17 something that I could pretty easily do and it's something  
18 that I do, you know, I meet strangers everyday and new  
19 clients and things like that and so I'm used to  
20 interacting and being face to face with people I have  
21 never met before.

22 Q So you recognize that just because people walk  
23 in here, raise their right hand and swear before god to  
24 tell the truth, that's no guaranty?

25 A Yeah. I completely recognize that.

1           Q     All right. And in a situation like this, you  
2 know, it might be important through cross-examination or  
3 other means to point out the truth when someone is a  
4 little bit less than honest. Do you agree with that?

5           A     I agree.

6           Q     Are you okay with that?

7           A     Positively okay.

8           Q     You are confident that you can be a fair juror  
9 to both sides?

10          A     I very much think so, yup.

11          Q     If I don't prove it, the verdict is not guilty?

12          A     Right.

13          Q     And if I do prove it, can you convict on a  
14 charge of first degree murder?

15          A     Definitely.

16          Q     Thank you, sir.

17                   MR. FURNSTAHL: Accept Mr. Gerling, Your  
18 Honor.

19                   THE COURT: Mr. Gerling, you will be seated  
20 on this jury.

21                   MR. GERLING: Okay.

22                   THE COURT: I'm going to excuse you today  
23 and you can come back Monday morning shortly before  
24 nine o'clock to this courtroom and remain in the hall  
25 until the clerk comes out to get you.

1 MR. GERLING: Very well. Sounds good.

2 THE COURT: We are going to take our  
3 recess.

4 (Mr. Gerling exits. Recess.)

5 THE COURT: Any questions on Mr. Oelberg?

6 MR. BENSON: No, Your Honor.

7 MR. FURNSTAHL: No, Judge.

8 THE COURT: Okay.

9 (Mr. Oelberg is sworn.)

10 THE COURT: Go ahead and have a chair. You  
11 pronounce it Oelberg?

12 MR. OELBERG: Yes.

13 THE COURT: Okay. Mr. Oelberg, have you  
14 had a chance to think about your answers on this  
15 questionnaire overnight, and is there anything you  
16 would like to add or change on any of your answers?

17 MR. OELBERG: No. I have thought about  
18 them and basically keep what I have said.

19 THE COURT: Okay. Go ahead, Mr. Benson.

20 MR. BENSON: Thank you, Your Honor.

21 BY MR. BENSON:

22 Q Good morning.

23 A Good morning.

24 Q Sir, you indicated that you wanted to be a juror  
25 on this case?

1           A     Yes. I remember thinking about that last night  
2 and --

3           Q     You kind of crossed no.

4           A     I crossed no out and I've never been on jury  
5 duty before and wanted to do my civil thing so I checked  
6 yes.

7           Q     Okay. Now, as you've had time to reflect  
8 overnight, do you still want to be a juror on this case?

9           A     Yes.

10          Q .   Why is that?

11          A     I feel like I'm a fair person and I would like  
12 to do my duty.

13          Q     Okay. And this is a first degree murder case,  
14 obviously. What are your thoughts about that?

15          A     Well, it's a very serious crime and I think it's  
16 sad that young people are accused of such serious crimes,  
17 and I just recently became a father and I think it's  
18 awful. Awful crime.

19          Q     Okay. And what's your impression of, well, it's  
20 going to be an emotional case, I think number one, given  
21 the age of Marvin Haynes, another given the fact that  
22 someone is dead, also another because of the victim's  
23 family, and there's going to be testimony in this trial,  
24 some of it will be emotional. How do you propose to  
25 compartmentalize that emotional aspect of this case and

1 still be able to focus on the evidence to be a fair and  
2 impartial and objective juror?

3 A I'm not sure I understand your question. I  
4 just --

5 Q That's fine. Do you agree that a murder trial  
6 can be emotional?

7 A Yes. I agree.

8 Q For what you said earlier about, you know, a  
9 young person being charged with first degree murder.

10 A Um-hum.

11 Q Do you agree that can be emotional because of  
12 the victim's family, you know, as far as what the, there's  
13 going to be an impact on somebody with the verdict?

14 A Yes, I agree.

15 Q Okay. That can be an emotional thing as well?

16 A Yes.

17 Q As a juror when you come in here we expect most  
18 jurors -- we expect the jurors to have these emotions  
19 because they are human beings, but you are going to be  
20 asked to set those things aside as much as possible in  
21 order to reach a decision based on the facts in the case.

22 A The facts in the case, yes.

23 Q Because when emotions take over then sometimes  
24 you don't get the decision that the evidence warrants?

25 A I agree.



1           Q     So do you think you would have any problem in  
2     setting aside your emotional --

3           A     Absolutely not.

4           Q     You indicated, or there's no indication that you  
5     had been the victim yourself of, you or anyone close to  
6     you being the victim of like violence or a violent  
7     situation?

8           A     Correct, we have not.

9           Q     And have you talked to anybody that's gone  
10    through like either have their house broken into or robbed  
11    or anything like that?

12          A     I have talked to one lady at work that has had  
13    her house broke into. Nothing was taken, it was resolved.  
14    Apparently the house alarm scared off the burglar and  
15    that's about it.

16          Q     Okay. Thank you. All right. And is there  
17    anything about that knowledge that's going to affect the  
18    way you view evidence in this case?

19          A     No.

20          Q     What are your impressions of police officers?

21          A     Well, the experiences I've had, you know, I've  
22    had a few speeding tickets, I've had no issues with  
23    police. I've had, while doing construction on my house I  
24    had a phone wire set a trigger, they came out, asked me  
25    some questions, very friendly. I'm impressed with the

1 professionalism from what I've seen.

2 Q Okay. And would you agree or disagree that  
3 police officers, like any other profession, some are  
4 better at their jobs than others?

5 A I would agree with that.

6 Q Do you agree that a police officer can make a  
7 mistake like anyone else?

8 A I agree.

9 Q And when a police officer comes in and testifies  
10 in this case, there will be police officers testifying,  
11 also be civilian witnesses testifying, can you hold police  
12 officers to the same standards as other individuals?

13 A Absolutely.

14 Q Okay. You indicated that you heard about this  
15 incident on the news?

16 A Correct.

17 Q All right. Since you've had time overnight, did  
18 any of the other details come back to you?

19 A None. I could not think of any details  
20 whatsoever. Other than the place of business.

21 Q Okay. Do you feel up to making a decision in a  
22 first degree murder case?

23 A Yes, I do.

24 Q Any concerns about working with 11 other people  
25 that you don't know in order to reach a decision?

1           A     None. No concerns.

2           Q     As you sit here right now and you look at Marvin  
3 Haynes, do you see an innocent person?

4           A     I couldn't say.

5           Q     Okay. Is that because you haven't seen the  
6 evidence yet?

7           A     That's correct.

8           Q     Okay. Let me ask you this. When the judge  
9 instructed you at the beginning of the case that you are  
10 to presume Marvin innocent of this charge, can you do  
11 that?

12          A     Absolutely.

13          Q     Okay. And maybe a better way to ask the  
14 question is have you made any judgments about Marvin or  
15 the state of the evidence at this time?

16          A     None.

17          Q     Do you think you can give him a fair trial?

18          A     Yes.

19          Q     All right. Is there anything else that you  
20 think I should know about you in reaching a decision of  
21 whether you would be a good juror on this case?

22          A     I can't think of anything.

23          Q     What's the most important decision that you have  
24 had to make or the toughest decision you've had to make in  
25 your life?

1           A     I recently adopted two kids from Russia and we  
2     -- the toughest decision was they did have some issues and  
3     deciding to go ahead and bring them back anyway was very  
4     tough and it was probably one of the hardest things I've  
5     ever done, so.

6           Q     And when did you bring them back? How long ago?

7           A     In June.

8           Q     All right. Thank you, sir.

9                     MR. BENSON: Your Honor, we'll accept Mr.  
10           Oelberg.

11                    THE COURT: Okay. Go ahead, Mr. Furnstahl.

12                    MR. FURNSTAHL: Thank you.

13     BY MR. FURNSTAHL:

14           Q     Good morning, sir.

15           A     Good morning.

16           Q     You had to sue a former owner of your house.

17     How did that go?

18           A     Um, we won the case. We were unable to collect  
19     any fees.

20           Q     Okay. Frustrating?

21           A     It was a little frustrating but in the long run  
22     it was, didn't matter, the repairs were done, moved  
23     forward.

24           Q     Okay. Nothing doesn't sound like in this case  
25     about that experience is going to affect your ability to

1 be fair to either side because of feelings you have about  
2 the justice system?

3 A Absolutely not.

4 Q The speeding ticket that you got, anything about  
5 that going to affect your ability to be fair?

6 A No.

7 Q And speaking of questions about the defendant's  
8 age, you indicated a certain amount of it's sad that  
9 people that young have to be accused and so forth. Do you  
10 believe that people at his age can commit serious crimes  
11 like this?

12 A Oh, I believe they can.

13 Q Do you think they should be held accountable  
14 even if they are 16 and a half years old?

15 A Absolutely.

16 Q His age is not going to be a factor; you are not  
17 going to cut him any breaks or impose a higher burden on  
18 me just because he's 16 or 17 and not older, correct?

19 A No, sir.

20 Q All right. In your questionnaire you indicated  
21 that your wife is a scientist?

22 A Yes.

23 Q Tell me about her work.

24 A I don't know much about it. She's in medical  
25 technology, she just took a new job with this new title.

1 I'm not sure what in science she's going to be performing  
2 at. She just started on Monday but she's, basically she  
3 was a manager for medical production, medical device kits.

4 Q How did you meet your wife?

5 A I met her at my mom's place of work. It was a  
6 hospital, and I just stopped to visit and we all went out  
7 after work and the rest is history.

8 Q I see. Great. Do you have any brothers and  
9 sisters?

10 A I have one younger brother and one older sister.

11 Q Tell me what they do.

12 A My sister works for -- I'm not sure who she  
13 works for. It's a handicap village type of work. My  
14 brother works for Winnebago Industries doing cabinet  
15 installation.

16 Q Is your wife from Iowa as well?

17 A Yes, she is.

18 Q What brought you two up here to Minnesota?

19 A Lack of job opportunity for myself down there,  
20 and likewise she had many opportunities offered to her up  
21 here as well.

22 Q Do you know anybody up here?

23 A I have an aunt and uncle up here.

24 Q Okay. Do you know anybody who has been on a  
25 jury before?

1 A No, I do not.

2 Q All right. Anything about the prospect of  
3 making a decision in a murder case that's intimidating or  
4 overwhelming to you?

5 A No.

6 Q You recognize your decision is going to affect  
7 somebody?

8 A Yes.

9 Q But you have to set that aside and base your  
10 decision only on the evidence. Can you do that?

11 A Yes.

12 Q How long have you been in the Minnesota area?

13 A I've been up in Minnesota since 1989.

14 Q Okay. Familiar with the near north side of  
15 Minneapolis?

16 A Yeah. Somewhat.

17 Q Any impression about the neighborhood around  
18 there?

19 A No impression.

20 Q Okay.

21 A I've heard things. I've not ever --

22 Q Never experienced?

23 A Never experienced them.

24 Q What kinds of things have you heard?

25 A It's a tough neighborhood.

1 Q Okay. Socioeconomic is --

2 A Correct. I've heard that numerous times on the  
3 radio, you know. I don't know any specific, I don't  
4 recall any specific --

5 Q Sure.

6 A -- incidents, but.

7 Q Heard of crimes being committed in that area?

8 A Yes.

9 Q Do you have any -- if you saw a violent crime  
10 being committed, other than being concerned about your own  
11 safety, what would you do?

12 A Well, I would try to remove myself from the  
13 situation and somehow contact for help.

14 Q All right. Why would you contact help if the  
15 situation didn't involve you? When you say you contact  
16 help, what do you mean by help? Who would you contact?

17 A I would try to contact the police.

18 Q Why would you do that if it didn't --

19 A I don't think that I would be able to help out  
20 in a situation.

21 Q Sure. Why would you, if the situation did not  
22 involve you or your family, why would you bother calling  
23 the police?

24 A Well, I believe that if somebody really needs  
25 help, you know, I would do everything I could to make sure



1       that they got the help they needed. That would be the  
2       civic, responsible thing to do, I believe.

3           Q       Do you think that maybe some of the areas of  
4       north Minneapolis some people might not share that kind of  
5       attitude?

6           A       I believe that might be the case.

7           Q       Do you think it makes it easier or tougher for  
8       cops in that area?

9           A       I'm sure probably pretty tough.

10          Q       Okay. Now in here, we're going to -- as we  
11       indicated you have to base your decision solely and  
12       completely on the evidence. We have two judges in here,  
13       the judge of the facts and the judge of the law. Will you  
14       be able to follow all of the judge's instructions on the  
15       law?

16          A       Yes, I will.

17          Q       Even perchance you might disagree or if you  
18       heard a definition you'll follow his definition?

19          A       Yes, I will.

20          Q       And you don't recognize any of the potential  
21       witnesses, correct?

22          A       Correct.

23          Q       So one of the jobs we ask you to do as judges of  
24       the facts is to decide the credibility or believability of  
25       the individual witnesses. You can appreciate that?

1           A     Yes.

2           Q     Do you think it's easier or tougher to judge the  
3 believability of someone that's a stranger to you?

4           A     I believe it's easier.

5           Q     Why do you say that?

6           A     Well, you know, I just if, you know, somebody  
7 you just, you tend not to think of things they could or  
8 could not do, whereas you don't know somebody for me it's  
9 easier to listen to everything, every fact and come up  
10 with an idea of what happened.

11          Q     Okay. But if you are say, for example, talking  
12 to one of your siblings and because you have known them  
13 throughout your life and they are, you know, maybe pulling  
14 your leg a little bit, you can probably tell that they are  
15 doing that because you have the background with them?

16          A     Yes.

17          Q     But with a stranger you might not know where  
18 they are really coming from. Can you appreciate that?

19          A     Yes.

20          Q     Can you appreciate then how in a forum like this  
21 where you have strangers judging the credibility of  
22 strangers your own common sense might be the best tool you  
23 are going to have in making the decision we are going to  
24 ask to you make?

25          A     Yes.

1           Q     How do you feel about relying on common sense in  
2 a murder case?

3           A     I feel like it's a burden, but one that I'm  
4 capable of doing.

5           Q     You'll see if you sit here, obviously it's a  
6 first degree murder, we have strangers judging strangers  
7 and we don't want robots making the decision. We want 12  
8 human beings. We want you to take all the tools that have  
9 made you who you are when you go back in the jury room and  
10 decide the facts of this case, okay? One of the things  
11 you have is you used throughout your personal and  
12 professional life is your own common sense. Will you use  
13 that tool in evaluating the evidence in this case?

14          A     Yes.

15          Q     Do you recognize just because people walk in  
16 here and raise their right hand and swear before god to  
17 tell the truth, there's no guarantee -- do you think that  
18 guarantees they are going to tell you the truth?

19          A     Not necessarily.

20          Q     Does that surprise you?

21          A     No.

22          Q     How do you feel about potentially being asked to  
23 decide if someone is lying on the stand in a murder case?

24          A     Could you repeat that question?

25          Q     How do you feel about the possibility of being

1 asked to determine if someone is lying on the stand in a  
2 murder case?

3 A I feel like I could determine that.

4 Q Okay. I can't recall from your questionnaire,  
5 do you have any experience with guns?

6 A No, I do not.

7 Q Do you know what a revolver is?

8 A Yes.

9 Q Ever fired one?

10 A No.

11 Q All right. Sounds to me like you are confident  
12 you can be fair to both sides?

13 A I can.

14 Q If I don't prove it, it's not guilty, right?

15 A Correct.

16 Q But if I do prove it, can you convict on a  
17 charge of first degree murder?

18 A I can.

19 Q Thank you.

20 MR. FURNSTAHL: We'll accept Mr. Oelberg,  
21 Your Honor.

22 THE COURT: Okay. Mr. Oelberg, you'll be  
23 seated on this jury. I'm going to excuse you right  
24 now and you can come back at about five to nine on  
25 Monday morning to this courtroom and remain outside

1 in the hallway until the clerk comes to get you.

2 MR. OELBERG: Okay.

3 THE COURT: You are excused.

4 (Mr. Oelberg exits.)

5 MR. BENSON: Can you ask about the work  
6 question?

7 THE COURT: Sure.

8 MR. BENSON: Number 89.

9 (Ms. Sawalich is sworn.)

10 THE COURT: Go ahead and have a chair.  
11 Pronounce your last name for me, please.

12 MS. SAWALICH: Sawalich.

13 THE COURT: Ms. Sawalich, we have your  
14 questionnaire you filled out. Is there anything that  
15 you've thought of that you want to add or change to  
16 your answers?

17 MS. SAWALICH: No, I don't think so.

18 THE COURT: You work in audiology?

19 MS. SAWALICH: Yes. Well, I'm a  
20 stay-at-home mom now, but my field prior to this job  
21 that I have was audiology.

22 THE COURT: Okay. Now, you said both of  
23 your babysitters start school next Thursday so you  
24 would have no child care and your husband travels for  
25 work and other family members work, too.

1 MS. SAWALICH: Yeah. I'm kind of in a bind  
2 as far as that goes. This was a stretch this week  
3 and next week, but.

4 THE COURT: This week, have you been here  
5 all week?

6 MS. SAWALICH: No. I came in yesterday.

7 THE COURT: Okay. So this is just your  
8 second day?

9 MS. SAWALICH: Yes.

10 THE COURT: Now, we anticipate that this  
11 trial, if you are seated as a juror, will start on  
12 Monday and it will be done by the end of the week,  
13 then it will be up to the jury as to how long it  
14 takes them to reach a decision on the case. During  
15 the time that the jury deliberates, then you will not  
16 be allowed to go home.

17 MS. SAWALICH: Oh, that's huge for me  
18 because I'm my child's primary caregiver, you know,  
19 and not the babysitter, until five, 5:30 everyday.  
20 My husband travels, I'm sure you've heard it all  
21 before but that's my life is taking care of her.

22 THE COURT: So your husband, like what's  
23 his schedule next week?

24 MS. SAWALICH: He is going out of town I  
25 think Monday night and he's coming back Wednesday

1 night because I told him because I don't have a  
2 babysitter on Thursday and Friday and I said you have  
3 to take off work because I have no other choice.

4 THE COURT: If this case was done on  
5 Thursday or Friday your husband would be there?

6 MS. SAWALICH: Yes.

7 THE COURT: Okay. And then obviously  
8 Monday is, after that is a holiday.

9 MS. SAWALICH: Yes.

10 THE COURT: And Tuesday would be probably  
11 his first day of work after that?

12 MS. SAWALICH: Yes.

13 THE COURT: Okay. So if this trial  
14 finished up by Thursday or Friday of next week --

15 MS. SAWALICH: I should be fine.

16 THE COURT: Okay. All right. The  
17 attorneys probably have some additional questions for  
18 you on that and Mr. Benson is going to be first.

19 MR. BENSON: Actually I want to excuse Ms.  
20 Sawalich. Thank you.

21 THE COURT: All right. You are excused  
22 from this jury. I want you to check back in with the  
23 jury office downstairs.

24 MS. SAWALICH: Thank you.

25 THE COURT: Thank you very much.

1 (Ms. Sawalich exits.)

2 THE COURT: I have that as 15. Yes.

3 MR. FURNSTAHL: Could you ask about  
4 question 76, Judge?

5 THE COURT: 76. I had a note here, this is  
6 the person that called. She forgot to fill out the  
7 last page which means she didn't look at the  
8 witnesses. I'm going to ask her about that first,  
9 okay?

10 MR. FURNSTAHL: Okay.

11 THE COURT: All right.

12 (Ms. Hendrickson enters.)

13 THE COURT: Ms. Hendrickson?

14 MS. HENDRICKSON: Yes.

15 THE COURT: I have a note here that you  
16 indicated you forgot to fill out the last page.

17 MS. HENDRICKSON: Yes, I did, yes.

18 THE COURT: By that you meant looking at  
19 the list of potential witnesses, right?

20 MS. HENDRICKSON: Yes.

21 THE COURT: All right. I'm going to hand  
22 you this list. You go ahead and take your time and  
23 look at all those names.

24 MS. HENDRICKSON: Okay. Your Honor, should  
25 I mention at this time that I think my husband may



1 have worked with a member of your family at one  
2 point, was supervised by her? I don't know if that  
3 makes any difference.

4 THE COURT: You should. Your husband  
5 worked with whom?

6 MS. HENDRICKSON: Kay Blaeser.

7 THE COURT: Okay.

8 MS. HENDRICKSON: Was supervised by her for  
9 about two years.

10 THE COURT: What company was that with?

11 MS. HENDRICKSON: Best Buy. He was an  
12 accountant.

13 THE COURT: Okay. Does your husband still  
14 work for Best Buy?

15 MS. HENDRICKSON: Yes, he does.

16 THE COURT: Okay. While you are looking at  
17 that list I'll see counsel up here for a minute.

18 (Off-the record discussion at  
19 the bench out of hearing of Ms. Hendrickson.)

20 MS. HENDRICKSON: I don't know any of the  
21 names on this list.

22 THE COURT: All right. Thank you very  
23 much.

24 MR. FURNSTAHL: I didn't hear the answer,  
25 Judge.

1                   THE COURT: She does not know any of the  
2 witnesses on this list.

3                   Is that correct, Ms. Hendrickson?

4                   MS. HENDRICKSON: That is correct.

5                   THE COURT: Now, you work for C.H.  
6 Robinson, right?

7                   MS. HENDRICKSON: Yes.

8                   THE COURT: It took me a second to figure  
9 out what with the potatoes and onions what you did  
10 exactly.

11                  MS. HENDRICKSON: Would you like me to  
12 explain it? It is a bit confusing. I manage all the  
13 inventory and the people that also do inventory  
14 management for potatoes and onions and ethnic foods,  
15 and I also am a committee lead which means I deal  
16 with regional buyers with Walmart, so I hold two  
17 management positions.

18                  THE COURT: I'm going to give you a little  
19 more information about what we anticipate on this  
20 case so you can answer the next question.

21                  We anticipate this case will start on Monday.  
22 If you are selected as a juror you would be asked to  
23 come back on Monday. The case will be done by the  
24 end of the week, end of next week, then it will be up  
25 to the jury to deliberate and make their decision,

1 and obviously we have no time limit on that. It's  
2 how long they feel they need to deliberate. Would  
3 that be an issue for you with regard to your  
4 employment?

5 MS. HENDRICKSON: It would, Your Honor.

6 THE COURT: Tell me why.

7 MS. HENDRICKSON: Well, my boss travels  
8 quite bit and as I hold two management positions I  
9 have to cover when he's gone. He's traveling this  
10 week and the only reason I could be on jury duty is I  
11 have to go to work afterwards and I have to work in  
12 the evenings to cover, and also I deal with the  
13 southeast region for potatoes and we just had a  
14 hurricane hit and we are a bit short staffed  
15 currently in the office as well due to some turnover  
16 and illness.

17 THE COURT: You knew you could defer jury  
18 duty?

19 MS. HENDRICKSON: I did but things came up  
20 like at the last minute so I was in Tampa last week  
21 traveling myself so when I came back it was kind of a  
22 fire storm.

23 THE COURT: So your boss is -- would you  
24 feel like next week if you are on this case you would  
25 have to go and work after jury duty each day?

1 MS. HENDRICKSON: Yes. Um-hum.

2 THE COURT: Could you do that?

3 MS. HENDRICKSON: I could do that. If I  
4 was able to, I mean if it was allowed I could.

5 THE COURT: We would start at nine and be  
6 done by 4:30. Would that allow you enough time to  
7 take care of business, and assume we would also like  
8 you to get some sleep so you can pay attention to the  
9 trial?

10 MS. HENDRICKSON: Yes. I could do that.  
11 And I thought you mentioned yesterday that there's  
12 the possibility we would be sequestered. Is that --

13 THE COURT: We are going to get to that  
14 next.

15 MS. HENDRICKSON: Okay.

16 THE COURT: The time that you would be  
17 sequestered would be over the time after the case is  
18 done when the jury is deliberating, so let's just  
19 take an example. Say you went out, we got done with  
20 the case Thursday night or Friday morning when the  
21 case goes to the jury, from that point forward you  
22 would not be allowed to go home until the decision  
23 was made.

24 MS. HENDRICKSON: That would pose a problem  
25 because next weekend I'm the on-call manager for my

1 office for Labor Day weekend so Saturday I'm supposed  
2 to work and then Monday I'm supposed to work all day  
3 both days.

4 MR. FURNSTAHL: No objection.

5 MR. BENSON: No objection.

6 THE COURT: All right. I'll excuse you,  
7 Ms. Hendrickson, from this jury. I want you to go  
8 back downstairs and check in with the jury office,  
9 okay?

10 MS. HENDRICKSON: Thank you so much, sir.

11 (Ms. Hendrickson exits.)

12 MR. FURNSTAHL: 89.

13 MR. BENSON: Yes. 89.

14 THE COURT: 89. Okay.

15 (Mr. Adams enters.)

16 THE COURT: Go ahead and be seated.

17 Mr. Adams, have you thought about your answers  
18 to the questionnaire which we have in front of us  
19 now?

20 MR. ADAMS: Somewhat, yes.

21 THE COURT: Is there anything that you  
22 thought that you should have written down and you  
23 want to add to your answers or change?

24 MR. ADAMS: Boy, not that -- nothing  
25 material that I can recall right now.

1 THE COURT: I won't hold it against you  
2 that you went to Gustavus. But the attorneys are  
3 going to have some additional questions and I first  
4 want to ask you just to follow up on one thing. I  
5 know your youngest child begins kindergarten, that  
6 would be the week after Labor Day, right?

7 MR. ADAMS: Um, be the 6th, somewhere along  
8 there.

9 THE COURT: Which, Labor Day is the 5th,  
10 holiday.

11 MR. ADAMS: Okay.

12 THE COURT: And then you are trying to  
13 establish a new financial executive position. Can  
14 you explain that to me?

15 MR. ADAMS: Yeah. I'm an accountant, CPA  
16 CFO type and I'm -- and have been doing mergers and  
17 acquisitions and I'm trying to finalize or establish  
18 a position with a company that's going through a  
19 merger and needs to bring in some financial  
20 leadership.

21 THE COURT: When you say establish the  
22 position, you mean you want --

23 MR. ADAMS: Be hired as their CFO, and I  
24 had to change that this morning already and it's a  
25 little, as those situations are, it's a little

1           tenuous. You never want to delay anything like that,  
2           I guess.

3           THE COURT: So you would, if you  
4           established this position you would leave your job as  
5           an investment banker and go to work for this company?

6           MR. ADAMS: Yeah. I'm working as an  
7           independent right now doing that.

8           THE COURT: Okay. Now, let me tell you a  
9           little bit of what the schedule is here and we'll  
10          talk about that a little more. Was yesterday your  
11          first day of jury duty?

12          MR. ADAMS: Um-hum.

13          THE COURT: Did you previously defer it?

14          MR. ADAMS: Um-hum.

15          THE COURT: You did. Will you answer yes  
16          or no as opposed to um-hum?

17          MR. ADAMS: Yes. I'm sorry.

18          THE COURT: Okay. This case will start on  
19          Monday. If you are seated as a juror you would be  
20          asked to come back here on Monday, the case will be  
21          done by the end of week, then it would be up to the  
22          jury to deliberate and make a decision and we have no  
23          control over how long that takes. Okay? Now, how  
24          would that work with regard to your kind of fluid  
25          situation in your employment right now?

1 MR. ADAMS: It's going to be, you know,  
2 it's going to at least delay and, you know, my  
3 concern would cause some, you know, decision making  
4 on their part. I would hate to have them go in a  
5 different direction and I'm concerned about that.

6 THE COURT: So you are really not on firm  
7 footing yet with regard to this new position?

8 MR. ADAMS: Right.

9 THE COURT: What exactly is going on that  
10 will make that change for you there, the management  
11 changing?

12 MR. ADAMS: Well, there's two companies  
13 that are combining.

14 THE COURT: Are you part of an ongoing  
15 process of negotiation that's going on?

16 MR. ADAMS: Well, not part of the merger.  
17 I was introduced to them as they would say after the  
18 fact and maybe wish it had been earlier, but.

19 THE COURT: So let me ask. If you are not  
20 there next week or if you have to go there after  
21 4:30 p.m., do you think there's a chance you are not  
22 going to get your job?

23 MR. ADAMS: I really don't know. I would  
24 think that they would be flexible but I don't know.  
25 They are moving it with what they need to get done.



1 THE COURT: Do you anticipate these  
2 companies are going to be talking about merger for  
3 some weeks to come yet?

4 MR. ADAMS: They are in the midst of doing  
5 it. It's in the integration stage right now.

6 THE COURT: So if you are requested to  
7 serve on this jury do you think you can set that  
8 aside, you know, and not worry, obviously you might  
9 worry about it, can you focus on the evidence you  
10 hear in this case and give your full attention to  
11 this case? It's obviously a very important case for  
12 both sides.

13 MR. ADAMS: Absolutely. I will obviously  
14 be anxious about my personal situation.

15 THE COURT: Counsel.

16 MR. FURNSTAHL: Do you want us to approach?

17 THE COURT: Yeah.

18 (Off-the record discussion at  
19 the bench out of hearing of Mr. Adams.)

20 THE COURT: Mr. Adams, let me ask you one  
21 additional question. You know that even if I release  
22 you from this jury you are going to be here next  
23 week, right?

24 MR. ADAMS: I learned that yesterday  
25 afternoon.

1 THE COURT: And you've already deferred  
2 jury duty once so you can't do it again.

3 MR. ADAMS: Correct.

4 THE COURT: All right. Mr. Benson is going  
5 to have some questions for you first before Mr.  
6 Furnstahl.

7 Mr. Benson, you may proceed.

8 MR. BENSON: Thank you.

9 BY MR. BENSON:

10 Q Good morning.

11 A Good morning.

12 Q Mr. Adams, you are, this is your first jury  
13 service?

14 A Correct.

15 Q And what was your thought when you found out  
16 this was a murder trial?

17 A Um, not excitement. You know, I guess I came in  
18 kind of open, not having any idea what would be brought up  
19 there and so a little bit of shock, I guess.

20 Q Okay. Was there any sense of being overwhelmed  
21 or intimidated by being on a first degree murder?

22 A Certainly.

23 Q Okay. Could you elaborate on what the source of  
24 that would be?

25 A Well, you know, again I think it's a, if I were

1 to say what are the most serious things that you can be  
2 placed on a jury for that's got to be toward the top of  
3 the list.

4 Q And I think there's some jurors that might find  
5 it too overwhelming in the sense of either too emotional  
6 or given the, or that the potential for impact on somebody  
7 is too great to make a decision. Taking in mind that this  
8 is an emotional case, that there's going to be an impact  
9 on somebody with a decision that's made, do you feel that  
10 you could focus on the evidence in this case and make a  
11 decision?

12 A I guess I already, in this situation there  
13 already has been the impact. My logical side says  
14 probably yes. My emotional side, you know, be hard to  
15 without having been through the situation. I don't know.

16 Q Okay. Let me ask you this. You are going to  
17 hear, expect to hear some emotional testimony from the  
18 witness stand, all right? And everyone in the courtroom  
19 will be affected emotionally by that testimony because we  
20 are all human beings. The key though as a juror is -- you  
21 are going to be instructed to this as well -- is to set  
22 aside like that emotion or at least compartmentalize it  
23 and put it somewhere so that you can focus on the evidence  
24 in the case.

25 A Yes.

1 Q Can you do that?

2 A I would believe so.

3 Q Okay. Is there anything about potentially being  
4 on a first degree murder case that you think would impair  
5 your ability to just be able to focus on the facts of the  
6 case?

7 A That would impair my ability. Um, I guess I  
8 don't have an answer, anything in particular.

9 Q Okay. In your questionnaire you indicated that  
10 your sister was a litigator and she worked at Rider  
11 Bennett for awhile?

12 A Correct.

13 Q Okay. And I take it from the way it's phrased  
14 that she no longer is at Rider Bennett?

15 A Correct.

16 Q What is she doing now?

17 A She's retired. Stay at home mother.

18 Q Okay. How long was she at Rider Bennett?

19 A Five, six, seven years maybe. Something like  
20 that.

21 Q How long has she been an attorney?

22 A Her career was with, I guess she clerked at the  
23 state supreme court and then was with Rider Bennett the  
24 entirety of her legal career.

25 Q Did she ever have occasion to do any criminal

1 work?

2 A She was, she would -- let's see. Her client was  
3 the Minneapolis school district and was in charge of  
4 expelling students.

5 Q Did you ever talk to her about the details of  
6 her work and everything?

7 A All the time.

8 Q Talk about the students that they were expelling  
9 or was it --

10 A Well, the purposes and, you know, the kind of  
11 the, you know, call it the war stories or the extreme  
12 stores and such that, the different things she would run  
13 into.

14 Q And Minneapolis public schools I imagine, and  
15 correct me if I'm wrong, that some of the expulsions, they  
16 involved like fights or violence or carrying weapons to  
17 school?

18 A That was the majority, if not all of it.

19 Q Okay. And you also indicated that in response  
20 about high crime areas that there's, that you avoid,  
21 obviously avoid anywhere that is a high crime area which  
22 makes sense, but have you ever been to north Minneapolis?

23 A Um, no, I'm going to be real bad on which areas  
24 are which. I imagine I have been. I don't know the  
25 physical areas but certainly that they are, you know, I'm

1 not very familiar with what would be defined specifically.

2 Q Okay. How about the area of 33rd and Lyndale?

3 A I know where Lyndale is. I'm not sure where  
4 33rd crosses.

5 Q Olson Memorial Parkway, familiar with that?

6 A Sure.

7 Q Highway 55, north side?

8 A Sure.

9 Q And so you have general impressions of that  
10 legal area, would that be the --

11 A Well, somewhat, yeah.

12 Q What are those?

13 A I'm sorry?

14 Q What are those?

15 A What are the -- well, let's see, the north of  
16 Olson Memorial and in the 94 area, I have had friends who  
17 worked in the hospital around there and just, you know,  
18 there's oftentimes situations that you probably are real  
19 familiar with.

20 Q Okay. Have you had occasion yourself to call  
21 911?

22 A No.

23 Q Okay. Have you ever witnessed a crime?

24 A Oh, um, nothing that I can, that rings, you  
25 know, a car accident or, you know, something. But

1 nothing, no, no.

2 Q Okay. All right. Have you felt like in fear of  
3 your personal safety?

4 A Certainly.

5 Q When was that?

6 A Oh, in situations, you know, I've been in other  
7 cities and, you know, in downtown areas at night and, you  
8 know, just maybe it's (inaudible) fear whether warranted  
9 or not but certainly felt uncomfortable and in fearful  
10 situations. Tend to avoid.

11 Q What are your thoughts about police officers in  
12 general?

13 A In general?

14 Q Yes.

15 A Very positive. Admirable.

16 Q Okay. Would you agree that police officers are  
17 human just like everyone else, right?

18 A Sure.

19 Q Okay. And like any other profession some police  
20 officers can make mistakes like other professions, fair to  
21 say?

22 A Individually, probably, yes.

23 Q Individually, yes. All right. And in these --  
24 tell me if you agree with this statement. We discussed a  
25 little bit about the perception of the high crime in like

1 north Minneapolis or in the areas of Minneapolis. Would  
2 you agree that the police are under pressure to solve a  
3 lot of cases, deal with a lot of cases?

4 A I guess mathematically, probably. I don't know  
5 one way or the other, so.

6 Q If a police officer came in here and testified,  
7 would you hold that police officer to the same or a  
8 different standard than a civilian witness? And what I  
9 mean by that is this. Police officers will come in here  
10 and testify, a non-police officer will come in and  
11 testify, how would you weigh their abilities to tell the  
12 truth?

13 A I would probably believe, you know, a police  
14 officer as someone that's explaining the situation as it  
15 is without really having an influence one way or the other  
16 as to results and such. Probably hold at a little bit  
17 higher or a higher expectation and level.

18 Q Okay. The judge will give you an instruction  
19 that there are certain factors you can look at. Some of  
20 that is going to be your common sense and everything else,  
21 but some of it is the age, education, you know,  
22 professional -- I don't know if profession is in there or  
23 not, but age, education, ability to observe, ability to  
24 relate what they are seeing, motives and biases of that  
25 witness. These are things you look at in determining



1       whether the witnesses in telling their story are telling  
2       the truth or not and it has to be applied to all the  
3       witnesses. The mere fact that someone is a police officer  
4       doesn't go into an equation. Do you understand what I  
5       mean? That's going to be an instruction that the Court  
6       gives.

7               So what I'm getting at is, are you a person that  
8       might give a police officer like a leg up in credibility  
9       simply because somebody walks in here and has a uniform on  
10      or, you know, has a badge?

11             A     My initial instinct is yes. I mean, I think  
12      that that's, obviously there would be factors in, you  
13      know, what the testimony is about, what participation it  
14      was but, you know, I guess my initial feeling is the legal  
15      system is, you know, someone that's within the legal  
16      system is -- my experience and belief would be there isn't  
17      a reason that they wouldn't, you know, that there wouldn't  
18      be credibility issues in there.

19             Q     Okay. What are your thoughts, do you think that  
20      a witness in general, a witness can get up on the stand,  
21      swear to tell the truth and lie? Do you think that's  
22      possible?

23             A     Do I think it's possible?

24             Q     Yes. Would that surprise you if somebody, a  
25      witness walks into this courtroom, takes the oath, gets up

1 and lies?

2 A It would surprise me. It's possible but it  
3 would surprise me.

4 Q You can foresee the possibility?

5 A Sure.

6 Q Okay. Now, do you think it's more likely or  
7 less likely that a police officer would get up, without  
8 knowing anything else about that officer except that they  
9 are wearing a badge and uniform, that a police officer can  
10 get up there and lie?

11 A I think it would be less likely.

12 Q All right. Are you open to the possibility that  
13 a police officer could walk into a courtroom, and just  
14 hypothetically set aside -- could walk into a courtroom,  
15 raise their hand, get up and tell the truth and lie to the  
16 Court?

17 A Hypothetically anything could happen, so yes.

18 Q Okay. As you sit here right now, I mean you've  
19 got the work you are concerned about, do you think you can  
20 give both sides a fair trial?

21 A I guess I would look at it that that's your duty  
22 if you are placed. I don't know, not knowing anything  
23 about the situation, um, like I say, you know, it would  
24 be, it would be a stressing situation but I think I would  
25 work hard to make sure I did what you are assigned to

1 do.

2 Q Okay. Let me put it this way. When I say can  
3 you be fair, can you, despite the outside distractions and  
4 everything else, and despite the emotions that, whatever  
5 emotions you may have about being a first time juror in a  
6 first degree murder case, whether you can, you know, give  
7 this case while you are sitting here listening to the  
8 evidence, give this case all of your attention while you  
9 are listening to evidence so that we can get a fair result  
10 in this case? That's what I'm asking.

11 A I have a number of outside, as we all do --

12 Q Of course.

13 A -- that are situations that I'm more stressed  
14 out more than usual about and concerned about and so it's  
15 hard to -- I'm in a period where I'm extremely anxious and  
16 I think that would, certainly have some impact on what I'm  
17 doing but, you know, as to a fair process, you know, I  
18 would believe so, but.

19 Q Okay.

20 MR. BENSON: Your Honor, can we just  
21 approach for a moment?

22 THE COURT: You may.

23 (Off-the record discussion at  
24 the bench out of hearing of Mr. Adams.)

25 THE COURT: Mr. Benson, any more questions?

1 MR. BENSON: No, Your Honor.

2 THE COURT: Okay.

3 MR. BENSON: We'll pass this juror.

4 THE COURT: Mr. Furnstahl.

5 MR. FURNSTAHL: Thank you.

6 BY MR. FURNSTAHL:

7 Q Good morning, sir.

8 A Good morning.

9 Q You mentioned about a sister. Do you have any  
10 other siblings?

11 A I have a younger sister.

12 Q What does she do?

13 A She's in public relations. Um, I'm not exactly  
14 sure which company she's with now. She lives in San  
15 Francisco.

16 Q You mentioned a sister that was a social worker?

17 A My sister-in-law was a social worker.

18 Q Sister-in-law. I'm sorry. Okay. And you  
19 mentioned in your questionnaire that either in this job or  
20 other jobs you've had responsibilities of hiring, firing,  
21 disciplining?

22 A Yes.

23 Q Have you ever had to fire somebody?

24 A Yes.

25 Q How many times have you had to do that?

1           A     Oh, two, maybe three.

2           Q     How well did you like that?

3           A     Didn't really enjoy it.

4           Q     How were you able to do the job if you didn't  
5 enjoy it?

6           A     How was I able to do the job if I didn't enjoy  
7 it? I had to.

8           Q     Okay. Did you set aside those feelings, that  
9 emotional aspect about it and base your decision on the  
10 evidence that you had in front of you?

11          A     Well, the situations were, generally weren't my,  
12 it wasn't my decision or final decision but I was  
13 responsible for it, so.

14          Q     Okay. But I mean in firing someone, it can't be  
15 pleasant because you are taking somebody's job; there is  
16 an emotional aspect?

17          A     Correct.

18          Q     And in order -- but in order to do what's best  
19 for everybody else and for the company and so forth, you  
20 have to set those feelings aside and base your decision on  
21 the person's performance or whatever it is that's causing  
22 a problem. Would you agree?

23          A     Sure.

24          Q     Can you kind of see the parallels here with  
25 these issues?

1           A     Sure.

2           Q     So you are able to, at least you've demonstrated  
3 a couple times in the past, that you are able to do that?

4           A     Well, again, um, I would say the situations that  
5 I've had to do it it wasn't, it wasn't my decision. One  
6 in particular I probably wouldn't have done.

7           Q     Okay.

8           A     But I understand the parallel that you are --

9           Q     Okay. Did you -- you have indicated that you,  
10 one of your hobbies is sports. Did you play sports in  
11 college?

12          A     Just intramurals.

13          Q     And you were asked about organizations that you  
14 or members of your family belong to. I want to ask you  
15 about that. What's MNCPA?

16          A     Minnesota Society of CPAs.

17          Q     Okay. Who's in that? That's you?

18          A     Yes.

19          Q     And how about Families Moving Forward, who is in  
20 that?

21          A     That's something through our church that we've  
22 helped out with and volunteered at. It's helping  
23 homeless, it provides shelter for homeless in our church.

24          Q     I see. Who is in Mother's Against Drunk  
25 Driving?

1           A     That's one that, I believe the questions were  
2     donations and supporting.

3           Q     Yes. Okay. Will you be able to follow the  
4     judge's instructions on the law in this case?

5           A     Um, I would assume so.

6           Q     Okay. For example, you've heard the phrase  
7     proof beyond a reasonable doubt before?

8           A     Sure.

9           Q     That's a definition that Judge Blaeser will give  
10    you. If you've heard a definition someplace else or if  
11    you've started to conceptualize your own definition, can  
12    you set that aside and use Judge Blaeser's definition?

13          A     I would think so.

14          Q     Appreciate how important that is?

15          A     Yes.

16          Q     If we ask you to be on this jury and you are  
17    back there deliberating, we don't want you changing the  
18    law on us because then the process might not work the way  
19    it's supposed to. Can you appreciate that?

20          A     I can appreciate that.

21          Q     And one of the jobs that you might have as a  
22    juror is to judge the credibility or believability of  
23    individual witnesses. Can you appreciate how in  
24    performing that responsibility your own common sense might  
25    be the best tool that you have in making the decisions

1       that you have to make?

2           A       In judging the credibility?

3           Q       Right.

4           A       Um, I think if you are judging credibility  
5       that's about all you would have to rely upon.

6           Q       The reason I bring this up is because a lot of  
7       people would like this forum to be a lot more objective  
8       and it's really not, it's pretty subjective. You have  
9       strangers judging the credibility of strangers so we want  
10      you to use those tools that have made you who you are and  
11      bring those with you when you deliberate on the facts of  
12      this case, okay? Can you appreciate how important your  
13      own common sense can be in making the kind of decisions we  
14      are going to ask you to make then?

15          A       Yes.

16          Q       Okay. I know this isn't your first choice in  
17      terms of sitting on a jury and I think you are a real  
18      responsible citizen, but we're going to ask you to make a  
19      sacrifice here and in some ways our hands are a little bit  
20      tied, and if we do that are you going to resent us or hold  
21      it against us or make a decision if you are deliberating,  
22      make a decision quicker because you need to get back to do  
23      some of the things that you have talked about?

24          A       Honestly?

25          Q       Yes. That's what we need to hear. Honesty.



1           A     Yes. I would be concerned about --

2           Q     Here's the bottom line, and this is where we  
3 need to get, I guess. If you are deliberating and you've  
4 got this concern about your child getting on the bus, and  
5 I think that's a huge thing in your life and your child's  
6 life, or this other issue with, the work issue, and you're  
7 back there deliberating and you believe the evidence shows  
8 one thing but you realize you can get out of there quicker  
9 because if you go a different way, if you vote a different  
10 way, what are you going to do?

11          A     Get very frustrated.

12          Q     You understand where I'm going?

13          A     Yes.

14          Q     I think we all will agree that you're a very  
15 responsible person and we are taking you at a time that's  
16 not the most convenient time and it's not convenient for a  
17 lot of people, and the thing is that even if we let you go  
18 you are going to be stuck here next week anyways. Follow  
19 me? So the one issue, I mean, we feel like we'll be done  
20 with the evidence sometime the end of next week, and then  
21 the question that we obviously cannot predict is the  
22 deliberations. The jury deliberates for as long as it  
23 takes to reach a verdict and that's where the temptation  
24 arises for a person in your situation. Do you know what  
25 I'm saying?

1           A     Yes.

2           Q     This is where we ask you to draw on your belief  
3     and civic responsibility, civic duty, and sacrifice, you  
4     know, and we need to hear from you if you are going to be  
5     able do it or not because we both are entitled to a fair  
6     trial here.

7           A     Yes.

8           Q     So we need to hear from you. Which way are you  
9     going to go?

10          A     Well, I would have to believe that, that I  
11     would, um, you know, that I would weigh based on what my  
12     decision is or what my belief is. My personality, I'm,  
13     you know, kind of -- I'm anxious and would probably get a  
14     little frustrated if it were a long deliberation. Outside  
15     influences would, you know, honestly would probably have  
16     some impact on my anxiousness.

17          Q     Um-hum.

18          A     Um, you know.

19          Q     I hear what you're saying, you know, and --

20          A     I would -- go ahead. I'm sorry.

21          Q     I was just going to say that nobody -- we  
22     obviously cannot predict how long the deliberations are  
23     going to take. That's nothing that we have any authority  
24     over, but I would hazard a guess that in any kind of  
25     deliberations there is going to be a certain amount of

1 anxiety with a number of people that are there because of  
2 other personal things that are going on in their lives.  
3 But if this sytem is going to work, it works because the  
4 jury makes it work. You know what I'm saying? I mean, we  
5 have our part to play in it but what really makes it work  
6 is if that jury when they go back there they are  
7 interested in doing justice no matter how they are --  
8 whatever way the verdict is, that it is a just verdict  
9 based on the evidence. Nothing else, you know, and I  
10 realize I'm kind of pulling at your strings here, but we  
11 need to hear it from you. Are you going to be able to do  
12 that or not, and I'm just kind of getting right to the  
13 bottom line here, so?

14 A Well, I think that, um, not having been through  
15 this situation, not having been in, you know, my greatest  
16 fear it being an extended situation and that.

17 Q Sure.

18 A Um, you know, I think I would, I would like to  
19 believe that I would be one that would stand to what I saw  
20 or believe, but an extended situation, not being familiar  
21 with what, you know, what would influence if someone else,  
22 say it's two people, myself and someone else and we are  
23 directly opposite and, you know, they must see something  
24 that provides them a situation that's opposite of what  
25 mine is.

Q And you understand that you are free to change your mind, you know. I mean, I believe one of the instructions you'll get is to remain open-minded, you know, so you can stand up for your position but don't be shy about changing your position if other opinions or impressions or feelings, expressions by other jurors lead you to do that, you know. And I recognize that this is not a situation that you've ever been in before so you don't have a basis to predict necessarily, but you understand this is our only opportunity to talk to you. And I don't know you, probably never see you again, but you know yourself. You know, but I mean you have an appreciation for the responsibility here. I know you don't want to be here and I can appreciate that, nobody is judging you because of that. But I think you can appreciate that we need citizens here to do this duty.

A      Certainly I can appreciate that.

Q Will you be able to do the duty or not?

A     My intellectual side says yes. The part that, that I'm not, you know, in uncharted ground would be what the emotional, the emotional pressure.

Q Okay.

MR. FURNSTAHL: Can we approach?

THE COURT: You may.

(Off-the record discussion at

1 the bench out of hearing of Mr. Adams.)

2 THE COURT: Mr. Adams, I'm going to excuse  
3 you from this jury. You need to go back down and  
4 check in downstairs in the jury room.

5 MR. ADAMS: Thank you.

6 (Mr. Adams exits.)

7 THE COURT: So counsel, how many more  
8 jurors should we bring up to begin examining at 1:30?  
9 Five?

10 MR. FURNSTAHL: Let's do ten because you  
11 know the pool that we are going to get.

12 THE COURT: Well, they brought new ones in  
13 yesterday, you know.

14 MR. FURNSTAHL: Will today be new ones?

15 THE COURT: Not today.

16 MR. FURNSTAHL: I was shocked that we had  
17 new ones yesterday.

18 THE COURT: Well, we have 12 so we need two  
19 more so we will bring up, telling them to send up ten  
20 but if they have, you know, obviously they need to  
21 know we don't want the same people we already had.  
22 The computer picked up the ones we lost from Monday.  
23 We'll bring ten up at 1:30 and we are going to put  
24 them in the box one at a time and start.

25 MR. BENSON: Fine.

1 (Court adjourns at 11:40 for  
2 the noon recess. The following proceedings occur at  
3 1:45 p.m. in front of a new panel.)

4 THE COURT: Members of the jury panel, this  
5 is a criminal case. An indictment has been filed  
6 with this Court which alleges that on or about May  
7 16, 2004, in Hennepin County, Minnesota, Marvin  
8 Haynes, Jr., while using a firearm, caused the death  
9 of Harry Sherer, a human being, with intent to affect  
10 the death of Harry Sherer while attempting to commit  
11 the crime of aggravated robbery; count two, that on  
12 or about May 16, 2004, in Hennepin County, Minnesota,  
13 Marvin Haynes, Jr., while using or possessing a  
14 firearm, assaulted Cynthia McDermid; and count three,  
15 that on or about May 16, 2004, in Hennepin County,  
16 Minnesota, Marvin Haynes, Jr., while armed with a  
17 firearm, attempted to take personal property from the  
18 person or in the presence of Cynthia McDermid knowing  
19 that he was not entitled to the property and used or  
20 threatened the imminent use of force against Cynthia  
21 McDermid to overcome her resistance or powers of  
22 resistance or to compel acquiescence in the taking or  
23 carrying away of the property.

24 Now, to this indictment the defendant Marvin  
25 Haynes, Jr. has pled not guilty. This plea denies

1 the charge and places upon the State of Minnesota the  
2 burden of proving the defendant's guilt beyond a  
3 reasonable doubt.

4 The State is represented by Michael Furnstahl.  
5 Will you please rise?

6 The defendant is represented by Kassius Benson.  
7 Will you please rise?

8 MR. BENSON: Good afternoon.

9 THE COURT: Would the defendant please  
10 rise?

11 (Complies.)

12 THE COURT: Now, some general rules of law  
13 apply in a criminal case. I will give you some of  
14 those rules now.

15 In the questioning that will take place in a few  
16 minutes you may be asked whether you will accept and  
17 follow the rules of law, and you should have these  
18 instructions in mind when you answer those questions.

19 An indictment is not evidence. It creates no  
20 inference or presumption of guilt. No member of the  
21 jury should in any way be prejudiced against the  
22 defendant because an indictment has been filed  
23 against the defendant, because the defendant may have  
24 been arrested, or because the defendant is on trial.  
25 The defendant is presumed innocent.

1           In order for you to find the defendant guilty,  
2           the State must prove guilt. The defendant does not  
3           have to prove innocence. The presumption of  
4           innocence remains with the defendant unless and until  
5           the defendant has been proven guilty beyond a  
6           reasonable doubt by evidence admitted in this trial.

7           I'm going to read you a list of individuals who  
8           might be called as witnesses in this case. Remember  
9           the name, any name that you think you may know or  
10          anyone to whom you may be related, and when you are  
11          called for questioning you should inform me of your  
12          relationship to those persons.

13          Mike Keefe, Dave Mattson, Gerry Wehr, Bruce  
14          Folkens, Dave Ulberg, Robert Heiple, Andy Stender,  
15          Greg Smelter, Judy Rollins, Ann Kjos, Mike Becker,  
16          Lora Hanks, Pat King, Rod Timmerman, Kris Reynolds,  
17          Officer Holms, Steve Wald, Dennis Maki, Dr. Kathy  
18          Berg, Jacqueline Kuriger, Sheila Prok, Lamekia  
19          Dockery, Cynthia McDermid, Adelia Barnette, Isiah  
20          Harper, Daquan Bradley, Jeremy Davenport, Josilinn  
21          Morgan, Tim Clifton, Tawanda Logan, Anthony Todd,  
22          Perez Wrencher, Sherita Coleman, Sheri Williams, Ravi  
23          Kumar Seeley, Antwon Lee, Captain Stanek.

24                 MR. FURNSTAHL: Rich.

25                 THE COURT: Rich Stanek. Was there one



1 more?

2 MR. FURNSTAHL: Lieutenant Mike Carlson.

3 THE COURT: Lieutenant Mike Carlson.

4 Now, if you know those names please remember  
5 them.

6 To ensure that both the defendant and the State  
7 receive a fair trial by an impartial jury, it will be  
8 necessary for me and for counsel for each of the  
9 parties to ask you certain questions that you must  
10 answer under oath. Please do not take any offense at  
11 any questions you are asked. Your contribution to  
12 this important and serious matter is best assured by  
13 your honest answers to those questions.

14 Some of you who are called to be questioned will  
15 be excused from serving on the jury. If you are  
16 excused it does not mean that anyone doubts you are a  
17 fair person.

18 The clerk is going to read the names from the  
19 random list of jurors. When your name is called, if  
20 we mispronounce your name please tell us how to  
21 pronounce it. Come forward and take a seat in the  
22 jury box, and starting with the back row, the high  
23 seat furthest away from me and fill in that back row  
24 coming towards me and then the front row.

25 Go ahead.

1 THE CLERK: Christopher Isdahl, Jennifer  
2 Woodbury, Dan Sullivan, Sarah Hick, Kristine Lee,  
3 Marilyn Carlson, Timothy Butts.

4 THE COURT: Sir, you get the one closest to  
5 me up here.

6 THE CLERK: Janet Bezdicek.

7 THE COURT: All right.

8 MS. BEZDICEK: Um-hum. Here.

9 THE COURT: Right.

10 THE CLERK: Jeanne Fansler, Lillian  
11 Lundeen, Sandra Marten, and Paula Miller.

12 THE COURT: Members of the jury panel, will  
13 you all stand and raise your right hands?

14 (Jurors are sworn.)

15 THE COURT: I'm going to ask you some  
16 general questions and when you respond to my  
17 questions, if you have a positive response would you  
18 put your hand up and just keep it up for a little  
19 while so we can make some notes? The attorneys will  
20 have some follow-up questions for you one at a time  
21 when you are seated up here.

22 First of all, is this your first week of jury  
23 service everyone?

24 JURORS: Yes.

25 THE COURT: Okay. Anybody who is not in

1           their first week? All right.

2           Who has served on a jury before this jury  
3           service? Okay.

4           Mr. Butts, how long ago did you serve on a jury,  
5           sir?

6                     MR. BUTTS: 1979, sir.

7                     THE COURT: Was that here in Hennepin  
8           County?

9                     MR. BUTTS: Albuquerque, New Mexico.

10                    THE COURT: Were you actually seated on a  
11           case that was tried?

12                    MR. BUTTS: Yes, I was.

13                    THE COURT: Criminal or civil case?

14                    MR. BUTTS: Criminal.

15                    THE COURT: Did you render a verdict on  
16           that case?

17                    MR. BUTTS: Yes, we did.

18                    THE COURT: How do you feel about the  
19           experience of serving on a jury on a criminal case?

20                    MR. BUTTS: It's a civic duty and a public  
21           service.

22                    THE COURT: Would you say it was a positive  
23           experience or negative? Were you neutral on it?

24                    MR. BUTTS: Neutral.

25                    THE COURT: Okay. Anything about that

1           experience that would make it difficult for you to  
2           serve as a fair and impartial juror to both sides of  
3           this case?

4                     MR. BUTTS: I don't believe so, sir.

5                     THE COURT: Okay. Thank you.

6                     Anybody else who has been a juror before? Mr.  
7           Sullivan.

8                     MR. SULLIVAN: Yes, sir.

9                     THE COURT: How long ago were you a juror,  
10          sir?

11                    MR. SULLIVAN: About 1985.

12                    THE COURT: Was that here in Hennepin  
13          County?

14                    MR. SULLIVAN: In Los Angeles.

15                    THE COURT: Los Angeles. Was that on a  
16          criminal or civil case?

17                    MR. SULLIVAN: Criminal.

18                    THE COURT: Did you go all the way through  
19          to verdict?

20                    MR. SULLIVAN: No.

21                    THE COURT: The case was resolved before  
22          then?

23                    MR. SULLIVAN: Yes.

24                    THE COURT: Okay. How did you feel about  
25          the experience?

1 MR. SULLIVAN: It was fine.

2 THE COURT: Anything about that experience  
3 that you think would make it difficult for you to be  
4 a fair and impartial juror to both sides of this  
5 case?

6 MR. SULLIVAN: No.

7 THE COURT: To both Mr. Sullivan and Mr.  
8 Butts, do you understand that I will give you the law  
9 in this case, and if you remember anything about the  
10 law or if you think the law was different the way you  
11 heard it the first time you'll need to set that aside  
12 and follow the law I give you. Can you do that?

13 MR. BUTTS: Yes, sir.

14 MR. SULLIVAN: Yes.

15 THE COURT: Okay. Anyone else? All right.

16 The attorneys and I have some basic information  
17 about you. Number one, the city you live in, your  
18 occupation, your education, your ages of your  
19 children if you have any, and your spouse's  
20 occupation, your date of birth, your race, whether or  
21 not you are Hispanic, your gender, and your marital  
22 status. That is all we have right now and so there  
23 are going to be some additional questions that the  
24 attorneys are going to want to ask you. I'm going to  
25 try to ask you some additional general questions just

1 to kind of save some time.

2 How many of you have been the victim of a  
3 criminal act? Okay. Ms. Miller? Okay. We'll start  
4 with you, Ms. Miller. What happened? What caused  
5 you to be a victim of an act?

6 MS. MILLER: I was mugged about 15 years  
7 ago by two gentlemen in Columbia Heights.

8 THE COURT: Were they armed?

9 MS. MILLER: I don't remember. I mean, I  
10 didn't see any weapons. No weapons were used when  
11 they mugged me.

12 THE COURT: They didn't tell you they were  
13 armed?

14 MS. MILLER: No. It was more like they ran  
15 up, ran up behind me and grabbed my purse and  
16 attacked me and injured me.

17 THE COURT: What injuries did you receive?

18 MS. MILLER: One stomped on my foot  
19 splitting all my toenails in half. I had a bloody  
20 foot.

21 THE COURT: Pushed you to the ground or  
22 something?

23 MS. MILLER: Actually no.

24 THE COURT: And did you call the police?

25 MS. MILLER: Yeah, eventually I did, but a

1           guy in a white truck pulled up and I ran up to him  
2           screaming help me, whatever, and he took off after  
3           them and they split up and he followed one of them.  
4           There was a third party waiting in a getaway car and  
5           he got the license plate number and then the cops  
6           were able to get them right away.

7                     THE COURT: Okay. Was somebody charged  
8           then as a result of that?

9                     MS. MILLER: Only the driver because he was  
10          the only adult.

11                    THE COURT: Okay. And did you follow the  
12          case?

13                    MS. MILLER: I did up to the point where he  
14          skipped. He served some time in a different county  
15          for a different offense, served some time for this  
16          offense, and then when it came time to paying  
17          restitution he skipped.

18                    THE COURT: So you had some losses that  
19          were not covered in that case?

20                    MS. MILLER: Correct.

21                    THE COURT: And how do you feel about the  
22          criminal justice system as a result of that incident?

23                    MS. MILLER: I feel that there are certain  
24          things that the criminal justice system just doesn't  
25          have any control over.

1 THE COURT: Okay. And how do you feel  
2 about the police that investigated that incident?

3 MS. MILLER: Um, I think they responded  
4 well.

5 THE COURT: That was prosecuted by the  
6 Hennepin County Attorney's Office?

7 MS. MILLER: I believe so. It was a long  
8 time ago so, Columbia Heights, I believe.

9 THE COURT: Do you remember the name of the  
10 attorney?

11 MS. MILLER: No.

12 THE COURT: How did that attorney treat  
13 you? Was it appropriate?

14 MS. MILLER: I never went to court for it,  
15 actually. It was a victim witness thing that I was  
16 corresponding with.

17 THE COURT: Okay.

18 MS. MILLER: And didn't hear anything  
19 after.

20 THE COURT: So you don't have any feelings  
21 as a result of that incident that would make it so  
22 you thought you couldn't be fair to one side or the  
23 other in this case, is that right?

24 MS. MILLER: No.

25 THE COURT: Yes?



1 MS. MILLER: Correct. I don't have any  
2 feelings one way or the other.

3 THE COURT: Who else in the front row had  
4 their hand up? Ms. Fansler?

5 MS. FANSLER: Yes.

6 THE COURT: What happened in your case,  
7 ma'am?

8 MS. FANSLER: My car was broken into. I  
9 was not in the car, and things were stolen including  
10 my wallet and \$4,000 was charged on my credit cards.

11 THE COURT: How long ago was that?

12 MS. FANSLER: I think it was 2001.

13 THE COURT: And what city was that in?

14 MS. FANSLER: Plymouth.

15 THE COURT: Was anybody ever charged in  
16 that case?

17 MS. FANSLER: No.

18 THE COURT: Did the police investigate it?

19 MS. FANSLER: Well, yes. They -- I called  
20 them, they responded to the scene and there was --  
21 but beyond, beyond my discussions I had with them at  
22 the scene and then that day over the phone, I never  
23 spoke to them after that or heard anymore.

24 THE COURT: Do you feel like there is some  
25 more they should have done in that case?

1 MS. FANSLER: No. I don't think there is  
2 anything else they could do.

3 THE COURT: Okay. And you never spoke to  
4 an attorney on it?

5 MS. FANSLER: No.

6 THE COURT: Okay. Any feelings as a result  
7 of that incident about the criminal justice system?

8 MS. FANSLER: No.

9 THE COURT: You think you can be fair to  
10 both sides in this case?

11 MS. FANSLER: Yes.

12 THE COURT: Okay. Mr. Butts, you had your  
13 hand up, right?

14 MR. BUTTS: Yes, sir, I did.

15 THE COURT: What happened in your case,  
16 sir?

17 MR. BUTTS: I'm not real sure. Actually my  
18 brother was murdered in (unintelligible) Alaska in  
19 1983.

20 THE COURT: Mr. Butts, I'm going to excuse  
21 you from this case. Would you please check in with  
22 the jury office downstairs?

23 MR. BUTTS: Yes, sir.

24 THE COURT: Anybody else have their hands  
25 up in response to that question in the back row?

1           Now, if I add any close relatives or friends,  
2           immediate family, anybody else have their hands up  
3           that they have been a victim of a crime and/or  
4           relative or friend? Ms. Miller.

5                   MS. MILLER: My father's brother was  
6           murdered.

7                   THE COURT: Your father's brother was  
8           murdered?

9                   MS. MILLER: My uncle.

10                  THE COURT: That's your uncle. When was  
11           that?

12                  MS. MILLER: I think I was about 16 years  
13           old when that happened.

14                  THE COURT: Okay. Where did that happen?

15                  MS. MILLER: Milwaukee, Wisconsin.

16                  THE COURT: Okay. And you remember  
17           obviously the affect on the family?

18                  MS. MILLER: Correct.

19                  THE COURT: Okay. Was there anybody  
20           ultimately charged with that case?

21                  MS. MILLER: Not that I know of.

22                  THE COURT: Do you know what happened?

23                  MS. MILLER: They found him, he was living  
24           in a rental room like, you know, and they found him  
25           bound and gagged and dead but no money was taken, so.

1 He was wrapped with a, bound with a cord. I don't  
2 know if it was a telephone cord or extension cord.  
3 Apparently the rag went down his throat when he was  
4 gagged.

5 THE COURT: Okay. Now, obviously, you  
6 know, having had that impact on your family, this  
7 case will involve murder and the testimony of  
8 immediate family and the effect on the family. Do  
9 you think you are going to be able to hold your  
10 emotions at bay if I advise you that you are going to  
11 need to listen to the evidence in this case and make  
12 your decision if you're a juror based on the evidence  
13 and not the emotional reaction, do you think you are  
14 going to be able do that?

15 MS. MILLER: Yes.

16 THE COURT: Okay. Now, obviously also in  
17 this case the defendant is only 16 and a half years  
18 old and that sometimes gets an emotional response  
19 from people as well. Do you think that either way  
20 you are going to be able to set aside your emotions  
21 and just listen to the evidence and make a decision  
22 based on what evidence is heard in this courtroom?

23 MS. MILLER: Yes.

24 THE COURT: Any doubt at all about that?

25 MS. MILLER: No.

1 THE COURT: Okay. Anybody else have their  
2 hand up in response to that question?

3 MR. FURNSTAHL: Judge.

4 THE COURT: Ms. --

5 MS. BEZDICEK: Bezdicek. I don't know the  
6 outcome or all the details, my sister had her  
7 apartment broken into in St. Louis Park probably  
8 about 12, 15 years ago.

9 THE COURT: Okay. And she was not present?

10 MS. BEZDICEK: She was not present.

11 THE COURT: Did they steal some things out  
12 of the apartment?

13 MS. BEZDICEK: I believe mainly  
14 electronics.

15 THE COURT: Okay.

16 MS. BEZDICEK: And ransacked it.

17 THE COURT: Then she called the police?

18 MS. BEZDICEK: Yes.

19 THE COURT: Did the police ultimately ever  
20 charge anyone with that?

21 MS. BEZDICEK: I don't believe so. I'm not  
22 certain.

23 THE COURT: Any do you have any feelings  
24 from talking to your sister about how the case was  
25 handled?

1 MS. BEZDICEK: No.

2 THE COURT: Nothing about that?

3 MS. BEZDICEK: As far as I know the police  
4 came and wrote a report and that's kind of the end of  
5 it.

6 THE COURT: Anything about that that would  
7 make you feel like you couldn't be fair to both sides  
8 of this case?

9 MS. BEZDICEK: No.

10 THE COURT: Okay. Anyone else?

11 Now, this case has been in the news. How many  
12 of you remember hearing in May or subsequent to that  
13 about this case? No one?

14 MS. MILLER: I'm not sure. Is this the one  
15 about the gas station attendant?

16 THE COURT: No.

17 MS. MILLER: Okay. Then I didn't hear.

18 THE COURT: Okay. All right. Now, I'll  
19 give you one additional piece of information and that  
20 is this. We anticipate, if you are selected to serve  
21 on this jury, that this case is going to start on  
22 Monday. It will be done by the end of next week and  
23 at that time when the case goes to the jury it's up  
24 to the jury to decide how long they need to  
25 deliberate on the case. Does anybody have any

1 personal issues that they think would interfere with  
2 their ability to serve on a jury and devote their  
3 complete attention to this case?

4 Ms. Woodbury.

5 MS. WOODBURY: I go to the University of  
6 Wisconsin Madison in Wisconsin and my school starts  
7 next Friday and so I know that's not usually excused  
8 from jury duty but it would definitely be a  
9 distraction for me since I would be missing school.

10 THE COURT: Okay. You know if I excuse you  
11 from this case you'll still have to be here next week  
12 for jury duty?

13 MS. WOODBURY: No -- I do understand that,  
14 yes.

15 THE COURT: That being the case, you know  
16 there would be the potential you wouldn't get there  
17 until the week following, is that right?

18 MS. WOODBURY: Excuse me?

19 THE COURT: What would happen if you didn't  
20 get to school until say Tuesday of the week after?

21 MS. WOODBURY: I would miss the first day  
22 of school. I would also miss a couple meetings that  
23 I have to be at. I don't know. I'm running a  
24 student organization this fall so I would be missing  
25 quite a bit of that.

1 THE COURT: What year are you?

2 MS. WOODBURY: I'm a senior.

3 THE COURT: Senior. Okay. What are you  
4 majoring in?

5 MS. WOODBURY: I'm a business major.

6 THE COURT: Okay. And school actually  
7 starts on Friday? Before Labor Day?

8 MS. WOODBURY: Yes. It's weird. It starts  
9 before Labor Day.

10 THE COURT: Okay. And when were you  
11 planning on going out there?

12 MS. WOODBURY: Um, probably today. But  
13 obviously but for jury duty I would have probably  
14 been out there this week.

15 THE COURT: Okay. And as far as like your  
16 living arrangements, everything like that is all set  
17 up?

18 MS. WOODBURY: I still have to move in.

19 THE COURT: But you have a place to live?

20 MS. WOODBURY: Yes.

21 THE COURT: Okay. If this case went  
22 through next week, do you think that would be a  
23 distraction to you? Or would you be able to set that  
24 aside enough to pay attention to the evidence in this  
25 case and make a decision based on that only?



1 MS. WOODBURY: Um, I mean I would like to  
2 say that it wouldn't be a distraction but honestly  
3 I'm distracted right now even, so. Just with all the  
4 plans that I have to be doing right now. If I have  
5 no choice and I'm here then I'm here.

6 THE COURT: If I release you from this case  
7 you are going downstairs because you'll be back next  
8 week for jury duty anyway.

9 MS. WOODBURY: Yes, I realize that.

10 THE COURT: Does that make a difference?

11 MS. WOODBURY: Yes. If this case goes next  
12 week and we would, we had to deliberate further that  
13 would further delay my travel back, so.

14 THE COURT: Okay. Anybody else that has  
15 something that they think would be so pressing that  
16 they would be thinking about it while they are  
17 sitting on this jury? Ms. Fansler.

18 MS. FANSLER: I have a similar situation  
19 just in that I work in an elementary school which of  
20 course starts the day after Labor Day, so similar  
21 feelings. If I have to be here, I'm here.

22 THE COURT: What school district are you  
23 involved in?

24 MS. FANSLER: Wayzata.

25 THE COURT: Okay. That's the day after

1 Labor Day that you normally would be expected to be  
2 there?

3 MS. FANSLER: Yes.

4 THE COURT: Okay.

5 MS. FANSLER: Actually this Wednesday is  
6 when I'm supposed to be there but the day I really  
7 have to be there is Tuesday after Labor Day.

8 THE COURT: All right. And so if you are  
9 not there to help prepare but you are able to be  
10 there say after Labor Day, you would be okay?

11 MS. FANSLER: Yes. It's the same concern  
12 as Jennie has, it's how long the deliberation will  
13 go. Through next week I'm okay. After that it would  
14 be --

15 THE COURT: You understand if you are, if  
16 you were on this case that we can control how long  
17 the trial takes and we'll get the trial done, but how  
18 long the jury takes to deliberate is totally up to  
19 them and we have no control over that.

20 MS. FANSLER: Yes.

21 THE COURT: It would be unrealistic for me  
22 to give you an estimate because it doesn't make any  
23 sense.

24 MS. FANSLER: I understand.

25 THE COURT: Okay. Anybody else have

1 anything that they thought of in that regard? All  
2 right.

3 Did anybody know anybody on the list of  
4 witnesses that I read or think they know or are  
5 related to anybody? Did you know the attorneys?  
6 Myself or my staff? Anybody? Okay.

7 Does anybody know Amy Klobuchar? Okay.

8 Anybody ever been a witness in a case, not a  
9 victim, but a witness? Okay. Ms. Lundeen.

10 MS. LUNDEEN: Yes.

11 THE COURT: What kind of a case was it that  
12 you were a witness in?

13 MS. LUNDEEN: It took place in the late  
14 '70s. I was working as a bank teller when I was in  
15 college and I caught somebody forging a withdrawal  
16 slip so I was asked to testify about that.

17 THE COURT: Okay. Did you actually testify  
18 in court?

19 MS. LUNDEEN: I did.

20 THE COURT: All right. And after you  
21 testified did you follow the case, or?

22 MS. LUNDEEN: It was a juvenile case so  
23 there wasn't -- and I didn't know what the outcome  
24 was. I was only in the courtroom for the ten minutes  
25 that I was testifying.

1 THE COURT: Okay. That leave any  
2 impressions on you with regard to the criminal  
3 justice system?

4 MS. LUNDEEN: No.

5 THE COURT: All right. Anybody else that's  
6 ever been a witness in a case?

7 All right. How many of you have shot a handgun?  
8 Mr. Isdahl. And what's your familiarity with  
9 handguns?

10 MR. ISDAHL: I've used them in hunting.

11 THE COURT: Okay.

12 MR. ISDAHL: And target practice.

13 THE COURT: What do you hunt with your  
14 handguns?

15 MR. ISDAHL: Last year I tried it for deer  
16 hunting. It's legal to use a handgun, so.

17 THE COURT: And Ms. Miller, did you have  
18 your hand up?

19 MS. MILLER: Yup.

20 THE COURT: What's your familiarity with  
21 handguns?

22 MS. MILLER: A friend of mine and myself  
23 used to go to Bill's gun range and shoot for  
24 entertainment.

25 THE COURT: Okay. All right. Did anyone

1           else have their hand up in response to that one?

2           Counsel, you want to approach a minute?

3                               (Off-the record discussion at  
4           the bench out of hearing of the jurors.)

5           THE COURT: Members of the jury panel, if  
6           anybody feels in answering the questions that I ask  
7           you that you would rather do that in private or you  
8           feel that you really can't discuss it very well in a  
9           public forum will you let me know and then we'll ask  
10          you one at a time, okay?

11          First of all, who's ever been a party to a  
12          lawsuit, either bringing a lawsuit or being sued?  
13          Ms. Hick.

14          MS. HICK: Yeah.

15          THE COURT: And what kind of a suit were  
16          you involved in?

17          MS. HICK: I brought a civil suit against  
18          the inspector of my home and we settled before going  
19          to court.

20          THE COURT: Okay. So you felt the  
21          inspector didn't do his job and you found some damage  
22          that he missed?

23          MS. HICK: Yeah.

24          THE COURT: Okay. And you had an attorney  
25          represent you?

1 MS. HICK: Yeah.

2 THE COURT: But you settled without going  
3 to trial?

4 MS. HICK: Yeah.

5 THE COURT: Okay. And how do you feel  
6 about the experience?

7 MS. HICK: It was very frustrating.

8 THE COURT: What was frustrating about it?

9 MS. HICK: Knowing that I had been wronged  
10 and that it was going to be very hard to get the  
11 money that I needed to fix the damage to my house.  
12 There was another, the other part of the issue was  
13 the former owner had done a lot of work without  
14 pulling permits and had done it wrong and that work  
15 was notable to be seen by the inspector but because I  
16 signed an arbitration I had to take the former owner  
17 to arbitration and the inspector to court and that,  
18 that kind of division of responsibility made the suit  
19 more difficult.

20 THE COURT: Okay. So did you also go to  
21 arbitration against the former owner?

22 MS. HICK: No, I settled before that too.

23 THE COURT: Okay.

24 MS. HICK: I sort of kind of had it with  
25 the two-year process.

1 THE COURT: So it was frustrating the  
2 length of time and the fact that you were not going  
3 to come out a hundred percent having to pay the costs  
4 of that?

5 MS. HICK: Oh yeah. Not even close.

6 THE COURT: Anything about that experience  
7 that you think would make it difficult for you to be  
8 an impartial juror on this kind of case?

9 MS. HICK: No.

10 THE COURT: Okay. Who else in the back row  
11 had a hand up on that one? Anybody else? All right.

12 The front row, who had their hand up? Ms.  
13 Miller. What kind of case were you involved in?

14 MS. MILLER: Two of them. One was a class  
15 action suit against Beneficial. That one I never had  
16 to go to court for that. That was a mail thing, I  
17 got a check in the mail.

18 THE COURT: Beneficial Financial Company?

19 MS. MILLER: They were charging some kind  
20 of fees they weren't supposed to be and anybody  
21 between certain dates that had previous loans with  
22 them or whatever got money.

23 THE COURT: What was the other one?

24 MS. MILLER: I was in a head-on car crash  
25 in '83.

1 THE COURT: 1983?

2 MS. MILLER: Yes. And I sued the estate of  
3 the people who hit me.

4 THE COURT: And did that case go to trial?

5 MS. MILLER: Settled the day of.

6 THE COURT: Day of trial. Was that brought  
7 in Hennepin County?

8 MS. MILLER: No.

9 THE COURT: Where was it?

10 MS. MILLER: Two Rivers, Wisconsin.

11 THE COURT: Two Rivers, Wisconsin. How did  
12 you feel about how that case ultimately was resolved?

13 MS. MILLER: Well, you know, the old saying  
14 if I would have known then what I know now, you know,  
15 I would have sued for more.

16 THE COURT: Okay. Now you feel like the  
17 settlement you made back then was probably not as  
18 good as you could have done?

19 MS. MILLER: Right.

20 THE COURT: All right.

21 MS. MILLER: Injuries that last, you know,  
22 a lifetime, that kind of thing, so.

23 THE COURT: What injuries did you receive  
24 as a result of that collision?

25 MS. MILLER: I broke every bone in my body



1 on my right side including a lung, cut up everything  
2 on my left.

3 THE COURT: Okay. And the other driver  
4 crossed the center line and hit you head on?

5 MS. MILLER: Yeah, that's where it gets a  
6 little sticky. He had a heart attack.

7 THE COURT: Behind the wheel?

8 MS. MILLER: Fell over on his wife, stepped  
9 on the accelerator and was coming around an S curve.  
10 Never saw him, so when he floored it he came around  
11 into my lane and met me coming around the corner and  
12 I don't remember anything after that.

13 THE COURT: Okay. Obviously that was a  
14 civil case and this is a criminal case. There will  
15 be different rules that apply and I will give those  
16 rules to you, but do you think that anything about  
17 that experience would make it difficult for you to be  
18 a fair and impartial juror on this case?

19 MS. MILLER: No.

20 THE COURT: You wouldn't let your  
21 dissatisfaction with how it came out affect either  
22 your view of either side of this case?

23 MS. MILLER: No.

24 THE COURT: Okay. All right. Anybody else  
25 have their hand up on the front row? Okay.

1           How many of you have attorneys in your family or  
2           close, very close friends? Ms. Lundeen.

3           MS. LUNDEEN: Yes.

4           THE COURT: Who is an attorney in your  
5           family?

6           MS. LUNDEEN: Not in my family, but I have  
7           several close friends who are attorneys.

8           THE COURT: Tell me who they are.

9           MS. LUNDEEN: James Hague.

10          THE COURT: Is he a referee? No. Okay.

11          MS. LUNDEEN: Barbara Burke.

12          THE COURT: Let's take Mr. Hague first.  
13          What kind of law does he do?

14          MS. LUNDEEN: He does insurance defense  
15          work.

16          THE COURT: Do you know what firm he's  
17          with?

18          MS. LUNDEEN: Cousineau, McQuire. As is  
19          Barbara Burke.

20          THE COURT: She's with the same firm?

21          MS. LUNDEEN: Yes. Another close friend,  
22          Catherine Dollner, is a workers comp judge.

23          THE COURT: Okay.

24          MS. LUNDEEN: And in my work I work with a  
25          combination of accountants and attorneys, so I work a

1 little bit with attorneys.

2 THE COURT: Okay.

3 MS. LUNDEEN: One more close friend, James  
4 O'Neill, also does a lot of defense work, insurance  
5 defense work.

6 THE COURT: What firm is he with?

7 MS. LUNDEEN: Faegre and Benson.

8 THE COURT: Is he the one who worked on  
9 that Valdez deal?

10 MS. LUNDEEN: Yes, he did.

11 THE COURT: Okay.

12 MS. LUNDEEN: You know what, you are  
13 thinking of another O'Neill. That was one of his  
14 partners, but he did some work on that but it wasn't  
15 his main case. Bryan O'Neill.

16 THE COURT: That is the same firm, right?

17 MS. LUNDEEN: Yes, it is.

18 THE COURT: You do international tax, is  
19 that right?

20 MS. LUNDEEN: Yes.

21 THE COURT: Okay. So do you have a -- what  
22 degree do you have?

23 MS. LUNDEEN: I have a bachelor's degree in  
24 accounting and a master's in taxation.

25 THE COURT: Okay. And who do you work for?

1 MS. LUNDEEN: Cargill.

2 THE COURT: Cargill. Okay. All right.

3 Anybody else that has very close friends or  
4 family that are attorneys? Ms. Fansler.

5 MS. FANSLER: I just have one friend, Brad  
6 Warner, and I don't really know that much about what  
7 he does. He's an attorney for an insurance company.  
8 I don't know which insurance company. We don't  
9 discuss it that much.

10 THE COURT: How about very close friends or  
11 family that are police officers? Mr. Isdahl.

12 MR. ISDAHL: Yes. One of my friends is a  
13 police officer for the Minnestrista police  
14 department.

15 THE COURT: Okay. And how often do you see  
16 this friend?

17 MR. ISDAHL: Once every couple weeks.

18 THE COURT: Okay. And do you talk about  
19 his job with him?

20 MR. ISDAHL: Nope.

21 THE COURT: No?

22 MR. ISDAHL: Nope.

23 THE COURT: Does he not like to discuss it?

24 MR. ISDAHL: We just don't talk about our  
25 jobs. We get together to have fun and do something

1           else. We don't want to talk about work.

2           THE COURT: So anything about that  
3           friendship with this police officer, because we are  
4           going to have police officers testifying in this  
5           case, anything about that relationship that would  
6           make you feel that you have to give something more to  
7           that police officer than any other witness?

8           MR. ISDAHL: No.

9           THE COURT: Okay. Eventually if you're on  
10          this jury I'm going to give you some rulings that you  
11          can -- and some information and guidelines -- that  
12          you can use to judge the credibility of a witness and  
13          whether or not that witness is telling the truth with  
14          you, and one of the things I'm going to tell you to  
15          use is your common sense but I'm going to tell you to  
16          look at a number of things. Experience, age, ability  
17          to see and understand what they are relating, how it  
18          fits in with other evidence, a number of different  
19          factors, but if I tell you you have to apply that  
20          equally to all witnesses can do you that?

21          MR. ISDAHL: Yes.

22          THE COURT: All right. Anybody else have  
23          police officers, and close family, friends? Ms.  
24          Miller.

25          MS. MILLER: I'm in school for criminal

1 justice right now, and I also work with a few police  
2 officers from Coon Rapids.

3 THE COURT: All right. So you are now  
4 going to school for criminal justice?

5 MS. MILLER: Correct.

6 THE COURT: Where do you go?

7 MS. MILLER: I do online, Florida Met U.

8 THE COURT: All right. I'm going to excuse  
9 you from this jury panel and I would ask if you would  
10 please check in with the jury office downstairs.  
11 Thank you very much.

12 MS. MILLER: Thank you.

13 THE COURT: Anybody else? Okay. How many  
14 of you are familiar with Jerry's Flower Shop at 3300  
15 Lyndale Avenue? Anybody? Mr. Sullivan.

16 MR. SULLIVAN: I've gone by that. I don't  
17 live too far from there. I've never been in there or  
18 been a customer there.

19 THE COURT: You don't know the owners and  
20 you've never been in it?

21 MR. SULLIVAN: It's on Lyndale?

22 THE COURT: Yes.

23 MR. SULLIVAN: No, I haven't.

24 THE COURT: Anybody else think they may  
25 recognize that Jerry's Flower Shop?

1 MR. SULLIVAN: Judge, I now realize I have  
2 read about this case.

3 THE COURT: I figured that might do that.  
4 So you remember hearing some news reports about this  
5 case when it occurred back in May, right?

6 MR. SULLIVAN: Yes.

7 THE COURT: Do you remember any specific  
8 details? Don't tell me what they are but do remember  
9 specific details?

10 MR. SULLIVAN: I just remember generally.

11 THE COURT: Anybody else now remember that  
12 they heard about this case on the news? Mr. Isdahl.

13 MR. ISDAHL: Yes.

14 THE COURT: Anything specific that you  
15 remember, or just that you heard about it on the  
16 news?

17 MR. ISDAHL: I remember hearing it. I  
18 can't remember anything specific now.

19 THE COURT: Ms. Fansler, same thing?

20 MS. FANSLER: Nothing specific no.

21 THE COURT: Okay. All right. Who has been  
22 investigated or convicted of a crime in the state of  
23 Minnesota? Anybody? Mr. Sullivan.

24 MR. SULLIVAN: Yes.

25 THE COURT: And what specifically, sir?

1 MR. SULLIVAN: I would like to discuss that  
2 in private.

3 THE COURT: Okay. Anybody else? Mr.  
4 Isdahl.

5 MR. ISDAHL: Do you count driving offenses  
6 like careless driving?

7 THE COURT: Yes, I do.

8 MR. ISDAHL: Okay.

9 THE COURT: What have you been convicted  
10 of?

11 MR. ISDAHL: Careless driving.

12 THE COURT: And how long ago was that?

13 MR. ISDAHL: 14, 15 years ago.

14 THE COURT: Was that here in Hennepin  
15 County?

16 MR. ISDAHL: Yes, it was.

17 THE COURT: Were you prosecuted by the  
18 Hennepin County Attorney's Office or the City  
19 Attorney's Office?

20 MR. ISDAHL: I do not remember.

21 THE COURT: Did you go to trial?

22 MR. ISDAHL: I just showed up at Ridgedale.  
23 I remember going in. It was taken care of there.

24 THE COURT: All right. Did you feel like  
25 you were treated fairly?



1 MR. ISDAHL: Yes.

2 THE COURT: Did you have an attorney  
3 represent you?

4 MR. ISDAHL: No, I did not.

5 THE COURT: Okay. Anything about that  
6 experience that would make you feel one way or  
7 another about the criminal justice system?

8 MR. ISDAHL: No, I really don't remember it  
9 that well, so.

10 THE COURT: Anybody else? Ms. Fansler.

11 MS. FANSLER: Do you mean like traffic  
12 tickets? Speeding tickets?

13 THE COURT: Yes.

14 MS. FANSLER: One speeding ticket, probably  
15 12 some years ago.

16 THE COURT: Okay. Did you contest it or  
17 just simply --

18 MS. FANSLER: Mailed in the fine.

19 THE COURT: All right. Ms. Martin.

20 MS. MARTIN: Many years ago a couple  
21 speeding tickets over probably 15 years ago.

22 THE COURT: Same thing, did you contest it?

23 MS. MARTIN: No.

24 THE COURT: Okay. Ms. Lundeen.

25 MS. LUNDEEN: I've had two speeding tickets

1 and I ran a red light.

2 THE COURT: Did you contest any of those?

3 MS. LUNDEEN: No.

4 THE COURT: You just paid the fine?

5 MS. LUNDEEN: Yes.

6 THE COURT: All right. Ms. Hick.

7 MS. HICK: I've had a number of speeding  
8 tickets in this state and in Iowa when I was in  
9 college and I just paid them all.

10 THE COURT: All right. Ms. Lee.

11 MS. LEE: I had a ticket and I paid it.

12 THE COURT: Okay. All right. Anybody  
13 else? Now, if I add close family members in there  
14 but exclude speeding tickets, anybody have a close  
15 family member who has been prosecuted for a crime  
16 other than a speeding ticket? Ms. Lundeen.

17 MS. LUNDEEN: My husband was convicted of  
18 DUI.

19 THE COURT: How long ago was that?

20 MS. LUNDEEN: It was last March.

21 THE COURT: Was that here in Hennepin  
22 County then?

23 MS. LUNDEEN: Yes.

24 THE COURT: And did he plead guilty or did  
25 he go to trial?

1 MS. LUNDEEN: He pled guilty, but he was in  
2 a courtroom and pled guilty.

3 THE COURT: Okay. Did he have an attorney  
4 represent him?

5 MS. LUNDEEN: Yes, he did.

6 THE COURT: Do you remember who it was?

7 MS. LUNDEEN: James Ventura.

8 THE COURT: Okay. Anything about that  
9 experience that you remember that would make you feel  
10 one way or another about the criminal justice system?

11 MS. LUNDEEN: Um, I don't think it has any  
12 bearing about how I feel about the criminal justice  
13 system. In a whole -- I'll just mention that one  
14 thing I observed about the process was while it was  
15 fair to my husband and the punishment was  
16 appropriate, it was a surprise to me that there were  
17 so many inaccuracies in the police report. They  
18 didn't have any bearing on the outcome of the trial  
19 but it was, I remember it because it was very  
20 surprising to me at the time.

21 THE COURT: Did you go to court with your  
22 husband?

23 MS. LUNDEEN: Yes, I did.

24 THE COURT: Okay. And do you remember the  
25 judge that handled your husband's case?

1 MS. LUNDEEN: He was at Ridgedale. I'd  
2 probably recognize the name if you said them all.

3 THE COURT: You don't remember right now?

4 MS. LUNDEEN: No, I don't.

5 THE COURT: All right. Anybody else on  
6 that? Ms. Bezdicek.

7 MS. BEZDICEK: If you put H after the C,  
8 it's the check.

9 THE COURT: Check.

10 MS. BEZDICEK: I have two brothers, and  
11 this is probably 20 years ago, both have DUI  
12 convictions.

13 THE COURT: Okay.

14 MS. BEZDICEK: And I wasn't really involved  
15 with any of it. Older brothers.

16 THE COURT: Anything about what they told  
17 you that made it seem like they were either treated  
18 appropriately, or the other way, treated totally  
19 unfairly by the system?

20 MS. BEZDICEK: No. They didn't really  
21 discuss it with me.

22 THE COURT: Okay. Anybody else have their  
23 hand up?

24 MS. FANSLER: Did you say in the state of  
25 Minnesota?

1 THE COURT: Yes.

2 MS. FANSLER: Never mind then.

3 THE COURT: Okay. All right. Counsel?

4 MR. BENSON: Can we approach?

5 THE COURT: You may.

6 (Off-the record discussion at  
7 the bench out of hearing of the jury panel.)

8 THE COURT: Ms. Woodbury, I'm going to  
9 excuse you from serving on this jury, okay? Will you  
10 please check in with the jury office downstairs?

11 MS. WOODBURY: Thanks.

12 THE COURT: Ms. Lundeen, do you work in the  
13 legal department there at Cargill?

14 MS. LUNDEEN: No. I work in the tax  
15 department.

16 THE COURT: Do you know how many attorneys  
17 are in the legal department there?

18 MS. LUNDEEN: In the legal department.  
19 Boy, I'm guessing it's got to be around 30, 40.

20 THE COURT: All right. Mr. Isdahl, I'm  
21 going to have you come up here and the rest of the  
22 jurors, my clerk is going to open this door and give  
23 you a place in the back here so you can wait your  
24 turn, okay?

25 Go ahead and have a chair.

1 MR. ISDAHL: Okay.

2 (Jury panel exits. Mr.

3 Isdahl is sworn.)

4 THE COURT: Okay, Mr. Benson, go ahead.

5 MR. BENSON: Thank you.

6 BY MR. BENSON:

7 Q Good afternoon.

8 A Afternoon.

9 Q I'm going to follow-up on a couple of your  
10 responses then I've got some more general questions for  
11 you and we'll go from there.

12 What were your thoughts when you found out this was a  
13 first degree murder?

14 A It kind of bothered me just because I have young  
15 children.

16 Q Okay.

17 A The whole idea, I mean it's nothing that would  
18 really affect me, just something that kind of surprised  
19 me.

20 Q Okay. What's your concern with the children?  
21 Is it a safety concern for yourself or is it a safety --

22 A My children.

23 Q Okay. All right. And is that just in a general  
24 sense of, you know, something violent happens in society,  
25 you are concerned, you think you don't want anything to

1       happen to you or your children? Or are you thinking there  
2       is going to be some impact on your children from you being  
3       a juror in a case such as this?

4             A     Nothing that I would be impacted from here, just  
5       in general.

6             Q     Okay. All right. Is there anything that you  
7       find intimidating about it other than that, intimidating  
8       or overwhelming in the sense that you wouldn't be able to  
9       function as a juror?

10            A     No.

11            Q     All right. Okay. Follow up on a couple of  
12       things. You shot a handgun before, you've gone actually  
13       deer hunting with a pistol last year?

14            A     Correct.

15            Q     Okay. So obviously you know the difference  
16       between a revolver and an automatic?

17            A     Correct.

18            Q     And you shoot quite a bit would you say, or?

19            A     Yes.

20            Q     What are your opinions on handguns in general?

21            A     Um, mostly I'm against handguns. I do own a  
22       couple but it's something I thought it would be a fun  
23       sport and I'm not really that enthused with it and it's  
24       more, I found out that it's more of a criminal type gun  
25       instead of -- I have shotguns and rifles which I use more

1 for hunting.

2 Q All right. That's understandable as far as your  
3 opinion. What do you think that opinion, if anything,  
4 would have on the way you view evidence in this case?

5 A I would put it beside me, you know. I'm here to  
6 go by the facts that I'm given here, not by what I think.

7 Q Okay. All right. You indicated that you had a,  
8 you've been in court before for a careless driving?

9 A Yes.

10 Q All right. And that as far as you are concerned  
11 that process went well?

12 A Yes.

13 Q Okay. And have you been in court for anything  
14 else that, you know, civil action, any other kind of  
15 ticket or criminal action?

16 A No.

17 Q Okay. All right. Then let's see, ever sued  
18 anyone before?

19 A No.

20 Q But you do have a police officer friend, right?

21 A Correct.

22 Q And can you tell me where this officer works?

23 A Minnetrista.

24 Q And as you said you don't talk about work?

25 A No.



1           Q     Okay. And it says you're an auto tech, is that  
2 correct?

3           A     Yes.

4           Q     What exactly do you do?

5           A     I'm a mechanic at a local dealership.

6           Q     Okay. All right. Is it the dealership -- tell  
7 me -- you don't have to tell me which one it is, but is it  
8 in the suburbs or city?

9           A     It's north of the Cities.

10          Q     What are your impressions of north Minneapolis?

11          A     I don't have any, any dealings there or anything  
12 so it's not a place that I go, so.

13          Q     Well, have you had any impressions such as the  
14 crime rate there or the socioeconomic conditions there,  
15 anything like that?

16          A     No.

17          Q     All right. During the course of this trial you  
18 are going to hear from law enforcement officers who are  
19 going to come in and testify, you are going to hear from  
20 some civilian witnesses, some will be adults, some will be  
21 juveniles. Is there anything about you that would give  
22 greater weight to the testimony of a police officer rather  
23 than a civilian witness?

24          A     No.

25          Q     Okay. All right. And you'll hear from the

1 Court that there's -- he's going to give you some  
2 instructions about what you can consider when it goes to  
3 credibility, and the fact that someone is a police officer  
4 and wears a badge and a uniform, that that does not give  
5 them like an added boost in believability.

6 A Correct.

7 Q And can you accept or do you agree or disagree  
8 that a police officer like any other individual in any  
9 other profession can make a mistake?

10 A Yes.

11 Q Could be, it could be either a good person or a  
12 bad person or rather could be good at his job or not good  
13 at his job?

14 A Yes.

15 Q All right. Have you ever been personally  
16 threatened, felt personally threatened?

17 A No.

18 Q Ever had to call 911?

19 A No.

20 Q Ever seen a crime committed?

21 A Not that I remember.

22 Q Okay. Ever talk to anybody that's been a victim  
23 of a crime?

24 A I'm sure I have but I don't remember what it  
25 involves or anything.

1           Q     Okay. What are your thoughts about the fact  
2     that Marvin Haynes, when you look at him, he's 16 or  
3     17 years old and charged as an adult in adult court on a  
4     charge of first degree murder?

5           A     I don't really think about it.

6           Q     The reason I ask is this, you know, leads to my  
7     next question. In a murder case there are certain  
8     emotions that go through anybody who is potentially a  
9     juror or anybody -- anyone?

10          A     Yeah.

11          Q     One emotional aspect of it for people is if  
12     there is someone who appears young or is young being  
13     charged with the most serious charge there is in this  
14     system, okay? Other people have a great sympathy and  
15     emotion for the deceased or the victim's family, and there  
16     will be emotional testimony I'm sure during the course of  
17     this trial. Are you the type of person who can set aside  
18     emotion and focus on the case?

19          A     Yes.

20          Q     Is there anything else you think that I need to  
21     know about you in order to determine if you would be a  
22     good juror on this case?

23          A     Not that I can think of.

24          Q     Okay. Do you think you would be a good juror?

25          A     I would like to think so.

1 Q Why do you think you would be a good juror?

2 A I'm used to listening to stories and deciding  
3 what to listen to and what not to.

4 Q Okay. Can you give me a circumstance?

5 A At work I deal with customers. They come in and  
6 I have to deal with warranty stuff and a lot of people  
7 think everything should be free and you have to decide if  
8 it's something they caused or something that was actually  
9 a problem with the car.

10 Q Okay. Then how do you go about resolving that?

11 A Usually we look at it and we can see if there is  
12 any damage or anything just by how they describe it and  
13 kind of see when people are trying to get something  
14 covered that they did, they try to avoid certain things,  
15 or.

16 Q Okay. So you kind of take a look at what they  
17 tell you and compare it up against what you see for  
18 yourself and evidence, that sort of thing?

19 A Yes.

20 Q Okay. Thank you, sir.

21 MR. BENSON: Your Honor, can we approach  
22 for one moment?

23 THE COURT: You may.

24 MR. BENSON: I have no further questions.

25 (Off-the record discussion at

1 the bench out of hearing of Mr. Isdahl.)

2 THE COURT: Mr. Isdahl, before I give Mr.  
3 Furnstahl an opportunity to ask some questions, this  
4 is your first week of jury duty, right?

5 MR. ISDAHL: Correct.

6 THE COURT: But you have been here all  
7 week, is that right?

8 MR. ISDAHL: Yes, I have.

9 THE COURT: Were you on another case?

10 MR. ISDAHL: Yes.

11 THE COURT: Criminal or civil?

12 MR. ISDAHL: Criminal.

13 THE COURT: And did the case, did you  
14 actually go to verdict on a case?

15 MR. ISDAHL: No. They let us go this  
16 morning.

17 THE COURT: Did you start hearing testimony  
18 on it?

19 MR. ISDAHL: Yes.

20 THE COURT: And then somehow the case was  
21 either dismissed, resolved or whatever?

22 MR. ISDAHL: Yeah. They didn't tell us.  
23 They just said they didn't need us anymore.

24 THE COURT: All right. Now, and you've not  
25 been a party to a lawsuit, is that right?

1 MR. ISDAHL: Correct.

2 THE COURT: Either as a plaintiff or a  
3 defendant?

4 MR. ISDAHL: Correct.

5 THE COURT: Okay. On the panel that you  
6 were on, was that a six-person panel?

7 MR. ISDAHL: No.

8 THE COURT: 12?

9 MR. ISDAHL: Yes.

10 THE COURT: Okay. All right. Mr.  
11 Furnstahl, go ahead.

12 BY MR. FURNSTAHL:

13 Q Good afternoon sir.

14 A Good afternoon.

15 Q How do you feel about being on one case in the  
16 morning and getting bounced and coming up here on a first  
17 degree murder case?

18 A I have something to do.

19 Q Okay. Beats sitting downstairs and being bored?

20 A Correct.

21 Q Is your employer paying your wages while you are  
22 gone from work?

23 A As far as I know.

24 Q Do you have any concerns that we need to be  
25 worried about in terms of that you might be distracted or

1 anything like that?

2 A No.

3 Q Okay. Do you want to be a juror on this case?

4 A Um, actually I probably don't just with my  
5 issues with my kids, thinking about it, but if I'm going  
6 to be here I might as well be on something and try to do  
7 the best that I can.

8 Q Okay. You can set those issues that you  
9 described, and you're entitled to your opinions, nobody is  
10 going to judge you for your opinions, appreciate your  
11 honest answers, but you think you can set those feelings  
12 aside and base your decision solely on the evidence that  
13 you do hear?

14 A Yes.

15 Q Did you have any reaction when -- I'm sorry, you  
16 already answered that question. Have you ever experienced  
17 a startling situation?

18 A Um, nothing that comes to mind right off the top  
19 of my head.

20 Q Were you one that said you had, said that you  
21 had heard something about this case?

22 A Yeah. I remember hearing about it on the news  
23 just a little bit when he said the name of the flower  
24 shop.

25 Q But you can set that aside?

1           A     Yeah. I don't remember a whole lot about it at  
2 all. Just the name kind of rang a bell.

3           Q     Are you confident that you can follow the  
4 judge's instruction on the law?

5           A     Yes.

6           Q     And you know one of your jobs as judges of the  
7 facts is to decide the credibility of the witnesses?

8           A     Yes.

9           Q     That was explained to you I take it yesterday  
10 and today?

11          A     Yes.

12          Q     All right. And can you appreciate how important  
13 your own common sense could be to you in making the kind  
14 of decisions we are going to ask to you make?

15          A     Yes.

16          Q     Are you confident you can be fair to both sides?

17          A     Yes.

18          Q     But if I don't prove it, the verdict is not  
19 guilty, right?

20          A     Correct.

21          Q     If I do prove it, can you convict on a charge of  
22 first degree murder?

23          A     Yes.

24          Q     Any doubt in your mind, sir?

25          A     No doubt.



1 Q Thank you, sir.

2 MR. FURNSTAHL: We accept Mr. Isdahl, Your  
3 Honor.

4 THE COURT: All right. Mr. Isdahl, you are  
5 going to be seated on this jury. What I'm going to  
6 do now is I'm going to excuse you now and I'll have  
7 you come back on Monday morning at five to nine and  
8 wait outside this courtroom before the clerk comes  
9 out to get you, okay?

10 MR. ISDAHL: Okay.

11 THE COURT: There is a couple of other  
12 things I want to tell you. Number one, do not  
13 discuss this case with anyone, all right?

14 MR. ISDAHL: Yup.

15 THE COURT: Don't do your own  
16 investigation, don't talk to anybody outside about it  
17 at all. If anyone tries to discuss this case with  
18 you, you need to let me know. It's naturally going  
19 to be, family members will be curious as to what you  
20 are doing. You can tell them you are serving on a  
21 criminal case. That's all you can tell them.

22 MR. ISDAHL: Okay.

23 THE COURT: Keep an open mind until you've  
24 heard all the evidence and remember you can't  
25 consider anything you hear outside this courtroom,

1           okay?

2                   MR. ISDAHL:   Yup.

3                   THE COURT:   You are excused.

4                   MR. ISDAHL:   Monday at nine?

5                   THE COURT:   Five to nine.

6                   MR. ISDAHL:   Five minutes to nine back

7           here?

8                   THE COURT:   Outside of this courtroom.

9                   MR. ISDAHL:   Okay.  I'm done for the day

10          then?

11                   THE COURT:   You are.

12                   MR. ISDAHL:   Okay.  Thank you.

13                                   (Mr. Isdahl exits.  Ms.

14          Hick enters.)

15                   THE COURT:   Go ahead and have a chair.

16          It's Sarah Hick?

17                   MS. HICK:   Yes.

18                   THE COURT:   Ms. Hick, the attorneys have  
19          some additional questions for you and Mr. Benson is  
20          going to go first.

21                   Go ahead, Mr. Benson.

22                   MR. BENSON:   Thank you, Your Honor.

23          BY MR. BENSON:

24           Q       Good afternoon.

25           A       Hi.

1           Q     You indicated first of all that you went to  
2 school in Iowa?

3           A     Yeah.

4           Q     Where at?

5           A     Cornell College.

6           Q     All right. Just wondering. I thought maybe it  
7 was Iowa State or Iowa --

8           A     Nope.

9           Q     This is your first jury service?

10          A     Yeah.

11          Q     And you were on a jury earlier today?

12          A     Yeah.

13          Q     With this guy that was just in the courtroom?

14          A     Yeah.

15          Q     Okay. All right. So what are your thoughts  
16 about finishing that case and coming in here and being on  
17 a first degree murder jury?

18          A     Um, we are all a little frustrated with having,  
19 you know, been involved in that case for awhile and having  
20 it just sort of end and I guess you never get resolution  
21 anyway even if there's a decision, you know, but, I don't  
22 know. I mean, you know, I'm happy to serve, my civic duty  
23 and --

24          Q     Okay.

25          A     -- be here.

1           Q     I take it you are frustrated. Did you find out  
2 any information about the --

3           A     Other case?

4           Q     Yeah, the other case.

5           A     Oh no, just said it ended and we didn't need to  
6 know more than that, so.

7           Q     Okay. All right. Well, if you are selected to  
8 be on this panel, will you be able to focus on the case?

9           A     Yeah.

10          Q     All right. Just generally what are your  
11 thoughts about a first degree murder charge in the sense  
12 of possibly being a juror on this case?

13          A     It's intimidating, I guess.

14          Q     Why is it intimidating?

15          A     Just a very serious charge, you know, there's  
16 lots of people involved and lots of features and families  
17 and it's very serious.

18          Q     Okay. And one of the things we wonder, think  
19 about, is whether when something is intimidating and all  
20 these issues whether people can function under that  
21 pressure, as it were. Do you think you can do that?

22          A     Yeah.

23          Q     And I imagine that one of the things you are  
24 considering is that a verdict in a murder case is going to  
25 have an impact on someone?

1           A     Yes.  Everyone.

2           Q     Exactly.  And one of the things I'm sure you are  
3     considering is the fact that when you look at Marvin  
4     Haynes you know he's young?

5           A     Um-hum.

6           Q     And he's here in court facing the most serious  
7     charge there is.

8           A     Um-hum.

9           Q     I also imagine that you are thinking about the  
10    deceased person and the family of that person?

11          A     Um-hum.

12          Q     And you just have to answer yes or no for the --

13          A     Yes.  Sorry.

14          Q     All right.  How is it that you propose to, I  
15    suppose, compartmentalize those emotions and those  
16    concerns and focus on the evidence?

17          A     I honestly think it's kind of hard to say ahead  
18    of time how I would compartmentalize those things.

19          Q     Let me ask you this way.  I'm asking you  
20    questions in a bit of a vacuum, you know?

21          A     Yeah.

22          Q     Can't tell you about the evidence in advance.

23          A     Right.

24          Q     But I can tell you there's going to be, you  
25    know, as human beings there will probably be some

1 emotional testimony maybe from some family members?

2 A Sure. Sure.

3 Q How do you anticipate dealing with that or  
4 receiving that type of testimony, and I ask that, are you  
5 a very emotional person? Are you somebody that's going to  
6 lean towards, you know, extra sympathy as it were for the  
7 family?

8 A I don't think so. I mean, I feel like I do a  
9 pretty good job of separating work and sort of work  
10 responsibilities from personal issues and I don't consider  
11 this a personal issue and I feel like I would be able to  
12 separate sort of emotional ideas from the more logical,  
13 rational process of a court decision.

14 Q Okay. Would you want to be a juror on this  
15 case?

16 A Um, someone who wants to be a juror scares me a  
17 little. So no, I will not say hey pick me for a jury  
18 trial for a murder. But I'm fine with performing that  
19 duty.

20 Q Okay. And as far as the time line as the judge  
21 has told you, you are able to accommodate that schedule?

22 A Yeah.

23 Q Do you have any -- what are your opinions on  
24 handguns?

25 A I'm not a fan of them being legal.

1           Q     And is there anything about that opinion that  
2     would impact the way you view evidence in this case since  
3     there is an allegation or since a handgun is involved in  
4     this case?

5           A     No. I mean, the laws aren't set the way that I  
6     think they should be and so the way the laws are and I  
7     don't think that's really relevant to the case or to the  
8     issue.

9           Q     Okay. What are your thoughts and your ability  
10    to assess the credibility of witnesses -- strike that.  
11    How about people in general?

12          A     I don't know. It's pretty hard to judge a  
13    person right up front. It's easier if you can get to know  
14    them and find out what they are about and kind of hear  
15    their opinions on stuff. But, you know, I think how  
16    seriously they treat the matter they are talking about is  
17    important. It's tough. It's very hard beyond that.

18          Q     Okay. In your own personal experiences I'm sure  
19    you've had situations where you've had to make that  
20    determination for yourself, right?

21          A     Yeah.

22          Q     Okay. And I imagine with your family, you know,  
23    like with your either family or friends or people that you  
24    know it would be easier than telling if someone that you  
25    don't know is telling the truth?

1           A     Yeah.  Yeah.

2           Q     All right.  And in this case, you know, people  
3 are going to come and you don't know anybody who is  
4 supposed to testify here?

5           A     (Nods head.)

6           Q     Do you think you would be able to use some of  
7 the same tools in determining whether they are telling the  
8 truth?

9           A     Well, I can't use --

10          Q     Not the same?

11          A     -- the same tools because I don't have any other  
12 information about them.

13          Q     Let me ask you this.  If in your own personal  
14 experience -- if you have a situation that would be great.  
15 If someone tells you, for example, one story on day one  
16 and then they will tell you another story a day later, how  
17 do you go about finding out if they are being candid with  
18 you?

19          A     Um, I guess it would depend on what changed in  
20 the story.  If it was facts that were really -- or ideas  
21 or fact that were really relevant to the point of the  
22 story, that would make me wonder.  If they were incidental  
23 to what was going on I wouldn't be very concerned because  
24 I know that when I tell stories I change irrelevant facts  
25 just to make it easier or shorter or longer or whatever.



1           Q     Okay. And then if, another hypothetical, one  
2 person, one witness says A, another witness says B, or  
3 another person, you know, says B, how do you go about in  
4 your mind figuring out who is telling you the truth?

5           A     I guess the part I was thinking about is what  
6 sort of stake they have in the process, if they have  
7 something to gain or something to lose by truth or fiction  
8 or what have you that would play into it; what sort of  
9 experience they have with talking about what they saw or  
10 what they experienced, I guess if someone is in a position  
11 where they are constantly having to watch for specific  
12 details I might be more inclined to trust some of their  
13 details. People have a big emotional investment, I know  
14 that's tough. Sometimes they are going to remember more  
15 because it was an emotional event. Sometimes they are  
16 going to remember less because of their emotions at the  
17 time, so that might be hard.

18          Q     Okay. And do you think that your common sense  
19 plays a part in that as well as your assessments?

20          A     Sure. Yeah.

21          Q     All right. In any event, do you think that you  
22 would be able to take the tools you have and apply them in  
23 the context of a criminal case?

24          A     Yes, I would do my best.

25          Q     All right. Aside from whether you want to be a

1 juror or not, do you think you would be a good juror?

2 A Yeah.

3 MR. BENSON: One moment. Thank you.

4 Your Honor, we'll accept Ms. Hick.

5 THE COURT: Mr. Furnstahl, go ahead.

6 BY MR. FURNSTAHL:

7 Q Why would you be a good juror?

8 A I think I'm pretty fair. I think I listen to  
9 other people's ideas. I mean, I think I pay attention  
10 really well. I know it's going to be really important  
11 when we get in the -- when the jurors come together at the  
12 end to be able to listen to everyone's thoughts and  
13 reactions and go from there and I feel like I can do that  
14 pretty well. I don't see myself having been told that I'm  
15 real dogmatic about, you know, no, it's my way and I won't  
16 listen to you guys, but neither am I passive about what I  
17 believe either.

18 Q You are in a master's program right now?

19 A Ph.D.

20 Q Ph.D.?

21 A Yeah.

22 Q Where at?

23 A University of Minnesota.

24 Q For what?

25 A Curriculum in instruction and education.

1 Q What?

2 A Curriculum in instruction and education.

3 Q What is your undergraduate degree in?

4 A I have a BA in political science and I have a  
5 master's in environmental science.

6 Q What do you hope to do when you get out of  
7 school?

8 A Um, be employable. I may go back to teaching.  
9 I may decide to go the economic route and teach at the  
10 college level. I may write curriculums. I may do some  
11 combination of all those.

12 Q Where were you a teacher before?

13 A St. Paul Central High School and a little bit at  
14 Apple Valley and a little bit at Eastview High School.

15 Q What did you teach there?

16 A (Unintelligible) science.

17 Q What?

18 A Biology and environmental science.

19 Q Any problems with students?

20 A Oh yeah.

21 Q Any issues with gangs in that school, those  
22 schools?

23 A Not, no, I mean I had no knowledge of kids, I  
24 mean, I heard that some of our students were involved in  
25 gangs. I never knew if any particular students of mine

1 except for one, I guess, one Asian boy who wrote about  
2 being in a gang as part of an essay and talked about his  
3 experience with the gang.

4 Q Okay. Tell me about your family, your parents,  
5 what did they do?

6 A They are both doctors.

7 Q Medical doctors?

8 A Yeah. Dad's a pediatrician over in St. Paul,  
9 and my mom is just retired, was in general and  
10 occupational practice down in Rochester. My brother and  
11 his wife are both physicians.

12 Q Do you have any other siblings?

13 A No.

14 Q Are you older or younger than your brother?

15 A Younger.

16 Q So lot of education in that family?

17 A Yeah.

18 Q Counsel was asking you about being a juror here  
19 and you, one of the things you said there's lot of futures  
20 involved. You recognize the decision obviously is going  
21 to affect somebody?

22 A Um-hum.

23 Q Affect a lot of people. The question is can you  
24 set that aside and base your decision only on the  
25 evidence, or is that going to affect your decision making

1 process?

2 A We're going to have to set that aside because  
3 lives are affected no matter what the outcome.

4 Q When you say we're going to have to set it  
5 aside, do you mean you?

6 A Well, we the, jurors, I would hope. Yes, me  
7 included in all of us.

8 Q I just want to talk about you right now.

9 A Okay.

10 Q All right. That is what I want to know. I  
11 mean, this is a first degree murder case, you look at the  
12 defendant, he's awfully young looking and I know what's  
13 going through the jurors' minds, do I want to send -- I  
14 know what is going to happen if I vote guilty and you  
15 talked about being fair and being able to hear both sides.  
16 But in a situation like this, some people may say it takes  
17 a little bit of courage too, you know what I'm saying?

18 A Okay.

19 Q To make the decision that the evidence calls for  
20 even though the decision is going to affect somebody. I  
21 want to know if you can do it.

22 A Yeah. I don't, you know, I'm not, maybe I  
23 misunderstood. I don't think we're in charge of  
24 sentences.

25 Q You are not.

1           A     We are just in charge based on what we've heard,  
2     is it guilty or innocent.

3           Q     Guilty or not guilty, right?

4           A     Yeah. And that's the decision we'll make. We  
5     realize that other jurors or a judge before us made a  
6     decision to try him as an adult, apparently.

7           Q     See, that's not something you need to worry  
8     about?

9           A     No. So we're given a situation, we make a  
10    decision from here.

11          Q     Um-hum. And what I need to know is can you base  
12    a decision solely on the evidence or other factors like  
13    the affect your decision is going to have on somebody, is  
14    that going to affect your decision making process, and I  
15    mean you as a person?

16          A     I hope not.

17          Q     Okay.

18          A     I mean I don't think so.

19          Q     Okay. Thank you.

20                   MR. FURNSTAHL: We'll exercise a  
21    peremptory, Your Honor.

22                   THE COURT: All right. I'll excuse you  
23    from this jury and I would ask if you would please  
24    check in with the jury office downstairs. Thank you  
25    very much.

1 MS. HICK: Okay.

2 THE COURT: We are going to take a very  
3 brief recess right now. 15.

4 (Ms. Hick exits. Recess.  
5 Ms. Lee enters.)

6 THE COURT: Ms. Lee, the attorneys have  
7 some additional questions for you and Mr. Benson is  
8 going to go first.

9 Go ahead, Mr. Benson.

10 MR. BENSON: Thank you, Your Honor.

11 BY MR. BENSON:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Ms. Lee, did you sit through the trial earlier  
15 that got -- when you got discharged earlier?

16 A Yes.

17 Q What are your thoughts about being a potential  
18 juror in a further case?

19 A I have no thoughts. I'm neutral. I'm neutral.  
20 I have no thoughts. I'm okay.

21 Q Okay. What are your, what emotions or thoughts  
22 or feelings go through your head when you think about  
23 being a juror in a murder case?

24 A Being a juror on a murder case?

25 Q As opposed to --

1           A     It's the same I guess to me. I'm not familiar  
2 with being a juror at all so in any case I would be --  
3 it's no different to me.

4           Q     Okay. What was the case that you were sitting  
5 on earlier today? What was the charge?

6           A     Assault and burglary, I believe.

7           Q     You didn't answer any, or you didn't raise your  
8 hand to any of the questions earlier. Have you or anyone  
9 close to you ever been like personally threatened or been  
10 in fear of your safety?

11          A     No.

12          Q     Ever call 911?

13          A     No.

14          Q     Okay. Ever witnessed a crime?

15          A     No.

16          Q     Do you think you can be a fair juror?

17          A     Yes.

18          Q     Why?

19          A     Well, I'll use facts as a tool to be able to  
20 decide what might have happened and to decide if the  
21 innocence or guilty.

22          Q     Do you think you can do that in this case?

23          A     Yes.

24          Q     Is there anything that I should know in order to  
25 determine whether you could be a fair juror? Anything



1 else I should know?

2 A I'm an open person. I like to listen to all  
3 sides of a story, whether it be among friends or whatever  
4 it may be. I like to listen to all sides and then put it  
5 together, but I've never had to do it in a court system as  
6 far as other than my last experience.

7 Q Okay. Tell me the most important decision that  
8 you have had to make in your life. Most important  
9 decision or the toughest decision that you have had to  
10 make.

11 A Um, probably what college to go to.

12 Q Which college did you go to?

13 A Bethel College.

14 Q Why was it a tough decision?

15 A Um, I wanted to get an education, there were a  
16 lot of different factors, where my friends were going and  
17 I wanted to go with them. It's not the biggest decision  
18 anyone has ever had to make but for me that's my biggest  
19 decision at that time. When you are just thinking about  
20 all the different scenarios, I guess, I had to decide what  
21 education I wanted, the cost, all the different factors  
22 that go into it.

23 Q If after sitting through this trial you feel  
24 that the State of Minnesota has not proven its case, do  
25 you have any problem whatsoever in finding Marvin Haynes

1 not guilty?

2 A No.

3 Q Thank you.

4 MR. BENSON: We'll accept Ms. Lee, Your  
5 Honor.

6 THE COURT: Okay. Mr. Furnstahl.

7 BY MR. FURNSTAHL:

8 Q Good afternoon.

9 A Hi.

10 Q Do you want to be a juror on this case?

11 A I'm neutral.

12 Q Okay. Will you be able to make your decision  
13 solely and completely on the evidence and not have --  
14 everybody recognizes that your decision is going to affect  
15 somebody, everybody recognizes the defendant is a young  
16 person, but can you set those feelings aside and base your  
17 decision solely and completely on the evidence?

18 A Yes.

19 Q Any doubt in your mind?

20 A No doubt.

21 Q Okay. Will you follow the judge's instructions  
22 on the law?

23 A I will.

24 Q And will you use your common sense and search  
25 for the truth in the evidence?

1 A Yes.

2 Q Anything else you think we should talk about?

3 A I'm boring. I'm sorry. I have nothing.

4 Q You indicated that if at the close of evidence  
5 you are not satisfied I proved the case, the verdict is  
6 not guilty, right?

7 A (Nods head.)

8 Q But if at the close of the evidence you are  
9 satisfied that I've proved this case, can you convict on a  
10 charge of first degree murder?

11 A Yes.

12 Q Any doubt in your mind?

13 A No doubt.

14 Q Thank you, Ms. Lee.

15 MR. FURNSTAHL: We accept Ms. Lee, Your  
16 Honor.

17 THE COURT: All right. Ms. Lee, you are  
18 going to be seated on this jury but I'm going to  
19 excuse you right now and I'm going to have you come  
20 back Monday morning to this courtroom and just remain  
21 in the hallway outside. Come back about five to nine  
22 and the clerk will come out and get you when we are  
23 ready to go, okay?

24 Before you leave I want to tell you a couple of  
25 additional things, though. Number one, don't discuss

1           this case with anyone. When any of your family  
2           members find out that you are on a jury they are  
3           going to naturally be curious and they are going to  
4           want to know what you are doing. You can tell them  
5           you are sitting on a criminal jury and that's all you  
6           can tell them, okay? Yes?

7                       MS. LEE: Yes.

8                       THE COURT: Do not do your own  
9           investigation, do not watch any news reports on TV or  
10          read about this case in a newspaper. Keep an open  
11          mind until you've heard all the evidence. Okay? Can  
12          you do those things?

13                      MS. LEE: I can do that.

14                      THE COURT: You come back at five to nine  
15          on Monday morning then, okay? Thank you very much.

16   (Ms. Lee exits.)

17                      THE COURT: And now, why don't you excuse  
18          the rest of the jury panel, tell them thank you very  
19          much and send them back down to the jury office.

20                      That's 14, right?

21                      MR. FURNSTAHL: Yes.

22                      MR. BENSON: Yes.

23   (Jurors are excused.)

24                      THE COURT: Well, counsel want to see me in  
25          chambers a little bit about jury instructions then?

1 MR. FURNSTAHL: Sure.

2 MR. BENSON: Sure.

3 MR. FURNSTAHL: This is off the record.

4 (Off-the-record discussion.

5 The proceedings conclude for this day.)

6 \* \* \*

7 STATE OF MINNESOTA)

8 ) ss.

REPORTER'S CERTIFICATE

COUNTY OF HENNEPIN)

9 I, Jolyn R. Lund, Official Court Reporter, do  
10 hereby certify that the above and foregoing is a true and  
11 accurate transcription of my original stenographic notes  
12 in said matter.

13 Date: March 1, 2006

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

04035635  
A05-2444  
ORIGINAL  
DISTRICT COURT

1 STATE OF MINNESOTA

FILED

2 COUNTY OF HENNEPIN

06 MAR -3 PM 12:41

FOURTH JUDICIAL DISTRICT

3 -----  
4 State of Minnesota,

HENNEPIN CO. DISTRICT  
COURT ADMINISTRATOR

D.C. File No. 04035635

S.Ct. File A05-2444

5 Respondent/Plaintiff,

6 vs.

**TRIAL TRANSCRIPT**

7 MARVIN HAYNES, JR.,

VOL. V, pp. 714-935

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, and a jury, at 659-C  
13 Hennepin County Government Center, Minneapolis,  
14 Minnesota, on the **29th day of August, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.  
22  
23  
24

25 REPORTER: Jolyn R. Lund

04035635

## I N D E X

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## E X H I B I T S

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No. 2 - Diagram of flower shop	763	764	764
No. 4-41 - Autopsy photos	765	765	765
No. 42 - Deformed bullet	800	800	800
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1 (Whereupon, the following  
2 proceedings occur.)

3 THE COURT: Members of the jury panel, will  
4 you stand and raise your right hands, please?

5 (Jury is duly sworn.)

6 THE COURT: Members of the jury, the trial  
7 is about to begin. During the trial, you are going  
8 to hear the testimony of several witnesses. You will  
9 have to make judgments about the credibility and  
10 weight of their testimony. Be patient and listen  
11 carefully to the testimony of all the witnesses.  
12 Keep it all in mind until you have heard all the  
13 evidence.

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

25 You may take notes during this trial, but you



1           should not feel required to do so. The most  
2           important thing is to give your full attention to the  
3           testimony as you hear it. You should keep an open  
4           mind about all the evidence until the end of the  
5           trial, until you have heard the final arguments of  
6           the attorneys, and until I have instructed you in the  
7           law.

8                       Evidence is what the witnesses say and any  
9           exhibits submitted to you. What the attorneys say is  
10          not evidence. However, you should listen attentively  
11          to any statements the attorneys makes. Those  
12          statements are made so that you can better understand  
13          the testimony.

14                      During the trial an objection may be made to  
15          some evidence and I may sustain or overrule the  
16          objection and direct that a questions not be asked or  
17          answered. If I sustain the objection, you should not  
18          speculate about what the possible answer would have  
19          been. If I instruct you during the trial to  
20          disregard some statements that a witness has made,  
21          then you must disregard it.

22                      From now on you must not discuss this case with  
23          anyone. This includes your fellow jurors, lawyers,  
24          representatives of the news media, witnesses and  
25          spectators or anyone else. When you go home your

1 family and friends will be curious as to what you are  
2 doing. Do not talk to them about the case and  
3 request them not to talk to you about the case. You  
4 should also refrain from reading about this case in  
5 newspapers or listening to news reports about it on  
6 the radio or television.

7 In order to accomplish this, you should not  
8 listen to any television or radio news until you are  
9 informed that you are discharged from your duties at  
10 the end of this trial. The reason for this is that  
11 it is too difficult to quickly turn off the  
12 television set or radio before you hear information  
13 reported on the case. Also I would suggest that if  
14 your spouse or anyone else in your home wishes to  
15 listen to television or radio news, that they be  
16 requested to keep it very low and you should retire  
17 to another room where you can't hear. As for  
18 newspapers, you should not read them unless someone  
19 else carefully examines the paper and removes or  
20 destroys any articles about this trial.

21 Remember, you are not investigators. Do not go  
22 anyplace if you think it relates to the events  
23 involved in this trial. Also, you are not to go out  
24 to do any looking, and you are not to ask people  
25 about this matter. It is important to remember that

1 if you do not follow these instructions you may  
2 jeopardize this trial.

3 Now, we will try to take a break, a recess each  
4 morning and we'll also recess for lunch about noon,  
5 and have a recess in the afternoon. We will attempt  
6 to wrap things up by each day about 4:30. You are  
7 free to bring a drink into the courtroom. You notice  
8 the attorneys have water and the judge has water so  
9 you can have something to drink if you need it.

10 Please make a mental note of the seat in which  
11 you are now sitting and please keep that seat  
12 throughout the trial.

13 Members of the jury panel, each of the attorneys  
14 is now given an opportunity to make an opening  
15 statement to you. The defendant's attorney may  
16 choose to make theirs at the completion of the  
17 State's case. I will just remind you that the  
18 remarks the attorneys make are not themselves  
19 evidence.

20 Counsel prepared to proceed?

21 MR. FURNSTAHL: Yes, Your Honor.

22 THE COURT: Go ahead.

23 MR. FURNSTAHL: May it please the Court,  
24 counselor, ladies and gentlemen.

25 This is a case about decisions. Counsel for the

1 defense asked all of you about, in your jury  
2 selection process, about decisions that you've made  
3 in your life, the most important decisions that  
4 you've made. We are here in this trial because of  
5 decisions that were made by the defendant. Costly  
6 decisions. Sometimes when we make decisions they  
7 often affect other people. Sometimes there are --  
8 the effects of our decisions that they have on other  
9 people can be devastating. In this case, the  
10 decisions that were made by this defendant were  
11 fatal, and that's the reason why we are here in this  
12 trial.

13 It was this defendant that made the decision to  
14 take a gun and walk into a family business and try to  
15 rob the business of its proceeds. It was this  
16 defendant who made the decision to take that gun and  
17 point it at one of the employees of this family  
18 business, and when this man would not move fast  
19 enough he decided to pull the trigger. Not once, but  
20 twice, and one of the bullets pierced this man's  
21 heart and he died before medical attention could even  
22 get there. He died at the scene. He didn't have a  
23 chance. He was unarmed, not struggling, not  
24 unwilling to give up the proceeds. But he decided he  
25 wasn't moving fast enough so he shot him and he

1 killed him.

2 The business that I'm talking about is a  
3 business known as Jerry's Flower Shop. It sits at  
4 the intersection of 33rd Street and Lyndale Avenue in  
5 north Minneapolis. There's a photograph of Jerry's  
6 Flower Shop. This business is run by, is owned by  
7 Jerry Sherer. He is the brother to the dead man,  
8 Harry Sherer, also they called him Randy. There were  
9 seven siblings in this family and they are a very  
10 close family and Jerry would often employ members of  
11 his family to work at his business.

12 This business had been opened since 1961  
13 servicing the needs of the community in north  
14 Minneapolis, and they have seen a lot of changes in  
15 north Minneapolis. They have seen that neighborhood  
16 go from good to bad to worse. Now, because of the  
17 decision that he made, this decision -- this business  
18 is no longer in existence. They have shut down.

19 This is the photograph of the man the defendant  
20 decided to shoot, the man that didn't move fast  
21 enough. His name is Harry Sherer. He is one of  
22 seven siblings to the Sherer family. You can see  
23 he's a blue collar guy. He had some problems. He  
24 was on disability, but the family, as I said they  
25 were a close family and as a result of his disability

1           they would work together to help Randy or Harry, they  
2           got him a house and so forth, they helped him with  
3           employment at the flower shop, and he would in turn  
4           pitch in too by helping at the flower shop making  
5           sure that things got delivered and other tasks and so  
6           forth that were asked of him.

7           The flower shop, not only was it a place of  
8           business but it was kind of a social area. People  
9           often would gather there to reminisce, to have  
10          coffee, to talk, to just get together and to, you  
11          know, have contact with friends and family. But now  
12          as I said this business is no longer in existence.

13          One of the persons that you are going to meet in  
14          this case is the sister of Randy Sherer, the sister  
15          of Jerry Sherer, the owner of the flower shop. Her  
16          name is Cynthia McDermid. And Randy was very  
17          protective of his sister. Cynthia was working that  
18          day almost 15 months ago, almost 16 months ago, it  
19          was May 16th of 2004 that she was working. It was a  
20          Sunday, actually a Sunday morning, late in the  
21          morning about 11:30 when all this happened. She  
22          wasn't scheduled to work that day. I believe it was  
23          her daughter or niece that was supposed to work that  
24          day but she agreed to fill in, and because of the  
25          changing nature of this neighborhood, they were

1 always a little bit on guard, had a little bit of an  
2 awareness of their surroundings because of concerns  
3 for their safety, and Cynthia experienced this and  
4 recognized this and acted accordingly.

5 Now, about 11:30 in the morning, she saw a young  
6 man walk into the flower shop. This is an aerial  
7 photograph of the location of the flower shop in  
8 north Minneapolis. The top of the diagram, of the  
9 aerial photograph is north, and at the intersection  
10 of 33rd and Lyndale sits Jerry's Flower Shop. One  
11 block to the south is Lowry, and this is a rather  
12 busy intersection. There is businesses all around  
13 here, some grocery stores and so on and so forth.  
14 You'll hear some testimony about a church that is  
15 located right here, I believe it is, and I'll talk  
16 more about that later.

17 In addition there will be some evidence or  
18 information about this alleyway that runs, that is to  
19 the east of the flower shop running north and south  
20 and specifically all the way up to about this  
21 location just opposite of this house right here  
22 (points).

23 This is the diagram of the inside of Jerry's  
24 Flower Shop. This is the front door (points). The  
25 street going this way would be Lyndale Avenue, the

1 street going this way, this would be to the south of  
2 the store, this would be 33rd. This is the front  
3 door. You can see there are coolers for the various,  
4 where they keep the flowers and so forth. This is an  
5 area where the, I'm sorry, right here (points), this  
6 is an area where the workers would put together vases  
7 with flowers and cut the flowers and so on and so  
8 forth.

9 Cynthia McDermid, the brother (sic.) of Randy,  
10 was working that day and even though she had this bit  
11 of awareness given the nature of the neighborhood  
12 that always kept them a little bit on guard, she saw  
13 a young man, the defendant, walk into the front door  
14 coming westbound on this sidewalk right here and  
15 coming to the, into the business. She was not  
16 alarmed and she didn't have her usual sense of  
17 awareness because she had recognized this young man,  
18 this defendant, in the past. It may have been that  
19 she had waited on him the week before which was  
20 Mother's Day weekend. It may have been that she had  
21 seen him down on the intersection of Lowry and  
22 Lyndale or saw him get on the bus, but she had seen  
23 this young man a couple of times in the past so her  
24 antenna didn't go up as it normally would when a  
25 stranger would enter the store.



1           Now, the defendant indicated -- he was polite,  
2           very cool, very calm, and he indicated that he wanted  
3           to purchase some flowers for his mother. He said  
4           that it was her birthday, and so she assisted him in  
5           looking in the coolers to pick out some flowers. He  
6           told her that his mother was a chiropractor and the  
7           flowers, as I said, were for her birthday and she  
8           didn't think anything of that because there were  
9           several chiropractors that had businesses in the area  
10          on Lyndale Avenue and so forth. And so as she was  
11          assisting him, she told him, she asked him if he  
12          wanted a card and if he wanted to pick out a card she  
13          would give that to him for nothing. And he said he  
14          would do that and he asked her if he could pay with a  
15          credit card and she said that was fine, and he picked  
16          out a number of roses and told her how he wanted them  
17          and so forth, and she brought them over to this work  
18          station here where she was putting them in a vase.

19          Now, the defendant obviously had some knowledge  
20          of the inside of Jerry's Flower Shop because there  
21          are areas specifically over in this area (points) in  
22          the north end of the flower shop, and we'll have  
23          photographs that will show these areas, but there  
24          were areas over there that the public was not, that  
25          it was not open to the public, and the defendant

1           respected those areas.

2           At any rate, while Cynthia was working on the  
3           vase of flowers for the defendant, she looked up to  
4           see him pointing a gun at her face. Now, she doesn't  
5           know anything about guns but she, but she will  
6           describe the gun. She will describe it as a silver  
7           or chrome revolver. She describes it -- because it  
8           has the cylinders, not because she says it's a  
9           revolver. We know it's a revolver though, because of  
10          -- not just because of her description, but because  
11          of the differences between a revolver and a  
12          semiautomatic pistol. A semiautomatic pistol when  
13          it's fired will discharge the casings, and as I said  
14          there were two shots fired in this case. The  
15          officers obviously searched the area. There were no  
16          discharged casings consistent with a revolver, which  
17          does not discharge its casings. It just spins the  
18          cylinder to the next unfired round.

19          When Cynthia looked up and saw the man with the  
20          gun in her face, she heard him say give me the money,  
21          and she was more than willing to give up the money.  
22          He also said that he wanted the tapes. There were  
23          some cameras in the flower shop, but unfortunately  
24          the cameras weren't working at the time and Cynthia  
25          tried to explain to him that they were not working.

1 But she told him that she would gladly give him the  
2 proceeds. It wasn't worth fighting to give up a few  
3 dollars in proceeds, so she started to make a move  
4 toward the counter where the till is and he said, he  
5 told her don't move, I want the money in the back.  
6 He apparently had some understanding or some belief  
7 that there was either a safe or some money in the  
8 back here, but that was bad information. Wherever he  
9 got that information, wherever he got that idea, that  
10 was false. The money was in the cash register at  
11 this counter. And she tried to explain that to him.

12 About that time Jerry -- I'm sorry, Harry -- I'm  
13 going to call him Randy because that's what the  
14 family calls him. Randy came out from the back and  
15 he was as I said very protective of his sister and he  
16 said words to the effect of what's going on here, and  
17 all the while the defendant was holding the pistol,  
18 the silver chrome revolver on the face of Cynthia  
19 McDermid. When Randy came out from the back, he  
20 moved the gun and pointed it towards Randy. Cynthia  
21 seized that opportunity to try to make a break, to  
22 run for her life, and she ran this direction  
23 (points), north in this direction, got a few steps  
24 when she heard a shot being fired by the defendant.

25 Randy, her brother, was unarmed. And he was

1           also on disability. He was not in a position to  
2           fight or do anything to defend himself. Cynthia got  
3           a few steps and heard one shot and then she tried to  
4           exit out this door (points), and you can imagine, you  
5           can well imagine the kind of tension that was going  
6           through her at that time, the panic that she was  
7           experiencing and she had difficulty getting out the  
8           door and she heard a second shot being fired.

9                   And then Cynthia ran to a neighbor's house two  
10          buildings up from the flower shop. This is some kind  
11          of a construction company right here, this is the  
12          neighbor's house (points). Between this construction  
13          company and the house, there's a small fence about  
14          three or four feet off the ground and she tried to  
15          get over this fence. She was climbing over this  
16          fence when she looked to her right and saw the  
17          defendant in a controlled brisk walk going northbound  
18          in the alleyway, and she could see him clearly and as  
19          a result of her experience was able to identify him.

20                   When the police came they seized the area, and  
21          one of the things they tried to do was to track the  
22          trail of the defendant, of the gunman. There were a  
23          couple of things that he touched inside the flower  
24          shop. One was some green wrapping paper, and he may  
25          have touched that card, but they took the green

1 wrapping paper. They made sure nobody went in  
2 inside. Randy was already dead so they sealed the  
3 scene so as to not interfere with the scent that they  
4 could get. They took the green wrapping paper, and a  
5 canine officer from the Minneapolis police department  
6 used his dog to track the route that the defendant  
7 took, and he tracked the route down the street then  
8 northbound up the alleyway to about this position  
9 (points) right here where the dog lost the trail.

10 And the officers on the scene called around to  
11 see if they could possibly get a bloodhound. This  
12 dog apparently was not a bloodhound. I believe it  
13 was a German shepherd but I'm not sure. So they  
14 called around to see if they could get a bloodhound,  
15 and there was an officer from, I think it was the  
16 Austin police department who had a bloodhound and he  
17 brought his dog up there to do the same thing. And  
18 they had the dog sniff the green wrapping paper which  
19 they kept separate from everything so as to not  
20 interfere with the scent. The dog traced the same  
21 exact route, down the sidewalk northbound, up the  
22 alleyway to about this position right here where the  
23 dog lost the scent. And we'll show you some  
24 photographs of that area where both dogs lost the  
25 scent. There is what appears to be fresh tire tracks

1           where it looks like a car squealed, had been parked  
2           but squealed out in an effort to get away from the  
3           scene very quickly.

4           Now, because of the, because of the location --  
5           now as I said this is kind of a tough neighborhood  
6           and unfortunately people don't always volunteer  
7           information to the Minneapolis police department  
8           because it's a very disadvantaged neighborhood, and  
9           so in order to try to identify the assailant, the  
10          officers who had canvassed the area noticed that one  
11          of the persons living in this house right here  
12          (points) somewhat matched the description that  
13          Cynthia McDermid had given and this was -- and she  
14          gave a description on, to the 911 operator, she gave  
15          the description to the police at the scene and we'll  
16          play you the 911 tape and you'll have a sense, a  
17          feeling as to the terror, the panic, the emotions  
18          that she was experiencing at the time that she's  
19          trying to provide as best she can that critical  
20          information.

21          But officers at any rate observed in their  
22          canvassing that one of the persons at that house  
23          somewhat matched the description that Cynthia  
24          provided, so that afternoon they put together a photo  
25          lineup which included one of the residents of that

1 home. This is the photo lineup, and I'm not sure  
2 which person is a resident of that house, but a photo  
3 that Cynthia focused on was photo number four. She  
4 indicated that he looked like the guy, but she  
5 couldn't be sure. She could only say she was 70,  
6 80 percent sure.

7 This young man is named, is Max Bolden,  
8 B-O-L-D-E-N. Max Bolden had nothing to do with this.  
9 We'll bring him in. In fact he was in South Dakota  
10 visiting relatives at the time and his stepmother  
11 will come in here and testify and verify to that  
12 fact.

13 But a little while later the Minneapolis police  
14 department got some information that directed their  
15 attentions to this defendant, Marvin Haynes, Jr., and  
16 a second photo spread was brought to Cynthia  
17 McDermid. That's this one. And they went through  
18 the photos one at a time. Not in a group, all six at  
19 once, but one at a time, and when they showed her  
20 photograph number five, she put her hand down and she  
21 said words to the effect that oh my god, that's him.  
22 This is the photo that she picked. That's a photo of  
23 the defendant, Marvin Haynes, Jr.

24 It's an old photo. His hair was longer at the  
25 time, but she was able to look at that, the day, I

1 believe it was the day after the murder of her  
2 brother and positively identified that photograph as  
3 the person who came in there with the gun, the person  
4 that she had seen in the past, the person that was  
5 familiar to her.

6 Now, you are going to meet a young man name of  
7 Ravi Seeley. Ravi Seeley is starting his sophomore  
8 year in high school. He's a shy quiet teenager, but  
9 he made a decision. He made a decision a lot of  
10 people, that everyone would like to see more people  
11 make. He made a decision, he had some information,  
12 thought he might have some information that might be  
13 helpful to this investigation and so when he got to  
14 school he contacted the DARE officer at his high  
15 school and said I might have some information that  
16 could be helpful regarding the murder at the flower  
17 shop, and he had seen this on the news.

18 Ravi -- I told you about a church that's located  
19 down here on Lowry. That is the church, and I'm not  
20 sure, I think it's a Hindu church. I'm not sure what  
21 it is. Hindu or Buddhist, something like that.  
22 Ravi's family is from India. At any rate they were  
23 on a break from church. This was a Sunday, and Ravi  
24 and his friend were walking in the area and they saw  
25 someone that they had seen the week before. That



1 person was the defendant. The week before on  
2 Mother's Day they were again on a break from church,  
3 and they were walking around and they came upon the  
4 defendant and he made some comments about their  
5 clothes. Ravi doesn't exactly remember everything  
6 now because it's been almost 16 months but it was  
7 something about his clothes, something about trying  
8 to see if they had any spare change, something about  
9 whether or not they wanted to buy some weed and so  
10 forth, and they were kind of bothered by this and so  
11 their attention was focused on this guy but they kept  
12 on moving.

13 The next week, the week of the flower shop  
14 murder, May 16th, Ravi was again on break from the  
15 church and he was walking around, and somewhere in  
16 this area he saw the defendant again and he was  
17 concerned that the defendant was going to approach  
18 him a second time because he kind of mean-mugged him  
19 so his attention was kind of focused on him and he  
20 tried to avoid him. And then later Ravi walked  
21 northbound on Lyndale and he heard a shot, he was in  
22 this area (points), around in this area, heard a shot  
23 and saw the same guy coming out of the flower shop.

24 And he is positive in his identification. He  
25 was shown a photo lineup a couple of days later, on

1 May 19th if I remember correctly. We'll have the  
2 exact information when the officer testifies. But  
3 the officers were using a technique that was rather,  
4 in terms of providing photo lineups, that was  
5 somewhat new. It was recommended because it provides  
6 for a safer identification, the best opportunity to  
7 provide a valid identification, a valid, honest,  
8 accurate identification, and this is what they would  
9 do. Where there's enough manpower, they would take  
10 an officer -- and this is what they did with Ravi --  
11 they would take an officer who had no connections to  
12 the case, no knowledge about the case and therefore  
13 no ability to inadvertently or otherwise suggest you  
14 should pick out a certain photograph. The officer  
15 wouldn't know necessarily which if anyone in the  
16 photo lineup was a suspect and they would say if you  
17 see someone tell me how you recognize him, and they  
18 would hold one photo up and then they would set it  
19 down. Not an opportunity to look and compare. Just  
20 one and put the photo down; two, put the photo down;  
21 three and four, put the photo down, and when they  
22 came to the photograph of the defendant, he said  
23 that's the guy. That's the guy.

24 Ravi Seeley doesn't know Cynthia McDermid. Ravi  
25 Seeley doesn't know or have any connection to Jerry's

1 Flower Shop. He's just a young kid who saw something  
2 and made a decision to provide the police with that  
3 information. Made the decision we all would want him  
4 to make.

5 As a result of this, part of their  
6 investigation, the officers put together a standup  
7 lineup where the two witnesses, Ravi and Cynthia,  
8 could see live persons, and this happened on  
9 May 20th. It sounds cruel but it's important to do  
10 these things as soon as possible and it was -- it  
11 sounds a bit cruel but it was something that was  
12 necessary to do but we did this on a day that Cynthia  
13 was going to her brother's wake. And you can, she  
14 will describe the emotion, how distraught she was but  
15 she still was willing to participate in this standup  
16 lineup.

17 It was shown to Ravi Seeley first and he  
18 identified the defendant, and we'll play the -- we  
19 have a video tape of that lineup. You can see the  
20 defendant's hair is much different from that old  
21 photograph that I showed you a minute ago. But Ravi  
22 Seeley said well that's the guy that I saw. And then  
23 Cynthia McDermid came in and she described how  
24 perplexed she was, all the emotions that she was  
25 going through and so she couldn't stand up so they

1 got her a chair so she could sit down. But when the  
2 defendant walked in the room she stood up immediately  
3 and saw him and recognized him. And then when she,  
4 they wanted to -- she asked to have the lineup, to  
5 view the lineup a second time so that she could be  
6 sure but the emotions got the best of her and she,  
7 and she said she was shutting down and she didn't  
8 want to go through it anymore, but there was an  
9 officer present who saw her reaction to the defendant  
10 when he came inside that room. It was a positive  
11 identification.

12 Now, it's been 16 months since this happened,  
13 and I don't know if when they come in here they are  
14 going to be able to identify this defendant as the  
15 person they saw that came into the flower shop and  
16 leave the flower shop 16 months ago, but it really  
17 doesn't make any difference. They are positive in  
18 their identifications in the photo lineup and in the  
19 standup lineup.

20 Now, Ravi Seeley is one teenager that you are  
21 going to meet in this trial. Another one you are  
22 likely to meet is a young man name of Isiah Harper.  
23 His nickname happens to be Poopey. He also happens  
24 to be the blood relative of this defendant. He's the  
25 cousin. His mother and the defendant's mother are

1 sisters. And Isiah Harper has some decisions to  
2 make. He is going to come in here, if he has to come  
3 in here in chains we are going to bring him in here  
4 and testify before you folks so that you can have his  
5 information when you go back to decide the evidence  
6 in this case, when you go back to search for the  
7 truth and render a verdict in this case.

8 You see, Isiah has a great deal of information  
9 but now he doesn't want to cooperate. The officers  
10 talked to Isiah Harper about a week after the flower  
11 shop murder and he told them what he knew but he  
12 didn't want to put it down on tape. A day or so  
13 later the officers went back and said look, we need  
14 to have this on tape. They got his mother's  
15 permission to talk to him and they transported him  
16 down to the Minneapolis police department and they  
17 tape recorded his statement.

18 And he told the officers this: He was with the  
19 defendant and some other young kids at a young girl's  
20 house named Muffy the morning of the flower shop  
21 murder, just prior to the murder. At that time the  
22 defendant was talking about how he wanted to, quote,  
23 hit a lick, closed quote, which he will tell you  
24 means to rob somebody. He will tell you that he was  
25 going to -- that his cousin was going to hit a lick,

1 his cousin known as Little Marvin, was going a hit a  
2 lick with the person that the defendant was with at  
3 Muffy's, a young man by the name of Daquan Bradley.  
4 In his statement to the police he said that his  
5 cousin, the defendant, was acting as if he had a gun  
6 on him but he saw a gun on the person of Daquan  
7 Bradley. That gun was a silver or chrome revolver,  
8 consistent with the description of the gun that  
9 Cynthia McDermid provided.

10 He said that he saw -- he told the police that  
11 he saw Daquan Bradley and his cousin, the defendant,  
12 drive off and then sometime later the same day he got  
13 a phone call from the defendant. In that phone call,  
14 he told -- the defendant told his cousin Isiah Harper  
15 to go look for Daquan. He said that he had shot a  
16 white guy at the flower shop because the guy wouldn't  
17 give up the money. He said that he used the gun that  
18 Daquan had on him, the one that Isiah had seen, the  
19 one that he had described to the police, the silver  
20 or chrome revolver, that was the gun that he used.  
21 He said that he didn't get any money from the flower  
22 shop, and Cynthia McDermid will confirm that no  
23 proceeds were taken in this robbery. This man died  
24 for nothing.

25 He said that, that Daquan -- that after the

1 shooting in this phone call the defendant described  
2 how after the shooting he left the flower shop, went  
3 down the alley where Daquan was waiting in the  
4 getaway car. That's all the information -- that's  
5 the information that he provided to the police in, I  
6 believe it was May 20th.

7 Now, he was then asked to testify at a grand  
8 jury hearing that was investigating this case, and at  
9 the grand jury hearing initially he didn't want to  
10 show up and he had to be arrested. Then when he did  
11 show up, his mother was barking in his ear that he  
12 didn't know anything, that he was at home at the time  
13 and he had no information about what happened at the  
14 flower shop. And we'll, you'll hear, we'll read into  
15 the record the transcript from that grand jury  
16 proceeding. He will acknowledge that he had heard  
17 his mother say these things just prior to his  
18 testifying in front of that grand jury. Initially he  
19 acts as if he's going to follow his mother's advice,  
20 but then he changes his mind and acknowledges what he  
21 told the police in that conversation.

22 Now, I have no idea -- now he has since  
23 indicated, demonstrated some hostility towards the  
24 investigation. I have no idea if he's going to get  
25 up here and tell the truth. I have no idea what he's

1 going to do when he comes up here, but he will, if he  
2 has to come in here in chains, he will be here. And  
3 he has a decision to make.

4 Now, at the close -- that's a brief outline of  
5 some of the evidence that we're going to introduce.  
6 I'm not going to talk about all the evidence here but  
7 this just gives you some of the highlights. But at  
8 the close of evidence the judge will instruct you on  
9 the law, and some of the law that the judge will give  
10 you along with things like proof beyond a reasonable  
11 doubt, he'll provide you with that definition, but  
12 he'll also provide you with the definitions of the  
13 crimes that are charged in this indictment. We call  
14 them elements, and this is how it works.

15 In order to tell you what it is you need to  
16 decide, we need to define that for you and so to  
17 define a crime what we do is break them down, we  
18 break the definition down into parts and we call  
19 these parts elements. And I have the burden of proof  
20 beyond a reasonable doubt as to each and every  
21 element. Only if I prove all of the elements is a  
22 verdict of guilty warranted. If I fail to prove even  
23 one of the elements, then the verdict is not guilty.

24 Where there are contested questions of fact  
25 relevant to the elements, that's where we look to you



1 folks as judges of the facts to resolve those  
2 disputes. So, for example, if one witness says this  
3 guy did it and another witnesses says no, no, this  
4 guy did it, it's up to you in searching for the truth  
5 if who did it is relevant to the elements, then you  
6 decide what the truth is, what the facts is -- what  
7 the facts are.

8 Now, there might be disputes of fact that are  
9 not relevant to the elements. Just for example, it's  
10 got nothing to do with this case, one witness says  
11 the car is red. The other witness says no, the car  
12 is blue. If the color of the car is not relevant to  
13 the elements, I have no burden of proving beyond a  
14 reasonable doubt what color that car is. I only have  
15 a burden of proving what the elements are, so it's  
16 not every contested question of fact that we have a  
17 burden of proof beyond a reasonable doubt.

18 Now, the defendant has entered a plea of not  
19 guilty as to each and every count in the indictment.  
20 That imposes the burden on the State to prove each  
21 and every element in the crimes charged in the  
22 indictment, and we have that burden. But I would  
23 suggest to you folks to pay particularly close  
24 attention to the evidence that goes to the identity  
25 of the person that entered into the flower shop that

1 morning on May 16, 2004, because this is very likely  
2 a who-done-it as opposed to a what happened, or what  
3 the person did. That does not relieve us of the  
4 other elements. We have a burden of proof as to each  
5 and every element, but you might want to pay  
6 particularly close attention to the evidence about  
7 who done it, the identity evidence.

8 And at the close of the evidence, after the  
9 Court has instructed you, I'm not sure if it's after  
10 or before, if he instructs before or after closing  
11 argument, but we are going to come back to you. Then  
12 it will be time for you to make your decision, and we  
13 are going to ask you for a decision that is merely  
14 justice; a decision that merely is a confirmation of  
15 the truth. That's all we are going to ask. That is,  
16 to convict. Thank you.

17 THE COURT: Mr. Furnstahl, will you take  
18 this down?

19 MR. FURNSTAHL: Sure.

20 THE COURT: Mr. Benson, go ahead.

21 MR. BENSON: Ladies and gentlemen, Marvin  
22 Haynes did not shoot Harry Sherer. He didn't rob  
23 that store. Marvin Haynes is innocent. Let me say  
24 that again. Marvin Haynes is innocent of these  
25 charges, and we've waited a long time, 16 months

1 almost, to let all of you know, a panel of you know  
2 that he didn't commit this offense.

3 On May 16, 2004, a black man walked into Jerry's  
4 Flower Shop. This man was about five-foot-ten to  
5 six-foot tall. This man was about 180 pounds. This  
6 man had a short natural hairstyle. This man, and Ms.  
7 McDermid will tell you, he spoke with clarity. She  
8 described it as not speaking with a hip-hop type  
9 style. Those are her words. This man seemed like he  
10 had an education. This man was in his early 20s.  
11 This man that robbed the store or attempted to rob  
12 the store and shot Harry Sherer, was not Marvin  
13 Haynes. Because while this six-foot, almost six-foot  
14 180-pound man was robbing that store,  
15 five-foot-six-inch 130-pound Marvin Haynes was in his  
16 home blocks away on Russell Avenue.

17 Now, how are you going to know that this is the  
18 case? You are going to know that this is the case  
19 because you are going to hear that initial  
20 description that Ms. McDermid gave. You are going to  
21 hear the circumstances in which she had to observe  
22 the person that was in store that day. You are going  
23 to hear about that identification process and the  
24 problems with that process.

25 You are going to, first of all, going to learn

1           that on that day, on May 16th, Marvin Haynes, his  
2           hair, appeared like this (indicates). You are going  
3           to learn that on May 16th Cynthia McDermid did have  
4           an opportunity, as you saw through the exhibit, to  
5           see the individual, the shooter in this case as he  
6           walked around the building and entered into the  
7           store. Ms. McDermid was actually in the kitchen at  
8           the time she saw a young man walk around the building  
9           and then come into the store. She observed this  
10          person, had some conversation with this person. She  
11          observed this person as he walked from the point  
12          where she was, walked in the store, to walk to the  
13          counter or to the cases where the flowers were. She  
14          observed this person a little while longer when that  
15          person went to get some cards, get a card for the  
16          birthday. She observed this person as she spoke to  
17          him about the price of the items, when she  
18          acknowledged something like \$45 was the amount of the  
19          flowers that this person had chosen.

20                 But she also had another opportunity to see this  
21          person after she ran out of store, because as she ran  
22          out of the store trying to get to safety, to get to  
23          somewhere to call for help, which is very reasonable,  
24          she got to a point, a fence and she had to climb over  
25          a three- or four-foot fence and as she was about to

1 do that she looks to her right and she sees this  
2 person again. She has another opportunity to see  
3 this person, to see this person's stature, his  
4 height, his weight, to see his face. I think at this  
5 point this person had a hood up. But she had another  
6 opportunity to see this person, and then she got to  
7 the house, I believe the woman's name was Edda  
8 McCabe, when she got to the house she called 911.  
9 The 911 operator asked for a description from Ms.  
10 McDermid, and this is the evidence that you need to  
11 pay special attention to.

12 She gave a description of the shooter. She  
13 described this person as five-foot-ten to  
14 five-foot-eleven, as weighing 180 pounds, as having a  
15 thin build, as being an African American male. And  
16 this was shortly after, within minutes of the robbery  
17 attempt. This five-foot-ten, five-foot-eleven,  
18 180 pounds, this is important because you are going  
19 to learn it's a description that just doesn't fit  
20 Marvin Haynes.

21 Ms. McDermid, as you'll hear, went back down to  
22 the store to check on her brother, and when the first  
23 police arrived on the scene, an Officer Judy Rollins,  
24 I believe you'll hear her testimony, she was one of  
25 the first officers there, she and another officer,

1 Sergeant Kjos, went to Ms. McDermid trying to calm  
2 her down as they are trained to do because they  
3 wanted to get some information, some closer  
4 information about the suspect because they wanted to  
5 find out who did this and of course they wanted to  
6 get that information as soon as possible because it's  
7 important to do that. And then Ms. McDermid gives  
8 further information about the shortness of the hair,  
9 how short -- close-cropped hairstyle is what she  
10 described it as.

11 The next day Cynthia McDermid on May 17th had an  
12 interview with Sergeant Mattson who I believe you'll  
13 hear will testify, and she gave further detail about  
14 the shooter. This is the day after the incident.  
15 She gives further details about the shooter. She  
16 says that during the conversation she did think that  
17 this person was educated. She felt that this person  
18 was someone who spoke with clarity. She once again  
19 said that he had a natural, close-cut hair style, not  
20 braids, not an afro, not bald. A close-cut  
21 hairstyle. This is the description of the shooter.  
22 This is the person who was in the store.

23 And you've heard from the information  
24 identification, you saw from Mr. Furnstahl's  
25 presentation, that Ms. McDermid was given a -- and

1           this is more of a blowup -- Ms. McDermid was given a  
2           lineup on May 16th, and Ms. McDermid in that lineup  
3           did identify this person, not a full identification,  
4           but said that this person who was Max Bolden who the  
5           police had determined was in South Dakota, but this  
6           person resembled the shooter; that this person, she  
7           was 75 to 80 percent certain that this person was the  
8           shooter, and the import of this is that with the  
9           hair, as you can see, that would be a natural,  
10          close-cropped haircut.

11                 However, Marvin Haynes, and we are not worrying  
12          about the height discrepancy or the weight  
13          discrepancy at this point, but Marvin Haynes as you  
14          will see and as you have seen had substantially  
15          longer hair. There's no way you'll see that Marvin  
16          Haynes's hair, his appearance that day could be  
17          described as a natural, short natural hairstyle. And  
18          why this is important is because this is, on  
19          May 16th, the shooter, I think you will come to the  
20          conclusion from the evidence, that the shooter did  
21          have that type of a hairstyle.

22                 Then we get to the identification procedure.  
23          You are going to learn that the police, although  
24          you'll learn that they had other options, they  
25          determined that they wanted to investigate Marvin

1 Haynes for whatever reason, they decided to use this  
2 photograph which is a photograph from 2002. It's not  
3 a photograph, you'll learn, from 2004, it's not a  
4 current photograph, but it is a photograph of Marvin  
5 Haynes with short hair.

6 Now, this was done on May 19th, this  
7 identification procedure, and as the prosecutor when  
8 he showed you the two pictures of Max Bolden and  
9 Marvin Haynes close together, apparently for the  
10 implication that they look alike, I would just submit  
11 to you that numerous people could fit this  
12 description. I ask you at this time to focus on the,  
13 you'll be asked to focus on the hair in this case,  
14 and the hair length and just the fact that Marvin  
15 Haynes on May 16th did not appear like this.

16 However, this was exactly what Ms. McDermid saw the  
17 day before she went to the live lineup and I expect  
18 the evidence in this case is going to show -- and  
19 also Ravi Seeley when he saw the same photo and the  
20 next day he saw a live lineup -- and I expect the  
21 evidence to show that what Ravi Seeley and Ms.  
22 McDermid were identifying was not the shooter at that  
23 point. They were identifying Marvin Haynes from that  
24 picture they had seen the day before, which was  
25 nothing like him that day. So these problems in the



1 identification resulted in Marvin Haynes being  
2 charged with this case.

3 The State has talked about another couple of  
4 witnesses, or at least mentioned another couple of  
5 names. You are going to know that these people are  
6 not reliable in this sense, that Isiah Harper as the  
7 State mentioned, he does not want to be here. He's  
8 likely not going to be here. He's told the State,  
9 he's told the police that they had pressured him into  
10 saying what they wanted him to say.

11 Now, Isiah Harper, I don't know, the State  
12 doesn't know what he's going to say if he does come  
13 here. You can know this, that during the course of  
14 the investigation Isiah Harper was identified by  
15 Daquan Bradley, the name you've heard before, Daquan  
16 Bradley told the police that Isiah Harper and Marvin  
17 Haynes committed this offense; Isiah Harper then  
18 tells the police that it was Daquan Bradley and  
19 Marvin Haynes that committed this offense. You are  
20 going to find out from Isiah Harper and some of the  
21 other people that may or may not come in here and  
22 testify that they may have their own reasons for  
23 pointing the finger at Marvin Haynes. They have  
24 their own reasons for complying or not complying with  
25 the police officers, and that the police officers did

1 have an incentive to close this case and they may  
2 have taken some short cuts, but when you listen to  
3 the evidence of each and every teenager that comes in  
4 here, like we talked about in jury selection, listen  
5 to that, listen to my questions as well, listen to  
6 the prosecutor's questions, and listen to how these  
7 witnesses answer those questions and compare them  
8 between each other, because you will find that some  
9 of these witnesses which I anticipate the State will  
10 call, Marvin Haynes doesn't even know. Didn't hang  
11 out with them, didn't talk to them. Some of them he  
12 did know. But you are also going to learn that he  
13 didn't hang out in that area of 33rd and Lyndale.  
14 Marvin hung out in a different area.

15 Now, you are also going to know that Marvin  
16 Haynes did not commit this offense because there's  
17 not going to be one piece of physical evidence tying  
18 Marvin Haynes to this case. You are not going to  
19 hear about any DNA or fingerprints, any bodily  
20 fluids, anything whatsoever linking Marvin Haynes to  
21 this case because Marvin Haynes has no link to this  
22 case.

23 But you will also hear about an interrogation,  
24 and this nightmare for Marvin Haynes began on  
25 May 19th when he was arrested in his home and taken

1 to adult jail, or taken to an adult police station.  
2 He was confronted by two Minneapolis, seasoned  
3 Minneapolis homicide detectives --

4 MR. FURNSTAHL: Objection. Can we  
5 approach?

6 THE COURT: State the objection for the  
7 record.

8 MR. FURNSTAHL: I believe counsel is  
9 discussing evidence that might not be admissible.

10 THE COURT: All right. Approach.

11 (Off-the-record discussion at  
12 the bench out of hearing of the jurors.)

13 MR. BENSON: May I proceed, Your Honor?

14 THE COURT: You may.

15 MR. BENSON: Thank you.

16 You are also going to know that Marvin Haynes  
17 did not commit this offense because you are going to  
18 hear about the interrogation that took place, and as  
19 I began, Marvin Haynes was taken out of his home on  
20 May 19th, he was taken to the Hennepin County jail,  
21 Hennepin County police station, he was thrown into  
22 the homicide office. He was -- two officers,  
23 Sergeant Mattson and Sergeant Keefe spoke with him  
24 and they interrogated him and they asked him  
25 questions about this offense, they accused him of

1           this robbery, they accused him of this murder. And  
2           you are going to learn that despite these accusations  
3           and Marvin Haynes being in trial in that situation  
4           facing two seasoned detectives, he told them he  
5           didn't do this, he didn't do anything.

6           You are going to learn in the course of this  
7           trial when you hear all this evidence, you are going  
8           to hear that the police, they tried to trick him,  
9           they tried to deceive him, they made an implication  
10          that they had DNA evidence, they made an implication  
11          that he had left bodily fluids at the scene, they  
12          implied to him they had his fingerprints, that they  
13          had him on videotape. They made all these things in  
14          an attempt to -- it's what police do in an attempt to  
15          get Marvin Haynes to say that he did something that  
16          he didn't do.

17          And you are going to hear that after all of  
18          that, Marvin Haynes told them the truth. You are  
19          going to learn he did tell them the truth, that he  
20          didn't do anything.

21          When this case is over, I'm going to come back  
22          to you and I'm going to ask you to look at this case  
23          to determine what justice calls for, to determine  
24          what the truth is, and when you do that you'll know  
25          that Marvin Haynes was telling the truth; that Marvin

1 Haynes didn't do this, that they got the wrong  
2 person.

3 Thank you.

4 THE COURT: Members of the jury, we're  
5 going to take a 15-minute recess at this time.  
6 Please leave your notebooks on your chair and then  
7 you are excused and don't come back into the  
8 courtroom until the clerk comes out to get you, all  
9 right?

10 (Recess. The following  
11 is outside the presence of the jury.)

12 THE COURT: Counsel, you can approach.

13 During defendant's opening statement, plaintiff  
14 objected when he referred to the interrogation, and  
15 plaintiff has indicated that, or the State indicated  
16 they didn't intend to introduce the defendant's  
17 interrogated statement. That was ruled on by Judge  
18 Connolly. Defendant has indicated that he would more  
19 than likely testify in this case and the Court  
20 indicated that if the defendant doesn't testify, then  
21 I would tell the jurors to disregard the information  
22 that they got regarding the interrogated testimony of  
23 defendant.

24 And counsel, anything else you want to add to  
25 that?

1 MR. FURNSTAHL: No. Just one other point.  
2 After I sat down thinking through counsel's argument,  
3 you are aware that the police, the way they first got  
4 on to Marvin Haynes was by that tip from an unknown  
5 source. I think it was ruled on by Judge Connolly,  
6 and counsel and I just talked about it again this  
7 morning that the way we were going to handle that was  
8 I was going to ask a leading question of Sergeant  
9 Mattson and say words to the effect that isn't it a  
10 fact that you received some information that directed  
11 your attentions to Marvin Haynes, and he is going to  
12 answer yes and move on.

13 But I believe that some of the comments counsel  
14 made in his opening statement may have opened the  
15 door to that. I won't try to introduce that without  
16 getting an in limine ruling by the Court, but I'm  
17 just giving you a heads-up on that.

18 MR. BENSON: Your Honor, just so you have a  
19 greater heads-up on the issue, I don't believe I  
20 opened the door to anything but we'll talk about  
21 that.

22 That ruling, I made a motion to keep out the  
23 anonymous tip as hearsay and also confrontational.  
24 If the State does want to get into that information  
25 or feels that I opened the door in some way beyond

1           what Judge Connolly's ruling was, they are going to  
2           still need to bring in not only the source from the  
3           police but the source of the actual information  
4           leading to Marvin Haynes, and we are not there yet.

5                     THE COURT: If counsel wants to argue about  
6           that we'll do that at the end of today's testimony.

7                     MR. FURNSTAHL: Judge, I know you had said  
8           to stay at counsel table but in order to get the  
9           photos out --

10                    THE COURT: Yeah.

11                               (The following is before the jury.)

12                    THE COURT: Okay. Mr. Furnstahl, you can  
13           call your first witness.

14                    MR. FURNSTAHL: Call Rod Timmerman.

15   Whereupon,

16                               RODNEY TIMMERMAN,  
17           after having been first duly sworn, was examined  
18           and testified as follows:

19                    THE CLERK: Please state your full name and  
20           spell your last for the record.

21                    THE WITNESS: It's Rodney Timmerman,  
22           T-I-M-M-E-R-M-A-N.

23                    THE COURT: Okay. Mr. Furnstahl.

24                               DIRECT EXAMINATION

25   BY MR. FURNSTAHL:

1 Q Mr. Timmerman, how are you employed?

2 A City of Minneapolis police department, sir.

3 Q Are you a licensed peace officer in the state of  
4 Minnesota?

5 A I am. I'm a sergeant.

6 Q How long have you been a police officer?

7 A 19 and a half years.

8 Q And how long of that 19 and a half years with  
9 the Minneapolis police department?

10 A I'm sorry, say that again.

11 Q How long with the Minneapolis police department?

12 A All of those years.

13 Q Okay. What's your present assignment?

14 A For the last 15 I've been with the crime lab  
15 unit.

16 Q Could you explain to the jury what the crime lab  
17 unit does when it comes to a scene, say for example of a  
18 homicide, kinds of things it does?

19 A The crime lab unit, also referred to as the  
20 Bureau of Identification, will go to a major crime scene  
21 and generally take 35-millimeter photography, a digital  
22 video, prepare a crime scene sketch, and collect and/or  
23 process for physical evidence.

24 Q What kind of processing do you do of physical  
25 evidence?



1           A     Collection, development and collection of  
2 fingerprints, for example, is one of the things we do.

3           Q     Okay. Now, were you -- so you were employed by  
4 the Minneapolis police department on May 16, 2004?

5           A     Yes, sir.

6           Q     Were you on duty that day?

7           A     I was.

8           Q     What day of the week was that?

9           A     Off the top of my head I do not recall.

10          Q     Okay. Did you respond to the scene at Jerry's  
11 Flower Shop located in the city of Minneapolis, Hennepin  
12 County, Minnesota?

13          A     Yes, sir, I did.

14          Q     Now, with respect again going back to the crime  
15 lab and its duties and responsibilities, when you have a  
16 major crime scene like that, is it routine that the crime  
17 lab is called out?

18          A     Yes, it is.

19          Q     Does it often occur that patrol officers are  
20 called to a scene first say for example in response to a  
21 911 call?

22          A     That is correct.

23          Q     And following that, sometime after that is that  
24 when the crime lab comes out?

25          A     Yes. There's generally a chain of events that

1 occur with such a scene.

2 Q Just explain to the jurors kind of the chain of  
3 events that normally occurs that results in the crime lab  
4 being brought to a scene.

5 A For example, uniformed officers and rescue  
6 personnel generally respond at which time they will notify  
7 their supervisors who then notify investigators, and it  
8 would be homicide investigators who generally notify  
9 dispatch who generally notify someone like myself.

10 Q Okay. Now, when you have a scene like a  
11 homicide, is it understood by the officers who appear  
12 before the crime lab that steps are taken, I mean assuming  
13 that there's no medical treatment that is required, are  
14 steps taken to freeze the crime scene?

15 A That is correct.

16 Q What's the purpose of that?

17 A That is to ensure the integrity of possible  
18 evidence that remains at the scene.

19 Q And who has the responsibility of gathering and  
20 collecting the evidence?

21 A That would be myself and others that I work  
22 with.

23 Q From the crime lab?

24 A Yes.

25 Q So for example if a patrol officer responds to a

1 scene and sees a bullet on the floor, for example, do they  
2 have a responsibility of picking that bullet up or doing  
3 anything with it?

4 A Generally no.

5 Q What would they do if they noticed it?

6 A They would mark it so they could show myself or  
7 other investigators where it is.

8 Q Okay. Now, you indicated that you responded to  
9 the scene at Jerry's Flower Shop on May 16, 2004?

10 A Yes, sir.

11 Q About what time did you get there?

12 A If I may refer to my report.

13 THE COURT: Well, if you can answer the  
14 question first without referring to your report go  
15 ahead. If you can't, then Mr. Furnstahl will lay  
16 foundation for that.

17 BY MR. FURNSTAHL:

18 Q Do you recall when you got there?

19 A Approximately 1400 hours, sir. About two in the  
20 afternoon. 2:15 or so.

21 Q Now, do you recall, do you know what time the  
22 Minneapolis police department was notified of the incident  
23 at the, at Jerry's Flower Shop?

24 A I do not.

25 Q Are you familiar with the records that are kept

1 in respect to a specific case?

2 A Yes, to a point.

3 Q Okay. And are you familiar with whether or not  
4 there might be an area in the records which indicates what  
5 time the Minneapolis police department is notified of a  
6 scene such as a homicide?

7 A I'm sure there is, just through 911 or dispatch.

8 Q Would looking at such a report indicate to you,  
9 give you the ability to describe for the jurors the time  
10 that the Minneapolis police department responded to a  
11 call?

12 A Personally I don't have that in my report.

13 Q All right.

14 A But there is a report out there from I'm sure  
15 the first responding officer.

16 Q If I were to show you a report could you provide  
17 that information?

18 A Yes, sir.

19 MR. FURNSTAHL: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. FURNSTAHL:

22 Q Directing your attention to page one of --  
23 what's the case number?

24 A Case number is 04-117071.

25 Q Is that the case that is assigned -- is that the

1 number assigned to this particular case?

2 A Yes, sir.

3 Q Does that report indicate what time the  
4 Minneapolis police department responded to a 911 call at  
5 Jerry's Flower Shop?

6 A Yes, sir.

7 Q What time?

8 A 11:51 they were dispatched; 11:56 a.m. they  
9 arrived.

10 Q All right. So you got there a couple of hours  
11 after officers were dispatched?

12 A Yes, sir.

13 Q Is that correct?

14 A Yes, sir.

15 Q Now, and did the scene appear to have been  
16 frozen as the way you described to the jurors when you got  
17 there?

18 A Yes. When I arrived officers were standing by  
19 outside.

20 Q Do you have any knowledge of officers using dog  
21 tracking techniques before you got there or after you got  
22 there?

23 A Yes. That's one of the reasons I was told that  
24 we were delayed in being contacted as just another scent  
25 in the neighborhood doesn't make sense.

1           Q     So was there some dog tracking that was  
2     occurring before you got there?

3           A     That's my understanding, yes.

4           Q     All right. Now, you indicated that one of the  
5     things that you folks do from the crime lab when you come  
6     to a scene like this is that you take photographs?

7           A     Yes, sir.

8           Q     Why do you do that?

9           A     To document the scene as you find it.

10          Q     Did you take such photographs in this case?

11          A     Yes, sir, I did.

12                   MR. FURNSTAHL: May I approach, Your Honor?

13                   THE COURT: You may.

14     BY MR. FURNSTAHL:

15          Q     Before I do that, you're also aware of some  
16     diagrams that we prepared in relation to this case?

17          A     Yes, sir, I am.

18          Q     Direct your attention to Exhibit 1, do you  
19     recognize Exhibit 1?

20          A     Yes, sir.

21          Q     What is Exhibit 1?

22          A     That's an aerial photograph with north being at  
23     the top showing the location of Jerry's Flower Shop.

24                   MR. FURNSTAHL: We would offer Exhibit 1.

25                   THE COURT: Any objection?

1 MR. BENSON: No objection, Your Honor.

2 THE COURT: Exhibit 1 will be received.

3 MR. FURNSTAHL: Ask to publish?

4 THE COURT: You may.

5 BY MR. FURNSTAHL:

6 Q Can you see that all right?

7 A Yes, sir.

8 Q Where I'm pointing to here, that's the location  
9 here of Jerry's Flower Shop,

10 A Yes, with the red letters.

11 Q What is this right here that I'm pointing to?

12 A That would be Sixth Street North.

13 Q What's this right here?

14 A I'm sorry, I apologize. It's the alley between  
15 Sixth Street North and Lyndale.

16 Q Okay. You also mentioned that part of your job  
17 with the crime lab or part of the responsibilities is to  
18 prepare scene diagrams?

19 A Yes, sir.

20 Q Was one such diagram prepared in this case?

21 A It was.

22 Q Directing your attention to Exhibit No. 2, do  
23 you recognize Exhibit No. 2?

24 A I do.

25 Q What is that?

1           A     That's the interior of Jerry's Flower Shop.

2                     MR. FURNSTAHL: We would offer Exhibit No.

3           2.

4                     THE COURT: Any objection?

5                     MR. BENSON: No objection, Your Honor.

6                     THE COURT: Exhibit 2 is received.

7                     MR. FURNSTAHL: Ask to publish.

8                     THE COURT: You may.

9     BY MR. FURNSTAHL:

10           Q     With the pointer that you have so that we can be  
11     acclimated, would you point to the front entrance of  
12     Jerry's Flower Shop?

13           A     That would be up here in the corner (points).

14           Q     And which direction is north?

15           A     This side would be north.

16           Q     Where would Lyndale Avenue be located then in  
17     relation to the diagram?

18           A     Up in this area running north and south.

19           Q     Where's 33rd Street?

20           A     Right out front.

21           Q     Okay. Now, and you are familiar with the back  
22     door entrance, or exit, rather?

23           A     Yes, sir.

24           Q     Now, you also mentioned that you prepared or  
25     that you took scene photographs, correct?



1           A     I did.

2           Q     Directing your attention to Exhibits 4 through  
3 41, inclusive.

4           THE COURT: 4 through 41, counsel?

5           MR. FURNSTAHL: Yes, sir.

6           THE COURT: Okay.

7 BY MR. FURNSTAHL:

8           Q     Directing your attention to Exhibits 4 through  
9 41 inclusive, could you just page through those, and I'll  
10 ask you if you can identify them. Do you recognize them?

11          A     Yes, sir. These are all photographs that I  
12 took.

13          Q     That you took?

14          A     Yes.

15          Q     At the scene that you responded to that day?

16          A     Yes, sir.

17                MR. FURNSTAHL: We would offer the  
18 exhibits.

19                THE COURT: Any objection, Mr. Benson?

20                MR. BENSON: No, Your Honor.

21                THE COURT: Exhibits 4 through 41 will be  
22 received.

23                MR. FURNSTAHL: Ask to publish, Your Honor.

24                THE COURT: You may.

25 BY MR. FURNSTAHL:

1           Q     Before we get into publishing the photographs,  
2     just directing your attention back to Exhibit No. 2, the  
3     diagram, did you assist in preparing that?

4           A     I did.

5           Q     All right. And you were familiar with the  
6     inside of the business, is that correct?

7           A     Yes, sir.

8           Q     There's a legend on that we should probably  
9     point out to the jurors and we can indicate what those  
10    items are and where they are located on the diagram  
11    because we have photographs that relate to those items, is  
12    that correct?

13          A     Yes.

14          Q     What is number one?

15          A     Number one is a fired bullet.

16          Q     With the pointer just indicate where the fired  
17    bullet was found.

18          A     Approximately right up in this area (points).

19          Q     What is number two?

20          A     Number two is the birthday card on a plastic  
21    holder on a table in this hallway area.

22          Q     Number three?

23          A     Number three is a bullet strike in the back room  
24    area.

25          Q     And number four?

1           A     Number four is a bullet strike (indicates) on  
2     this corner of a shelving unit.

3           Q     Okay. Let's look at the photos then. And at  
4     times what I'm going to be doing is asking you to identify  
5     the approximate location that you were when you took the  
6     photographs so we have it in context, okay?

7           A     Very good.

8           Q     This is Exhibit 1. What do we see in Exhibit 1?

9           A     Looking at a northeasterly direction showing the  
10    front entrance area.

11                   THE COURT: Counsel, you said Exhibit 1.

12           You meant 4, right?

13                   MR. FURNSTAHL: Exhibit 4, I'm sorry.

14   BY MR. FURNSTAHL:

15           Q     What is that again.

16           A     I'm sorry, I'm looking at a northeasterly  
17    direction looking at the main front door area of Jerry's  
18    Flower Shop.

19           Q     Exhibit 5, what is Exhibit 5?

20           A     Now I'm looking north up Lyndale Avenue. On the  
21    right is the front sidewalk area of Jerry's.

22           Q     What avenue is this that I'm pointing at?

23           A     That is Lyndale.

24           Q     And this one right here?

25           A     That is 33rd.

1 Q Exhibit 6?

2 A Looking east showing the front view of Jerry's  
3 Flower Shop.

4 Q Again this road this way is what?

5 A I'm sorry?

6 Q What road is this to the south of Jerry's?

7 A To the south of Jerry's is 33rd.

8 Q This road?

9 A Is Lyndale.

10 Q Okay. Exhibit 7?

11 A This is the south wall of Jerry's. This is  
12 looking in an easterly direction on 33rd.

13 Q Exhibit 8?

14 A That's also the south facing wall. I'm standing  
15 on 33rd showing the back, back porch area of Jerry's.

16 Q Exhibit 9, what do we see in Exhibit 9?

17 A This is just a closer view of the front entryway  
18 to the flower shop.

19 Q Exhibit 10?

20 A That's an interior view of the flower shop and  
21 showing the victim.

22 Q Now, was it your understanding that the victim  
23 had been moved from where he was initially found?

24 A Yes.

25 Q What was the purpose for that?

1           A     That fire fighters was my understanding moved  
2     him to this area so they would have a larger area to work,  
3     to attempt first aid.

4           Q     Okay. Exhibit is 11 a close-up of the decedent,  
5     is that correct?

6           A     That is correct.

7           Q     Exhibit 12, what do we see in Exhibit 12?

8           A     Looking in a southwesterly direction again  
9     showing the victim and also showing the interior side of  
10    the front entryway door to the flower shop.

11          Q     Directing your attention to the diagram, Exhibit  
12    No. 2, with the pointer could you indicate the approximate  
13    position that you were in when you took Exhibit 12?

14          A     Approximately in this area over here (points).

15          Q     Pointing what direction then?

16          A     This direction (points).

17          Q     Okay. This is Exhibit 13. What do we see here?

18          A     This is the front counter area.

19          Q     Again would you, directing your attention to  
20    Exhibit 2, indicate the area that you are photographing?

21          A     That's this front counter near the front  
22    entryway (indicates).

23          Q     Exhibit 14?

24          A     That's another view of the front counter area.

25          Q     And specifically what I'm pointing at here, can

1       you tell what that was from where you are?

2           A     If I remember correctly, I think that was some  
3       wrapping tissue for flowers.

4           Q     What color is that?

5           A     It appears to be green.

6           Q     Okay. Exhibit 15, what do you see, what is  
7       depicted in Exhibit 15?

8           A     That is a card rack near the south wall of the  
9       business.

10          Q     Directing your attention to Exhibit No. 2, would  
11       you again indicate where that is?

12          A     That is over in this area here, I believe  
13       (points).

14          Q     Record should reflect he was pointing to the  
15       south wall just east of the front door, is that correct?

16          A     That is correct.

17          Q     And Sergeant, Exhibit 16, what do we see in  
18       Exhibit 16?

19          A     That is another or -- excuse me, another card  
20       rack that was near the front counter area.

21          Q     Could you point to where it was on Exhibit No.  
22       2?

23          A     Approximately right in this area (points).

24          Q     The record should reflect that he's pointing  
25       just to the east side of the counter that's located on the

1 west side of the, of the business, is that correct?

2 A That is correct.

3 Q And then Exhibit 17, what do we see in  
4 Exhibit 17?

5 A That is a small card rack located on the south  
6 side of the front counter area.

7 Q Point to where that is on Exhibit 2, would you,  
8 please?

9 A (Points.) On the south end of this front main  
10 counter.

11 Q All right. The record should reflect that he's  
12 pointing to the south end of the counter that's located on  
13 the west side of the business.

14 Now, why were these photographs of the card racks,  
15 three different card racks that you photographed, why is  
16 it that you took those photos?

17 A I had been told by investigators that a suspect  
18 possibly touched some of these items prior to the  
19 incident.

20 Q Now, did you have any interest in doing anything  
21 with those items?

22 A Yes. I wanted to fingerprint the items for  
23 possible evidence in this case.

24 Q Were they subsequently seized by you or either  
25 personnel from the crime lab?

1 A Yes, they were.

2 Q All three of these card racks?

3 A I believe investigators property inventoried  
4 each of those.

5 Q Okay. We'll talk about that in a moment. For  
6 now let's continue with the photographs. Exhibit 18, what  
7 do we see in Exhibit 18?

8 A That's an interior view of the main floor area  
9 looking in a westerly direction out toward Lyndale Avenue.

10 Q Again, if you could point to where that is on  
11 Exhibit 2?

12 A That would be looking out the window that is  
13 right here (points).

14 Q The record should reflect he's pointing to the  
15 west window north of the counter.

16 And Exhibit 19, what do we see here?

17 A That is the main cooler when you first enter the  
18 front door area. You are looking in an easterly  
19 direction.

20 Q Okay. Go ahead and point to it.

21 A (Points.) That would be this cooler here.

22 Q All right. The record should reflect that  
23 that's the cooler located to the east of the counter that  
24 we've been referring to.

25 And Exhibit 20.



1           A     That's the same cooler but with a more easterly  
2 direction showing you the hallway that leads into the back  
3 office area. I'm looking -- I'm photographing in this  
4 direction.

5           Q     The record should reflect he pointed just to the  
6 south of the cooler that was previously mentioned.

7           Now, Exhibit 21. Do you see that all right?

8           A     Yes, I can.

9           Q     What do we see in Exhibit 21?

10          A     I'm looking in a westerly direction, I'm  
11 standing in the small hallway (points) photographing back  
12 to the west, also showing the victim.

13          Q     The record should reflect that the witness  
14 pointed to that portion on Exhibit 2 that's identified as  
15 the step and pointed in a westerly direction, is that  
16 correct?

17          A     Yes, sir.

18          Q     Where I'm pointing to here, what do we see here?

19          A     That is a work bench or table.

20          Q     And just on Exhibit 2, point to where, what work  
21 bench that is?

22          A     Where number two is indicated.

23          Q     And what I'm pointing to right here, what is  
24 that?

25          A     That appears to be a flower display.

1 Q All right. This is the decedent right here?

2 A Yes, sir.

3 Q Exhibit 22, can you see 22?

4 A Yes, sir.

5 Q What do we see in Exhibit 22?

6 A That is the hallway. You are looking in an  
7 easterly direction. Apparently that is where the decedent  
8 had fallen and the firefighters pulled the victim this  
9 direction.

10 Q He would have fallen here or there?

11 A Farther back.

12 Q Back here?

13 A I don't know if it's that far back, sir.

14 Q But where he's, we can see a blood trail. That  
15 indicates the direction that he was pulled?

16 A Yes, sir.

17 Q Would you indicate on Exhibit No. 2 where you  
18 were when you took that photo?

19 A I'm standing approximately right here (points)  
20 photographing to the east.

21 Q The record should reflect he pointed just to the  
22 east of the counter. Is that right?

23 A Yes, sir.

24 Q Once again, here's that work station that you  
25 identified?

1 A Yes, sir.

2 Q With the flowers, is that right?

3 A Yes, sir.

4 Q Exhibit 23, what do we see in Exhibit 23?

5 A That's a closer view again looking west or,  
6 correction, eastward showing the flower arrangement you  
7 had pointed out in a prior photograph.

8 Q Just so we're clear, would you point to it on  
9 Exhibit 2?

10 A That work table there (points).

11 Q Number two is identifying the card and plastic  
12 card holder, correct?

13 A Yes, sir.

14 Q Exhibit 24, what do we see in exhibit -- hang on  
15 a second. What do we see in Exhibit 24?

16 A That is the birthday card on a small plastic  
17 stick or holder.

18 Q Is that what I'm pointing to right here?

19 A It is.

20 Q What's this just to the right of it?

21 A That is the flowers we spoke about earlier on  
22 this table.

23 Q Now, Exhibit 25 is what?

24 A That is a fired deformed bullet marked by a  
25 police department victim's assistant card. When the

1 officers first noticed that they set a card down there to  
2 mark it as evidence so I will be able to see it later.

3 Q Earlier you testified how patrol officers on the  
4 scene if they see some item of possible evidence they --  
5 part of the protocol is for them to mark it?

6 A Generally they do so, yes.

7 Q This is what happened here?

8 A Yes, sir.

9 Q Exhibit 26, close-up of that?

10 A Yes, sir.

11 Q Would you indicate where on Exhibit No. 2 that  
12 bullet was found.

13 A That's approximately in this area underneath  
14 some flower stands.

15 Q Now, I want to ask you a question about possible  
16 reasons why a bullet could be located in that area where  
17 you have it identified by the number one on Exhibit No. 2,  
18 okay? And assume these facts to be true: That the gunman  
19 comes into the flower shop, positions himself  
20 approximately here just to the west of the hallway that  
21 is, that has the work station that you have been  
22 describing, shoots in a westerly direction, the victim  
23 falls in approximately this position but is pulled out by  
24 fire personnel in order to assist in medical treatment.  
25 What would be some possible reasons if the person is shot

1 and struck over in this area, why the bullet is found  
2 here?

3 MR. BENSON: Objection, Your Honor.

4 Foundation for this particular witness.

5 THE COURT: Sustained.

6 BY MR. FURNSTAHL:

7 Q Have you -- how many crime scenes have you gone  
8 to?

9 A I would have to say thousands.

10 Q And when you go out to crime scenes, do you  
11 generally get a synopsis from other officers there as to  
12 what may or may not have occurred?

13 A Yes, sir.

14 Q Does that provide you some assistance?

15 A It does.

16 Q What does it do for you?

17 A It gives you an idea of perhaps how the events  
18 unfolded.

19 Q And is that something that you are trying to do,  
20 is trying to determine how events unfolded?

21 A Yes, sir.

22 Q And from that -- and have you gone to scenes  
23 where you have had to pick up fired bullets?

24 A Many times.

25 Q Have you gone to scenes where you have had to

1 pick up expended casings, that is to say casings from a  
2 bullet that has been fired?

3 A Yes, sir.

4 Q And have you observed in these prior experiences  
5 that the casings might not be in the location where you  
6 might expect them to be given the information that you  
7 might have received as to the location the shooter was  
8 when he fired the rounds?

9 A That is correct.

10 Q Is that something usual or unusual?

11 A It depends on the scenario, but it's happened  
12 many, many times for various reasons.

13 Q Same thing with bullets. Have you had occasion  
14 where it's been described to you where the victim was when  
15 he sustained a bullet wound but a bullet is found  
16 someplace else?

17 A Many times.

18 Q So based upon your training and experience, and  
19 based upon what was described to you in this case, do you  
20 have some explanation that you could proffer to the jury  
21 as to why a bullet is found right here when the  
22 information is that the victim was struck by the bullet in  
23 this location where I'm pointing to?

24 A I have a possible explanation.

25 Q What is the explanation?

1 MR. BENSON: Objection, Your Honor. Can we  
2 approach?

3 THE COURT: Objection is lack of  
4 foundation?

5 MR. BENSON: Yes, Your Honor.

6 THE COURT: All right. You may approach.

7 (Off-the-record discussion at  
8 the bench out of hearing of the jurors.)

9 THE COURT: All right. The objection is  
10 overruled. You can answer that question.

11 BY MR. FURNSTAHL:

12 Q Do you remember the question?

13 A I would rather have it one more time.

14 Q Based upon your training and experience, can you  
15 provide the jury with possible explanations as to why a  
16 bullet is found in this location when information you have  
17 is that the victim was struck by a bullet when he's in  
18 approximately this location?

19 A Yes. With as many firefighters as arrived and  
20 are pulling him down the hallway, it may be kicked or  
21 dragged along with the victim.

22 Q All right. Directing your attention to  
23 Exhibit 27, can you see that?

24 A Yes, sir.

25 Q What is Exhibit 27?

1           A     You are looking in a southeasterly direction to  
2 the back office area.

3           Q     Will you point --

4           A     I'm sorry.

5           Q     No problem.

6           A     You are looking at this corner and you can see a  
7 small defect in the wood.

8           Q     Where I'm pointing to here?

9           A     Yes, sir.

10          Q     And that's what's marked by number four from the  
11 legend?

12          A     Yes, sir.

13          Q     Exhibit 28, what do we see in Exhibit 28?

14          A     Now you are looking in a southerly direction at  
15 the same defect in the wood on the wood shelving unit.

16          Q     Point to the position you were in when you took  
17 that photo?

18          A     I'm standing approximately here (points)  
19 photographing in a southerly direction.

20          Q     The record should reflect that he was pointing  
21 just to the south of the cabinet towards, pointing in a  
22 southerly direction towards number four on the legend.

23                 Exhibit 29, basically we're following the path of  
24 that bullet?

25          A     Yes, sir.



1 Q That's what these series of photos does?

2 A Yes.

3 Q What is Exhibit 29?

4 A That's just looking in a southeasterly direction  
5 at the back office area.

6 Q And where I'm pointing to here, do you see that?

7 A Yes, sir.

8 Q I want to direct your attention to Exhibit 30  
9 and ask if that's the same thing?

10 A Yes, sir, it is.

11 Q And what do we see in Exhibit 30?

12 A That is a possible bullet strike to the back  
13 side of a file cabinet.

14 Q Is that depicted on Exhibit 2?

15 A It is not. It's approximately in this area  
16 (points).

17 Q Just to the west of where number three is marked  
18 on Exhibit 2, correct?

19 A That is correct. Along this path line (points).

20 Q This is Exhibit 31. What do we see in Exhibit  
21 31?

22 A That is looking in a southwesterly direction.  
23 It is the back porch area. I'm showing the interior wall  
24 of the back porch area.

25 Q Would you point to where that is on Exhibit 2?

1           A     We are looking right here (points).

2           Q     The record should reflect that he's just to the  
3 east of what's marked as number three on the exhibit.

4           A     And what do we see right here where I'm pointing?

5           A     That is a defect in the wall.

6           Q     Then Exhibit 32, what do we see in Exhibit 32?

7           A     That is a cardboard box that we retrieved out of  
8 the back porch area.

9           Q     And what do we see right here?

10          A     Is a defect in the cardboard.

11          Q     And by defect, would that be consistent with a  
12 bullet hole?

13          A     Yes, sir.

14          Q     Directing your attention to Exhibit 33, what is  
15 that?

16          A     That is an interior view of that cardboard box.

17          Q     The one from the prior photo?

18          A     Yes.

19          Q     What I'm pointing to right here, what is that?

20          A     That is a fired deformed bullet.

21          Q     How many bullets were recovered from the scene?

22          A     Two.

23          Q     What's the difference between a bullet and a  
24 casing, so everybody understands?

25          A     The bullet is the actual projectile. The

1 discharged cartridge casing is what contains the bullet  
2 prior to it being expended.

3 Q Did you, you found two bullets, but did you find  
4 any casings?

5 A No, sir, I did not.

6 Q Do you know the difference between a  
7 semiautomatic and a revolver?

8 A Yes, sir, I do.

9 Q Would you explain that for the jurors?

10 A A revolver contains a cylinder. If a bullet is  
11 fired, the discharged cartridge casing remains in the  
12 cylinder. A semiautomatic has a magazine generally placed  
13 into the grip. When a bullet is fired, it automatically  
14 discharges a cartridge casing and another bullet is sent  
15 up the magazine and into the chamber automatically.

16 Q That's something you learn in your training and  
17 experience?

18 A Yes, sir.

19 Q As a police officer?

20 A Yes, sir.

21 Q Are you required to fire weapons?

22 A Yeah, I am.

23 Q Now, given the fact that you have two bullets,  
24 you found two bullets at this scene and no casings, and  
25 assuming that it was a handgun that was used, what does

1       that tell you as to the model or make of the handgun?

2           A       That it was probably a revolver that was used at  
3       this particular incident.

4           Q       Is this some, is that a scene that you looked  
5       closely to see if you could find any casings?

6           A       Yes, sir. I was there for several hours.

7           Q       Why do you look for casings?

8           A       Just for that reason. There is a possibility  
9       that you can match a discharged casing to an individual  
10      firearm.

11          Q       Does the Minneapolis police department crime lab  
12      unit, do you have ballistics experts that can do such  
13      things?

14          A       We have three.

15          Q       That's part of your duties when you go to a  
16      scene, is that right?

17          A       Is collect evidence for them to look at.

18          Q       Directing your attention to Exhibit 34, what do  
19      we see in Exhibit 34?

20          A       That is the, I believe that is the alleyway  
21      between Sixth Street North and Lyndale.

22          Q       Where would Jerry's Flower Shop be in relation  
23      to this?

24          A       To the left, or the west.

25          Q       On this side (points)?

1 A Yes, sir.

2 Q Okay. Directing your attention to Exhibit 35,  
3 what do we see in Exhibit 35?

4 A That is actually the alleyway entryway. I  
5 believe the previous photo was still the rear parking lot  
6 area of Jerry's.

7 Q We can see this --

8 A Yes, sir.

9 Q -- blue house?

10 A That is correct. That is still the rear parking  
11 lot of Jerry's.

12 Q And right here is the same house?

13 A That is the same blue house.

14 Q Now, you took photos going down the alleyway,  
15 correct?

16 A I did.

17 Q Why did you do that?

18 A Investigators had informed me that a possible  
19 path of a fleeing suspect was east down the 33rd Avenue  
20 North sidewalk and north in the alleyway between Sixth and  
21 Lyndale.

22 Q And how did they obtain that information?

23 A I don't know the answer to that.

24 Q Okay. Exhibit 36, what do we see in Exhibit 36?

25 A This is towards the end of that alleyway. If I

1        may refer to my report to get an address for you?

2            Q        Sure. Does that refresh your recollection then?

3            A        Yes, sir. Behind 3343 Sixth Street North. This  
4        is the driveway area. I'm looking in a northeasterly  
5        direction.

6            Q        So going back to the aerial photo, that was 3343  
7        Sixth Street?

8            A        Yes, sir. And 3345.

9            Q        Okay.

10          A        They have a shared driveway area.

11          Q        Would you indicate on Exhibit 1 the approximate  
12        location of those, of that area that we're seeing on this  
13        exhibit?

14          A        That's approximately in this area (points).

15          Q        The record should reflect he's pointing to the  
16        area just to the south, first of all in the alleyway, just  
17        to the south of the intersection of the alley and 34th  
18        Avenue North?

19          A        Right in this area (points).

20          Q        Exhibit 37 is another photograph of that area?

21          A        Yes, it is.

22          Q        Exhibit 38 shows the end of the alleyway?

23          A        It does.

24          Q        Where I'm pointing to, that's 34th Avenue?

25          A        Yes, sir.

1 Q Again that's the garage?

2 A It is.

3 Q You also took some photos of this area where I'm  
4 indicating on Exhibit 38, correct (indicates)?

5 A Yes, sir.

6 Q Exhibit 39, what do we see in Exhibit 39?

7 A That is the same garage and some of the gravel  
8 near the alleyway.

9 Q Right here where I'm pointing, is that the end  
10 of the alleyway that intersects with 34th?

11 A Yes, sir, it is.

12 Q Was there an area right about here (points)  
13 actually that you were focused on?

14 A Yes.

15 Q Why is that?

16 A The dirt was disturbed in that area as if a tire  
17 had spun.

18 MR. BENSON: Objection, Your Honor, to the  
19 last part of that as speculation.

20 THE COURT: Well, counsel you can -- I'll  
21 allow it provided you give, he gives an explanation  
22 as to what causes him to think that.

23 BY MR. FURNSTAHL:

24 Q What causes you to think that?

25 A I've been to the FBI schools on tire track

1 impression evidence and we worked with this phenomena in  
2 field testing scenarios.

3 Q Now, there's a Minneapolis squad adjacent to  
4 this area, correct?

5 A Yes.

6 Q What was the purpose for having a squad there?

7 A To ensure the integrity of the crime scene, that  
8 no other vehicles would pull in or pull out prior to my  
9 being able to examine this area.

10 Q Standard protocol?

11 A Yes, sir.

12 Q Exhibit 40, what do we see in Exhibit 40? Hard  
13 to see but where I'm pointing to right here, what is that?

14 A That's just a disturbed area of gravel.

15 Q Okay.

16 MR. FURNSTAHL: May I approach?

17 THE COURT: You may.

18 BY MR. FURNSTAHL:

19 Q Take a look at that, right through here. Can  
20 you describe what that is?

21 A Yes. That is a tire track and some disturbed  
22 gravel.

23 Q Okay. So where I'm pointing to here, it shows a  
24 tire track on Exhibit 40, correct?

25 A Yes, sir.



1           Q     And just above that is the disturbed gravel,  
2 correct?

3           A     Yes.

4           Q     Is that consistent with anything based upon your  
5 training and experience, specifically the training that  
6 you had with the FBI that you just described?

7           A     Yes, it is.

8           Q     What is it?

9           A     That it's a disturbed area and I believe the  
10 tire track had come after.

11          Q     Okay. And Exhibit 41, what do we see in  
12 Exhibit 41?

13          A     That is rubber marks created by a tire. It's a  
14 friction abrasion, if you will, from a spinning tire.

15          Q     Is that consistent with a car speeding away from  
16 a scene?

17          A     Yes, sir.

18          Q     Sergeant, in your experience and in your  
19 training as a crime scene expert, if I may use that term,  
20 have you had occasion -- you mentioned one of the things  
21 that you try to do is to recreate the scene?

22          A     I try to document the scene. Could you be more  
23 specific, sir?

24          Q     Sure. What I'm wondering is that when you go to  
25 a crime scene, is blood spatter sometimes an issue?

1           A     Sometimes it is.

2           Q     Would you explain to the jurors what blood  
3 spatter is?

4           A     When a victim is hit, be it with a projectile, a  
5 board, some other instrument, there are times when spatter  
6 may be directed. If you are hurt and you swing your hands  
7 blood may fly off of it. There's a number of reasons that  
8 blood spatter can occur.

9           Q     Are there reasons why blood spatter may not  
10 occur when someone is struck with a bullet?

11          A     Certainly. It depends on where somebody is  
12 standing in proximity to the victim being struck.

13          Q     Can it depend upon the caliber of the weapon or  
14 the kind of weapon?

15          A     I don't know the answer to that. Proximity I  
16 would believe to be more important.

17          Q     Let me ask you this hypothetical: If someone --  
18                   MR. FURNSTAHL: If I can approach the  
19 witness?

20                   THE COURT: You may.

21 BY MR. FURNSTAHL:

22          Q     Nothing personal but I'm going to use you as the  
23 victim and me as the perp, okay? Let's say I'm standing  
24 this far away from you and I have a .38-caliber revolver  
25 that I shoot at you and you have some clothing, and let's

1 say another scenario I'm standing this far away from you  
2 and I have a sawed-off shotgun loaded with double buck,  
3 double barrel and I shoot you with both barrels. Now,  
4 based upon your training and experience, would you expect  
5 blood spatter to come back, blow back onto me more likely  
6 if I'm using the double barrel shotgun as opposed to the  
7 .38 caliber pistol?

8 A Now that I understand your question, yes, sir.

9 Q Yes, sir, what?

10 A Yes, sir, you would perhaps have more on you due  
11 to the large explosion and gases and the bullet strikes.  
12 There's more area being struck and more injury occurring,  
13 therefore it's possible you would have more on you than a  
14 .38.

15 Q Okay. And so in terms of whether or not an  
16 assailant might have back spatter, if you will, on them as  
17 a result of shooting someone with a weapon, a couple  
18 factors that are important are the proximity of the  
19 shooter to the victim?

20 A Yes.

21 Q What the victim might be wearing, that is to say  
22 that the clothing might prevent the back spatter from  
23 coming back?

24 A That is correct.

25 Q And the type of weapon that is being used?

1           A     Very much so.

2           Q     Okay. Now, you had mentioned that you had taken  
3 the greeting cards and they were seized, property  
4 inventoried for the purpose of having them dusted for  
5 fingerprints?

6           A     Yes.

7           Q     Do you have training and experience in  
8 fingerprint identification?

9           A     Yes. I've been to numerous FBI, BCA schools on  
10 that subject.

11          Q     How long have you been working with fingerprint  
12 evidence?

13          A     15 years.

14          Q     Have you testified as an expert in fingerprint  
15 analysis in courts of law such as this?

16          A     Numerous times, sir.

17          Q     Is it always the occasion when you go to a scene  
18 that you find fingerprints of a suspect?

19          A     It's not always the case.

20          Q     Could you tell the jurors what would be some  
21 reasons why you might not find fingerprints from a  
22 suspect? Other than the fact that they might not touch  
23 anything.

24          A     There's many variables with fingerprints.  
25 Number one that always comes to mind is how fragile a

1 fingerprint is. For example if I put down a nice print  
2 right there, now it's gone. That's how fragile a  
3 fingerprint is. Some people are sweatier than others.  
4 Some surfaces are good surfaces, some surfaces are bad  
5 surfaces. Some people have very distinct excellent  
6 ridges. Some people just, people that work with cement or  
7 secretaries, secretaries work with a lot of paper, I'm  
8 stereotyping here, but a great deal of paper  
9 microscopically it's abrasive. Our own secretary in the  
10 office has very lousy fingerprints just from working all  
11 these years with paper. So there's many variables with  
12 fingerprints. Environmental, et cetera.

13 Q Did you dust the interior of Jerry's Flower Shop  
14 for the purpose of seeing if you could locate  
15 fingerprints?

16 A Yes, I did.

17 Q Likewise the cards that we saw in the  
18 photographs?

19 A Yes. I had assistance with the cards.

20 Q Must have been pretty labor intensive.

21 A We were there for quite awhile doing each and  
22 every one.

23 Q Did you find any fingerprints that you could --  
24 is it correct that even if you find a print it might not  
25 be an identifiable print?

1           A     That is correct.

2           Q     Describe that for the jury.

3           A     You need characteristics to -- the essence of  
4 forensic science is the comparison of an unknown to a  
5 known. That's part of it. For example, if a fingerprint  
6 is of a good quality, I may be able to enter it into the  
7 AFIS fingerprint data base and it would give me a list of  
8 possibilities, so I'm taking the unknown and now I have a  
9 possibility of knowns that I can compare it to.  
10 Information might be received that a suspect was developed  
11 in a case at which time you go pull a fingerprint card if  
12 there is one available for this person and you may do  
13 comparisons.

14          Q     Okay. Now, regarding your work in this case,  
15 did you -- regarding all the dusting of the different  
16 items that you did to see if you could locate  
17 fingerprints, did you find any identifiable prints in all  
18 the work that you did?

19          A     I did. I found two.

20          Q     Were you able to identify who they belonged to?

21          A     A police officer. One of the first responders  
22 at the scene.

23          Q     Nothing on the -- we saw a photograph with the  
24 card that was adjacent to the flowers on the countertop.  
25 Do you know what I'm referring to?

1           A     Yes, sir. There was some ridge detail, but  
2           insufficient for comparison purposes.

3           Q     Directing your attention to Exhibit 24, that's  
4           the card that I'm referring to.

5           A     Yes, sir.

6           Q     You found, what was it, your --

7           A     There was some ridge detail information but not  
8           enough for a comparison.

9           Q     Okay. Now, so other than a couple of prints  
10          that you identified as belonging to police officers, no  
11          other identifiable prints were found in all the work that  
12          you did?

13          A     I believe there was five other ones that we did  
14          develop on the large card shelf and they were compared to  
15          a suspect in this case and no identification was made.

16          Q     Did you identify who those prints belonged to?

17          A     No, sir.

18          Q     Thank you, sir.

19                   MR. FURNSTAHL: That's all I have.

20                   THE COURT: Cross-examination, Mr. Benson?

21                   MR. BENSON: Thank you, Your Honor.

22                   CROSS-EXAMINATION

23           BY MR. BENSON:

24          Q     Good morning.

25          A     Good morning.

1           Q     Officer, with respect to these fingerprints, you  
2 indicated there were five, I believe there were five  
3 latents or five prints processed?

4           A     Developed, yes.

5           Q     Developed. And those were involved with the  
6 card stands, correct?

7           A     Yes, sir, I believe that is correct.

8           Q     Just for clarity, can you tell us which five  
9 prints were developed off of those card stands?

10          A     Which five prints?

11          Q     Yes. Where were those five prints retrieved  
12 from or developed from?

13          A     I would have to go to the property room and  
14 retrieve all five of the cards.

15          Q     Okay. Let me ask. You completed a supplement  
16 37, correct? A police report in relation to this case?

17          A     I believe so, sir. Yes, I have it right here.

18          Q     You have it in front of you. And by the fourth  
19 paragraph you indicate that five cards processed on the  
20 wheeled display contained partial prints?

21          A     It was a wheel -- yes, sir.

22          Q     Okay. And where was that --

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

24                   THE COURT: You may.

25                   BY MR. BENSON:



1           Q     If you can show the jury, where was the wheeled  
2 display in the store?

3           A     I remember correctly, sir, I indicated before it  
4 was along the south wall near the entryway.

5           Q     Okay. And you processed that, or someone from  
6 your division processed that and you came up with five  
7 latents?

8           A     Yes, sir.

9           Q     And each of those five latents were not  
10 sufficient to try and do a comparison, correct?

11          A     I believe they were.

12          Q     And in fact you compared those five latents to a  
13 fingerprint card bearing Marvin Haynes's fingerprints?

14          A     Yes, we did.

15          Q     Okay. And after that comparison no  
16 identification was made, correct?

17          A     That is correct.

18          Q     So Marvin Haynes's fingerprints didn't match the  
19 fingerprint on that display?

20          A     That is correct, sir.

21          Q     Now, I want to ask you about the 3343 Sixth  
22 Street North, the address where you, there were the tire  
23 marks?

24          A     Yes, sir.

25          Q     Were you asked to go into the address and to

1 take any photographs or recover any evidence?

2 A Excuse me. No, sir, I was not.

3 Q And you were taking direction just basically  
4 from the lead officers on the scene or the first officers  
5 there?

6 A I believe I was, yes.

7 MR. BENSON: Thank you, Your Honor.

8 Nothing further.

9 MR. FURNSTAHL: May I have just a moment  
10 with counsel?

11 THE COURT: You may.

12 (Off-the-record discussion  
13 outside hearing of the jury.)

14 MR. FURNSTAHL: Couple points on redirect  
15 examination.

16 THE COURT: Go ahead.

17 MR. FURNSTAHL: May I approach?

18 THE COURT: You may.

19 REDIRECT EXAMINATION

20 BY MR. FURNSTAHL:

21 Q You testified in response to counsel's questions  
22 that you found five identifiable prints on the wheeled  
23 display. Showing you Exhibit 15, is that the wheeled  
24 display that you described?

25 A Yes, sir, it is.

1 MR. FURNSTAHL: May I publish?

2 THE COURT: You may.

3 BY MR. FURNSTAHL:

4 Q This is Exhibit 15, is that correct, Sergeant?

5 A Yes, sir.

6 Q Now, the fact that you found five identifiable  
7 prints and none of them matched to the known prints of  
8 Marvin Haynes, does that mean that Marvin Haynes did not  
9 touch this display?

10 A No.

11 Q What does it mean?

12 A That means that other people, be it delivery, be  
13 it customers, be it somebody else were the origins of  
14 those particular prints. Again, they were compared and  
15 not identified as belonging to Mr. Haynes. However, as  
16 I've explained, he may have touched a number of things  
17 there, but also by touching and moving the finger, now  
18 I've erased that fingerprint.

19 Q Couple more questions. I asked you -- on  
20 Exhibit No. 2 it references two fired bullets, correct?

21 A Yes, sir.

22 Q And I asked you to bring those with you today?

23 A You did.

24 MR. FURNSTAHL: May I approach?

25 THE COURT: You may.

1 BY MR. FURNSTAHL:

2 Q Directing your attention to Exhibits 42 and 43,  
3 can you identify those, please?

4 A Yes. This is my handwriting bearing the case  
5 number for this case and these are bullet envelopes  
6 identified as number one and two, each holding a fired  
7 deformed.

8 MR. FURNSTAHL: We would offer Exhibits 42  
9 and 43.

10 THE COURT: Any objection, counsel?

11 MR. BENSON: No objection, Your Honor.

12 THE COURT: All right. Exhibits 42 and 43  
13 will be received.

14 BY MR. FURNSTAHL:

15 Q And Sergeant, Exhibit 42, which bullet does that  
16 correspond to with respect to the legend on Exhibit No. 2?

17 A That is the number one position on the floor.

18 Q And 43 then is?

19 A That is the one found in the back porch  
20 cardboard box.

21 Q Now, were those items taken to your ballistics  
22 people at the crime laboratory?

23 A They were.

24 Q And was an opinion formed as to the caliber of  
25 the bullets?

1 A That is correct.

2 Q What caliber?

3 A They were consistent with the same thing I  
4 carry, .38, .357 Magnum.

5 Q Thank you, sir.

6 MR. FURNSTAHL: That's all I have.

7 THE COURT: Any additional  
8 cross-examination, Mr. Benson?

9 MR. BENSON: Yes, briefly, Your Honor.

10 RE CROSS-EXAMINATION

11 BY MR. BENSON:

12 Q Officer, with respect to these fingerprints,  
13 just to be clear, there were five latents that you  
14 developed off of the wheeled display, correct?

15 A Or cards within that wheeled display.

16 Q Okay. And you compared those to Marvin Haynes's  
17 fingerprints and they didn't match, correct?

18 A That is correct, sir.

19 Q There were two other latents that you developed  
20 in that store suitable for comparison and those were  
21 connected to the police officers?

22 A Unfortunately yes.

23 Q Okay. Any other fingerprints that you found in  
24 that store that were suitable for comparison?

25 A Not that were suitable for comparison.

1 Q Okay. And then you discussed a fingerprint that  
2 wasn't suitable for comparison on the card -- on the card  
3 next to the flowers, correct?

4 A Yes, sir.

5 Q Okay. So when Mr. Furnstahl asked you does that  
6 mean that Marvin Haynes wasn't in that store, let me ask  
7 you in a different way. From your job, your tasks that  
8 you performed on this crime scene investigation,  
9 particularly the fingerprints, you have no testimony or  
10 evidence to offer to prove that Marvin Haynes was in that  
11 store, correct?

12 A The answer to your question, yes, that is  
13 correct.

14 MR. BENSON: Nothing further, Your Honor.

15 MR. FURNSTAHL: One last question.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. FURNSTAHL:

19 Q Where did you find the prints that belonged to  
20 the police officers?

21 A On the front door.

22 Q Would you point to that on Exhibit 2?

23 A Up in this area (points).

24 MR. FURNSTAHL: Nothing further.

25 THE COURT: Anything else, Mr. Benson?

1 MR. BENSON: No, Your Honor.

2 THE COURT: You can step down.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness excused.)

5 MR. FURNSTAHL: We'll then call Cynthia  
6 McDermid.

7 THE COURT: All right.

8 Whereupon,

9 CYNTHIA MCDERMID,  
10 after having been first duly sworn, was examined  
11 and testified as follows:

12 THE CLERK: Please state your full name and  
13 spell your last for the record.

14 THE WITNESS: Cynthia McDermid, spelled  
15 capital M-C-D-E-R-M-I-D.

16 THE COURT: Okay. Mr. Furnstahl.

17 MR. FURNSTAHL: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. FURNSTAHL:

20 Q Good morning, Ms. McDermid.

21 A Good morning.

22 Q You are familiar with Jerry's Flower Shop?

23 A Yes, I am.

24 Q And how are you familiar with that?

25 A I worked there for 14 years and it's also --

1 Q Pardon me?

2 A -- owned by my brother.

3 Q All right. What's your brother's name?

4 A Gerald Sherer.

5 Q Is he younger or older than you?

6 A He's older than I am.

7 Q How about brothers and sisters? Do you have --

8 A I have five brothers, one sister.

9 Q Where are you in the chain of command?

10 A Right in the middle.

11 Q Okay. How long had your brother owned that  
12 flower shop?

13 A 42 years.

14 Q And you said that you worked there for 14 years?

15 A Um-hum.

16 MR. FURNSTAHL: If I can have a moment,  
17 Judge?

18 THE COURT: You may.

19 BY MR. FURNSTAHL:

20 Q What kinds of things do you do for your brother  
21 at the flower shop?

22 A It was mostly sales and that type of work.  
23 Sales clerk.

24 Q Did other members of your family work there?

25 A Yes.



1 Q What other members? What other siblings, first?

2 A Well, on any given time on holidays would be  
3 extra help, and during the year no siblings worked there.

4 Q Okay. But on holidays siblings --

5 A Right.

6 Q Other than siblings, did other relatives work  
7 there other than holidays?

8 A Right.

9 Q What kinds of relatives or what relatives worked  
10 there?

11 A Gerald's daughter worked there. She was a  
12 part-time driver.

13 Q Anybody else?

14 A My daughter worked there part-time.

15 Q Okay. Were there any people that weren't  
16 related to you folks that worked there as well?

17 A No.

18 Q Just only family that worked there?

19 A Um-hum.

20 Q In the 40, 42 years ago that it was open --

21 A Right.

22 Q -- you had a brother named Harry, correct?

23 A Right.

24 Q What name did he go by?

25 A Randy was his nickname so that's what we would

1 always call him, Randy.

2 Q How did he get the nickname Randy?

3 A You know, I don't know. My mother wanted to  
4 name him Randy and my dad wanted to name him Harry, so she  
5 said we'll call him Randy. His real name is Harry and  
6 Randy was his nickname.

7 Q Did Randy work there at times?

8 A No.

9 Q Would he be there at times?

10 A He would be there every day.

11 Q Was Randy on disability?

12 A Yes, he was.

13 Q Would you describe your siblings and how you  
14 interact? Are you pretty close?

15 A Very close.

16 Q Did you folks, given that Randy had a  
17 disability, did you folks do things to make his life  
18 easier?

19 A Yes, we did.

20 Q What kind of things?

21 A Well, he would come down and visit every day  
22 and, you know, I would ask him if he wanted to sweep the  
23 floor and do a few chores for me down there and I would  
24 buy him some cigarettes or I would give him some money,  
25 and it was an ongoing thing every day, or buy him

1 something to eat. This was just every single day for  
2 years and years.

3 Q Was Randy working?

4 A No.

5 Q Because of his disability he could not?

6 A Right. Right.

7 Q Where did he live?

8 A He lived on 32nd and Irving, which is probably  
9 about ten blocks from the flower shop.

10 Q In an apartment or house?

11 A A house.

12 Q And is that a house that was purchased for him  
13 or he purchased, or?

14 A My brother Gerald had purchased it for him.

15 Q Okay. So he would come to the flower shop on a  
16 daily basis just to kind of hang out and help out?

17 A Right.

18 Q Now, you mentioned the flower shop was opened  
19 for 42 years. I'm guessing that you saw a lot of changes  
20 in the neighborhood in that 42 years, is that correct?

21 A Yes, that's correct. That's correct.

22 Q How did -- just generally describe how the  
23 neighborhood changed, how it progressed?

24 A Well, it progressed because we had more broken  
25 windows and things of that nature. We had a few of the

1 windows shot out and we never had that years ago, so I  
2 mean it just, just a lot more crime in the area, you know,  
3 so that's how it changed. Maybe the last five years or  
4 so.

5 Q Is the store still open?

6 A No.

7 Q Now, you brought a photo of your brother,  
8 correct?

9 MR. FURNSTAHL: May I approach?

10 THE COURT: You may.

11 BY MR. FURNSTAHL:

12 Q Showing you Exhibit 44, that's a photo of Randy?

13 A Yes, it is.

14 Q All right. We've already published that so I  
15 won't do that again but just so we are all on the same  
16 page, that's Harry whose given name -- or Randy whose  
17 given name is Harry?

18 A Correct.

19 Q Was he younger or older than you?

20 A Two years younger than me.

21 Q Was he close with you?

22 A Yes, close.

23 Q Protective of you?

24 A Yes, very protective.

25 Q Not to cause any family problems, but were you

1 his favorite sister?

2 A Probably.

3 Q Now I want to talk to you about May 16, 2004,  
4 okay? If you need to take a break you tell me, okay?

5 A Right.

6 Q I just want you to -- you and I are just having  
7 a conversation here, okay?

8 A Um-hum.

9 Q I might from time to time ask you to speak up so  
10 I want to make sure everybody hears you, okay?

11 A Yeah.

12 Q Were you working that day?

13 A Yes, I was.

14 Q Do you remember what day of the week that was?

15 A It was a Sunday.

16 Q Did you normally work on Sundays?

17 A No, I didn't.

18 Q Who normally worked Sunday mornings?

19 A My daughter.

20 Q Why is it that you were working?

21 A She had someplace she had to take her children  
22 and asked would I work it for her and I said yeah. We  
23 just exchanged days.

24 Q What time did the flower shop open?

25 A Nine.

1 Q What time did you get there?

2 A Ten to.

3 Q Who opened the shop, if you know.

4 A My husband and I, I believe. I can't recall.

5 Q Okay.

6 A I think my husband and I.

7 Q Was your brother Jerry, was he down there that  
8 morning?

9 A Right.

10 Q And was he there when all this happened? Do you  
11 know what I'm taking about?

12 A No.

13 Q How long before this happened had your brother  
14 Jerry left?

15 A I would say maybe a half hour.

16 Q Now, because -- given the nature of the  
17 neighborhood, did you try to make yourself aware of your  
18 surroundings so as to ensure your safety and so forth?

19 A Yes.

20 Q And at some point in time that morning did you  
21 see a young man come into the flower shop?

22 A Yes, I did.

23 Q About what time was that?

24 A I'm guessing about quarter to 12, 20 to 12,  
25 somewhere in that.

1 Q That is your best recollection today?

2 A Yeah. Somewhere around there.

3 Q All right. Where were you when you first saw  
4 him?

5 A I was sitting in the back room at a table, a  
6 desk that faces, faces west.

7 Q All right.

8 MR. FURNSTAHL: May I approach?

9 THE COURT: You may.

10 BY MR. FURNSTAHL:

11 Q Directing your attention to what's been received  
12 into evidence as Exhibit 2, do you recognize this as being  
13 a diagram of the inside of your brother's flower shop?

14 A Yes.

15 Q With the pointer in front of you, could you  
16 indicate where you were when you first saw this person?

17 A Let's see now. I was --

18 Q Just -- let me help you out. That has been  
19 described as the front door, this is the back door, this  
20 is the counter where the flowers were that you were  
21 working on, okay?

22 A Okay. I was over here (points).

23 Q All right. The record should reflect she's  
24 pointing just to the south of the cooler that's just to  
25 the east of the front door. You can go ahead and have a

1 seat.

2 And you mentioned that you saw this young man. Was  
3 he traveling in a certain direction?

4 A Specific direction, he was going west.

5 Q On what?

6 A 33rd.

7 Q Was he walking or driving?

8 A He was walking.

9 Q And had you seen this person before?

10 A Yes.

11 Q Any doubt in your mind?

12 A No doubt.

13 Q Given the fact -- you described earlier about  
14 how you have kind of a heightened awareness of your  
15 surroundings given the changes in the neighborhood, did  
16 you have that same kind of heightened awareness after you  
17 saw this person of whom you had seen in the past?

18 A Yes.

19 Q All right. And how often had you seen this  
20 person, as best you can recall?

21 A Probably two or three times, somewhere around  
22 there. Maybe four. I'm not quite sure but I had seen him  
23 before.

24 Q No doubt about that?

25 A No doubt.



1 Q Where had you seen him?

2 A Probably either catching a bus on Lyndale right  
3 there which is right in front of the shop, or I do believe  
4 he walked in for change one time, so I've seen him in that  
5 area walk around the corner there, so.

6 Q Was there anything about waiting on him?

7 A I do really believe, but I can't be positive,  
8 that I waited on him during one of the holidays. I just  
9 said that I very well could have.

10 Q All right. Was there a holiday just the week  
11 before?

12 A Yes.

13 Q What holiday?

14 A That was Mother's Day.

15 Q All right. Was that one of the holidays you  
16 thought you might have waited on the defendant?

17 A No. I thought it was prior to that.

18 Q Okay. But at any rate he was familiar to you,  
19 is that correct?

20 A Right.

21 Q No doubt?

22 A No doubt.

23 Q And when he comes in, does he come in the front  
24 door then?

25 A Came in the front door, right.

1           Q     Who was present in the flower shop then at the  
2     time that he enters?

3           A     My brother and me.

4           Q     Which brother?

5           A     Harry.

6           Q     Randy?

7           A     Randy.

8           Q     Let's call him Randy, okay?

9           A     Randy is fine, yeah. Randy and I were there.

10          Q     Your brother Jerry had just left?

11          A     He had to leave, right.

12          Q     Why was Randy there that day?

13          A     Randy was going to stay there with me. He  
14     always was there every day no matter what, but we never  
15     had more than one person stay there alone so he would  
16     always be there no matter what, and then my husband would  
17     come down and Randy would go home so somebody would come  
18     back. At any given day on a Sunday there's three or four  
19     people there.

20          Q     Is this a place that you folks would socialize  
21     at?

22          A     Sometimes, yeah. We would have coffee or  
23     McMuffins in the morning and, yeah, sometimes.

24          Q     Okay. Now, when this person comes in, what  
25     happens?

1 A The bell rings.

2 Q The bell?

3 A There's a loud bell on the door.

4 Q On the what?

5 A On the door.

6 Q Then what did you do?

7 A So I put my coffee cup down and said I would be  
8 right there.

9 Q Okay. And did this person respond?

10 A He said okay.

11 Q What do you do?

12 A So I set my coffee down and walked out in front.

13 Q And who do you see?

14 A I see Marvin Haynes.

15 Q Do you recognize that person in court?

16 A Yes, I do.

17 Q Any doubt in your mind about that?

18 A No doubt.

19 Q Who did you see? Identify him by indicating  
20 where he's sitting and what he's wearing.

21 A He's wearing a greenish blue shirt sitting in  
22 between -- right here at this table.

23 MR. FURNSTAHL: The record should reflect  
24 the witness has identified the defendant.

25 THE COURT: The record will so reflect.

1 BY MR. FURNSTAHL:

2 Q Now, it may be natural, I mean since he's the  
3 only person on trial here, it may be natural for the  
4 jurors to wonder why, since it was your brother that was  
5 murdered, you were to identify the only person on trial  
6 here. What can you do to, say to these jurors to assure  
7 them that your identification that you made today is  
8 truthful and accurate and honest?

9 A Well, I'll tell you what.

10 Q You have to put your hands down.

11 A What I've gone through I wouldn't wish it on  
12 anybody so when I say it's him, that is -- it's him.

13 Q So you come out from behind the back and you see  
14 this person that you have known before, that you have seen  
15 before and that you've identified as the defendant, and  
16 does he ask you anything?

17 A He asked me -- he told me he would like a nice  
18 flower arrangement.

19 Q Did he say who it was for?

20 A He said it was for his mother, his mother's  
21 birthday.

22 Q How did you respond?

23 A I showed him, I showed him -- we have three  
24 coolers. I showed him what was sitting in the coolers and  
25 asked, let him pick out what he liked and --

1           Q     How long was, as best you can recall, as best  
2     you can estimate, how long is he in the, in the flower  
3     shop before you hear the first shot?

4           A     I would say five to six minutes.

5           Q     All right. Are you in close proximity to him  
6     during all that time?

7           A     Just about the whole time.

8           Q     So he comes in, he says he wants some flowers  
9     for his mother's birthday?

10          A     Right.

11          Q     And you show him the different coolers?

12          A     Right.

13          Q     You say you have three coolers?

14          A     Correct.

15          Q     Directing your attention to Exhibit No. 2, right  
16     here, there's a cooler right here (points)?

17          A     Yeah.

18          Q     Here?

19          A     Right.

20          Q     And here?

21          A     Right.

22          Q     Now, are there areas in the flower shop that is  
23     not open to the public?

24          A     Yes, there is.

25          Q     Did the defendant, when he was inside did he

1       respect that, or did he go to those areas?

2           A       Well, he was going to walk into that area and I  
3       said well, you know you can't come back here. Oh, that's  
4       right, so he did walk around. So he did acknowledge that  
5       he shouldn't walk back there.

6           Q       What area was that? Could you use the pointer?

7           A       That is this area right back in here (points).

8           Q       The record should reflect she was pointing to  
9       the area just to the west of what's identified as the  
10      bathroom.

11          So you are showing him the flowers and the various  
12      coolers, and is he giving you directions as to what  
13      flowers you should pick out or is he picking them out?

14          A       He picked out a vase of flowers but he wanted  
15      taller and bigger flowers. He wanted that, that look but  
16      he wanted it a little bit fuller and bigger.

17          Q       Now, when he picked them out, did he point to  
18      them or grab them or what did he do?

19          A       He just pointed to them. He said I like that  
20      but it's not quite big enough and not full enough.

21          Q       So he didn't touch it, just pointed to it?

22          A       Right.

23          Q       Then did you pick it up?

24          A       Yes, I did.

25          Q       Was he having any conversation with you during

1       this time period about why he wanted them?

2           A     Yes. He said it was his mother's birthday and  
3       she was a chiropractor and he was going to school, and  
4       just small talk.

5           Q     All right. Was he polite or impolite?

6           A     Very polite.

7           Q     Did he do or say anything at that time that put  
8       you on guard?

9           A     Not one bit.

10          Q     And of course you were familiar with him?

11          A     (Nods head.)

12          Q     Is that right?

13          A     (Nods head.)

14          Q     You have to answer out loud.

15          A     Yup.

16          Q     I'm sorry. Otherwise the court reporter can't  
17       take it down.

18          A     Correct.

19          Q     Sorry. I apologize for that.

20                Now, when he said that his mother was a chiropractor,  
21       were you familiar with chiropractors in the area?

22          A     Yes.

23          Q     How many chiropractors are in the area?

24          A     Well, there's right up on Lowry Avenue, which is  
25       probably about four blocks away, there's a whole clinic

1       there of them so, you know, very well could have been  
2       there.

3               Q       So when he said his mother was a chiropractor,  
4       did that you cause you any heightened awareness?

5               A       No.

6               Q       All right. Now, you said that he picked out a  
7       vase, you picked it up, and he wanted some more flowers?

8               A       Right.

9               Q       Did you grab those flowers?

10              A       Um-hum.

11              Q       Is that a yes?

12              A       Yes. I'm sorry. Yes, I did.

13              Q       I don't mean to -- I know this isn't much fun  
14       but I need to --

15              A       Yes, I did grab the flowers.

16              Q       Where did you grab them from?

17              A       Out of the main cooler.

18              Q       Is that the big one?

19              A       That is the big cooler, right.

20              Q       And did you have a vase with you at that time?

21              A       That was sitting on the counter. There is a  
22       little work space right there and I set that down and  
23       opened the cooler and took out a package of roses.

24              Q       Now, the counter that you are referring to, is  
25       that the one where I'm pointing to right here where the



1 two is?

2 A Yup.

3 Q So you set the vase down on the counter, then  
4 you go to the main cooler and get some more roses?

5 A Correct.

6 Q What is the defendant doing at this time?

7 A He's standing right there before the cooler.

8 Q Is your -- where's your brother at this time?

9 A My brother is walking around. My brother walks.  
10 He walks from the front of the store to the back of the  
11 store to out the -- he just is a walker, and a looker.

12 Q Did he come out into the open so that the  
13 defendant could see him?

14 A Yes.

15 Q Did they acknowledge each other?

16 A Yes.

17 Q How did they do that?

18 A Mr. Haynes said good morning, sir, to my  
19 brother, and my brother said how you doing there, and they  
20 both acknowledged saying fine.

21 Q So after you put the vase down, grabbed more  
22 flowers, then what do you do?

23 A What did I do after the --

24 Q You put the vase down on the counter, you go to  
25 the big cooler and get some more flowers. Then what do

1       you do with those?

2           A       I start cleaning them off, taking the thorns off  
3       and adding more, and I asked him I said is this enough  
4       flowers and he said oh, maybe a few more. And I said you  
5       know, this is going to be about 40 or 50 bucks. He said  
6       that's all right, I have my Visa, I'm all set, so.

7           Q       Where were you doing this cleaning and taking  
8       thorns off?

9           A       Right on that number two counter there.

10          Q       By the counter?

11          A       Um-hum.

12          Q       And now, was there any mention about a card?

13          A       Yes.

14          Q       Who mentioned the card?

15          A       He mentioned a card and said I'm going to pick  
16       out a birthday card over here for my mother.

17          Q       Where did he go?

18          A       He walked over there in front of, let's see, in  
19       front of that counter up in front, the very front.

20          Q       This counter right here (points)?

21          A       Right. There's two card racks right there, and  
22       he walked over there and kind of spun it around a little  
23       bit and I told him right on that counter there happened to  
24       be some little enclosure cards that were free and some  
25       said To Mother or Happy Birthday or such as that, and I

1 told him those are free, if you want to pick one of those  
2 out I would put that on there for him.

3 Q Did he pick one out?

4 A Yes, he did.

5 Q Did he give it to you or what?

6 A He picked up that little card and he brought it  
7 over to me.

8 Q Where you are at the counter?

9 A Yes.

10 Q All right. And was there some green wrapping  
11 paper in that store?

12 A Yes, there was, right on that counter.

13 Q Right on the top of the counter?

14 A Right.

15 Q What was the green wrapping paper used for?

16 A To wrap a purchase. It's a waxed paper.

17 Q Now, when -- after he brings the card over to  
18 you, do you have a plastic holder for the card?

19 A Yes.

20 Q Do you do something with that?

21 A It's called a cardette and the card is placed  
22 right in there so you can put it in a vase or a plant. It  
23 has one end sharpened.

24 Q Do you do that?

25 A Yes.

1 Q Then what happens?

2 A It didn't get filled out. I said he could fill  
3 it out when we get to the counter. I put it on there and  
4 I was going to put it in the flowers. I didn't get that  
5 far.

6 Q What happens?

7 A I turned up and looked and there was a gun about  
8 this close to my eyes.

9 Q And about -- when you say "this close," could  
10 you indicate about approximately how many inches that is?

11 A Well, I would say a foot, twelve inches.

12 Q Do you know anything about guns?

13 A No.

14 Q Would you describe the gun that you saw?

15 A I can tell you that the gun was silver and, I  
16 don't know what kind of gun it is, but when it was this  
17 close to my eyes I could see a chamber, if it's called  
18 that even, and it had bullets in it. That's what I can  
19 tell you that it looked like because I could see these in  
20 there. That's all I could tell you what kind it is. I  
21 don't know.

22 Q By a chamber, do you mean a cylinder?

23 A Like a round thing with little bullets in it, if  
24 that's what it is, I don't know.

25 Q Have you ever shot a gun?

1 A No. Never held a gun.

2 Q Was it a pistol?

3 A It was a pistol, handgun.

4 Q Silver pistol with a round thing with bullets in  
5 it?

6 A Right.

7 Q When you look up and you see that, what  
8 happened?

9 A It was this close to my eyes. I look up and he  
10 said I'm not joking with you. I didn't move, and he said  
11 I want the money out of the till -- I'm sorry. He said I  
12 want the money. I said I will go to the till, and I put  
13 my foot down. He said don't move. So I didn't move, I  
14 just stood there. He said where's the tapes. I said  
15 there is no tapes. And he said, he put the gun a little  
16 bit closer to my eyes and he said, in the back. And at  
17 that time my brother walked up and he was, he was behind  
18 me.

19 Q Before we get to that, let me ask a couple  
20 questions, okay?

21 A Yup.

22 Q You mentioned he asked for the money and you  
23 took a step, correct?

24 A Correct.

25 Q What were you taking a step towards?

1           A     I was going to go to the till and open it to  
2     give to him.

3           Q     Did you have any interest in keeping him from  
4     trying to get the money?

5           A     Absolutely not. He could have everything in  
6     there.

7           Q     Now, the till, where was that located?

8           A     The till is at the front counter right where you  
9     see, right there.

10          Q     Right there (points)?

11          A     Right.

12          Q     So you would have had to walk this way?

13          A     Right there, there and around the corner and  
14     open the till.

15          Q     And you were willing to do that?

16          A     Absolutely.

17          Q     About how much money was in that till?

18          A     Probably a hundred dollars, \$120, about like  
19     that.

20          Q     He said something about wanting the money in the  
21     back?

22          A     Yes. He said in the back, and that's when my  
23     brother said there is -- we have no safe, we have no  
24     money.

25          Q     All right. One other thing I wanted to ask you

1       about before we get into that. He said he wanted the  
2       tapes?

3           A       He said I want the tapes. I said there is no  
4       tapes.

5           Q       Did you understand what he was referring to?

6           A       Well, yes, because we have a camera there and  
7       the tapes had broke so we hadn't replaced them so there  
8       wasn't a tape, but we had monitors where you could watch.  
9       Usually my brother was down there and he can watch what  
10      was going on in the front of that store at all times.

11          Q       Where were the monitors?

12          A       The monitors were in the back and one in the  
13      work area.

14          Q       Back here (indicates)?

15          A       One was here (points) and one was right where we  
16      sit on that desk, so at all times when he would sit there  
17      he could watch who was in there, and hear them also.

18          Q       Where was the camera?

19          A       The camera was right here (points), right out in  
20      front you could see this right here (points).

21          Q       So he asked for tapes, you tell him there are no  
22      tapes. He asked for money, you make a step towards, take  
23      a step towards the cash register and he says don't move,  
24      and then your brother comes out. And what happens?

25          A       My brother was standing behind me, I presume,

1 and he must have spotted the gun because he said I don't  
2 even have any money in my billfold, we don't have any  
3 money here. That's, and he also said what the fuck is  
4 going on here. Excuse my language but that's exactly what  
5 he said, and I just kind of, I said, just wanted to say  
6 cool it but it just happened so fast. And that's why I  
7 say he was behind me. He had to be somewhere right in  
8 here, not directly behind me but maybe by the side of me.

9 Q Okay. Now, as best you can, would you put,  
10 would you point to where you were at the time you saw the  
11 defendant with the gun?

12 A I was right here (points) at this work table,  
13 the very end.

14 Q The very end?

15 A I was right here, yup.

16 Q I'm going to put a C.M. there for Cynthia  
17 McDermid, okay? Would you point to the location of the  
18 defendant when you saw the gun?

19 A Right there next to me (points).

20 Q Right up here?

21 A Right above there, yup.

22 Q I'll put M.H. for Marvin Haynes. Is that about  
23 right?

24 A That's correct.

25 Q Would you put the, as best you can, as best you



1 can, tell the location that your brother was in?

2 A My brother would have been right over here  
3 (points).

4 Q I'll put R.S. for Randy Sherer.

5 A Randy Sherer.

6 Q About like that?

7 A Right.

8 Q So your brother comes out, he makes these  
9 comments, then what happens?

10 A I don't quite know what happened then because  
11 when I was looking I was petrified, the gun was in my  
12 eyes. When the gun -- I don't know if I felt my brother  
13 brush against me or what I felt but the gun moved. The  
14 gun moved away from my eyes, and when that gun moved I  
15 ran. I turned around like this and I headed for the back  
16 door.

17 Q When you turned around did you see your brother?

18 A I did not see my brother. I heard the first  
19 shot.

20 Q With the pointer would you indicate the route  
21 that you took?

22 A Let's see. I came -- there's one little sector,  
23 I came this way, and it's not that much room, come this  
24 way here (points).

25 Q Where are you when hear the first shot?

1           A     Right here when I heard the first shot (points).

2           Q     I want to put a --

3           A     Right when I come down here, the step, I get  
4 right here and hear the first shot.

5           Q     I'm going to put a number one indicating the  
6 first shot, okay? Then --

7           A     I get over here, I get around this corner, and  
8 here I hear the second shot right here (points). I think  
9 it was the second shot.

10          Q     Then what happens? Let me ask you this: Did  
11 your brother have a gun?

12          A     No.

13          Q     Was he armed in any way, shape or form?

14          A     No.

15          Q     What happens next?

16          A     When I got over here, when I hear the second  
17 shot I got over here, the door is locked and I'm pulling  
18 on it and I'm thinking how am I going to get this door  
19 opened. I looked at the bathroom door and I thought I  
20 should run in there and then thought no, I should just go  
21 to the door, so I grabbed ahold right here, the door  
22 handle and had enough (inaudible) probably, I turned it  
23 right and it unlocked, so when I pulled the door open I  
24 ran out of the door.

25          Q     Where do you go then?

1           A     I ran -- let's see here where we are.

2           Q     Let me help you. Let me show you a different --  
3 let me show you an aerial photograph that we have. Here's  
4 your flower shop here.

5           A     Okay.

6           Q     All right.

7           A     Here's the shop here. When this -- right here,  
8 I came out this door right here (points). When I got over  
9 here there is a high, high fence so I couldn't get through  
10 there, and the next yard over there's a low fence,  
11 three-foot fence and I jumped that and the second house is  
12 right there (points) where I ended up.

13          Q     Do you know that person in the second house?

14          A     No.

15          Q     And as you were going over that three-foot high  
16 fence to get to that house, do you see anything?

17          A     Well, when I got over towards the three-foot  
18 fence, I looked over and there was Mr. Haynes walking down  
19 the alley fast. Not running, but fast like that with his  
20 hood over his head but I could see his face.

21          Q     With the pointer could you indicate the  
22 approximate location that he is in, the direction that  
23 he's going?

24          A     Let's see, where am I here? All right. Is this  
25 Lyndale Avenue here?

1 Q Yes, it is.

2 A Okay. All right. This is an alley right here,  
3 right in between here there's an opening and this is where  
4 I saw him right here (indicates).

5 Q Which direction is he going?

6 A He is going north.

7 Q All right.

8 A He's going up the alley here and I'm right here  
9 so I can see him very clear. Very clear.

10 Q No doubt about it?

11 A Huh?

12 Q No doubt about it?

13 A No doubt.

14 Q And at this point in time you said something  
15 about his hood?

16 A His hood was up then but I could still see the  
17 face because it didn't cover the face, just the top of his  
18 head.

19 Q Did he have a hood up while he was in the store?

20 A No. No.

21 Q Now, you mentioned that you didn't know the  
22 neighbor?

23 A No, I didn't know her, no.

24 Q What -- did you get over the fence?

25 A I got over the fence, and I just was screaming

1       for her to come to the door. I actually, I didn't know  
2       who lived there exactly. I had just a feeling it was a  
3       woman that lived there. I might have seen her before, I  
4       never talked to her that I know of, and I started pounding  
5       on her door and asking her to call 911 and nobody came to  
6       the door right away.

7               Q       What was going through your mind at that time?

8               A       He's coming to get me, he's going to come back  
9       down that way because I saw him, I'm sure he saw me.

10              Q       Then what happens?

11             A       I walked to in front of her yard and she had a  
12       very tall fence, I would have never got over that. I have  
13       crippled legs, and she come walking outside, she was  
14       getting as panicked as I was. I do believe I was  
15       screaming. And she called 911 for me. I think I talked  
16       on 911. I'm not quite sure, I don't even have -- I don't  
17       know. I can remember having the phone and she said this  
18       is 911 and then I thought to myself I better go back, I  
19       handed the phone back to the neighbor and said here, you  
20       talk, I've got to go see if my brother got out all right,  
21       you know.

22              Q       Do you remember talking to the 911 operator?

23             A       Not -- just maybe a little. I can remember she  
24       said stay on this phone and I said no, and I handed it to  
25       that woman. I really don't remember a lot about it, to be

1 truthful.

2 Q Do you remember providing a description to the  
3 911 operator?

4 A No, I don't even remember really talking to her  
5 that much.

6 Q What was going on?

7 A I don't know. I don't know what was going  
8 through my head. I don't know. Everything and nothing.  
9 I was in a total panic. First of all I wanted to see if  
10 my brother got out alive. That was my main goal.

11 Q Then do you go back to the flower shop?

12 A Yes.

13 Q Do you go there before the police get there or  
14 after?

15 A Yes. Before.

16 Q Do you go inside?

17 A (Nods head.)

18 Q That's a yes?

19 A Yes.

20 Q And you see your brother?

21 A I see my brother.

22 Q Did you try to assist him in any way?

23 A I knew I could not have helped him. All -- I  
24 kept screaming his name. He never moved to show me he was  
25 alive so I figured he was gone.

1 Q All right. Then what happens?

2 A I thought I have to call my brother Jerry  
3 because he's got to know what is going on. I could hear  
4 the police cars coming, they hadn't been there yet, so I  
5 dialed my brother and I told him you have got to get down  
6 here quick.

7 MR. FURNSTAHL: May we approach, Judge?

8 THE COURT: You may.

9 (Off-the-record discussion at  
10 the bench out of hearing of the jurors.)

11 THE COURT: Members of the jury, we're  
12 going to take our noon recess at this time. I would  
13 remind you to please leave your notebooks on your  
14 chair and you're excused and please come back to the  
15 courtroom at 1:30, but don't come in until the clerk  
16 comes out to get you.

17 (Noon recess.)

18 THE COURT: Ms. McDermid, I'll just remind  
19 you that you are still under oath, okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: You may proceed, Mr. Furnstahl.

22 MR. FURNSTAHL: Thank you.

23 BY MR. FURNSTAHL:

24 Q Ms. McDermid, before I get into introducing the  
25 photo lineups there are a couple of questions I need to

1 ask you about. First of all, did the defendant, did he  
2 get any proceeds from the store? Did he get any money?

3 A None, no.

4 Q And we heard some testimony and some evidence  
5 about some green wrapping paper that was on the counter by  
6 the front window?

7 A Correct.

8 MR. FURNSTAHL: May I approach the witness?

9 THE COURT: You may.

10 BY MR. FURNSTAHL:

11 Q Directing your attention to what's been received  
12 in evidence as Exhibit 13, is that the green wrapping  
13 paper?

14 A Yes, it is.

15 MR. FURNSTAHL: Ask to publish?

16 THE COURT: You may.

17 (Exhibit 13 is displayed on  
18 overhead projector.)

19 BY MR. FURNSTAHL:

20 Q Where I'm pointing to right here, is that where  
21 the green wrapping paper was located?

22 A Correct.

23 Q What is that wrapping paper used for?

24 A It's for purchases. Cut flowers. It's a wax  
25 paper so it kind of keeps the moisture in and that type of



1 thing.

2 Q Now, you mentioned that during the time when you  
3 were working on the flowers, cutting the thorns and so on  
4 and so forth, that the defendant was looking at various  
5 card racks?

6 A Correct.

7 Q Was he over by the green wrapping paper?

8 A Correct.

9 Q Did you see him leaning over or having contact  
10 with the green wrapping paper?

11 A I thought he was leaning on it at one time  
12 looking at the cards.

13 Q Do you recall advising the officers at the scene  
14 about that?

15 A I think they asked me about it and I told them  
16 that also that I think that he was leaning on it or could  
17 have been touching it, but he was right there, so I'm not  
18 positive. I know he was probably leaning on it.

19 Q Okay. Now, let me ask you about the photo  
20 lineups, okay? Do you remember how many photo lineups you  
21 looked at, photographic lineups as opposed to a standup  
22 lineup?

23 A Three.

24 Q Do you remember when the first time was that you  
25 were shown a photo lineup?

1           A     Let's see, Sunday, I think. I believe it was  
2 Sunday night, the day of this happening.

3           Q     What was your emotional condition like that  
4 Sunday night?

5           A     I don't really recollect hardly anything,  
6 period.

7           Q     Do you remember seeing a series of photographs?

8           A     Vaguely, yes.

9           Q     Do you remember picking anybody out?

10          A     I think I picked one that I thought looked  
11 similar but I told him that it was not.

12          Q     Okay.

13          A     That I was just about positive it wasn't him but  
14 that maybe 70 percent looked like him.

15          Q     Did you pick anybody else out of that lineup as  
16 someone that you recognized?

17          A     There was other one on there that I recognized,  
18 yes.

19                   MR. FURNSTAHL: May I approach?

20                   THE COURT: You may.

21 BY MR. FURNSTAHL:

22          Q     I have an envelope, a brown manila envelope that  
23 I've marked as Exhibit 45, correct?

24          A     Um-hum

25          Q     Did you see me take out of there six individual

1        photographs?

2            A        Right.

3            Q        Directing your attention to photograph number  
4 one, do you remember him?

5            A        Yeah.

6            Q        I'm sorry, this is photograph what?

7            A        Number two.

8            Q        And how do you know -- do you recognize photo  
9 number two?

10          A        Yes, I do.

11          Q        How do you recognize him?

12          A        Well, because he's, since he's been a young  
13 child would always come into the flower shop.

14          Q        One that lived in the area?

15          A        Yes. Yes, he did.

16          Q        Do you by chance know his name?

17          A        I don't know his name.

18          Q        But you recognize him from the neighborhood?

19          A        Yes. Um-hum.

20          Q        Yes?

21          A        Yes, I do.

22          Q        Okay. Do you by chance remember which number it  
23 was that you picked out that you said was 70 percent like  
24 the guy?

25          A        I don't remember what number.

1           Q     Okay. All right. Now, when you were shown that  
2 first lineup, did the officer that showed you the lineup  
3 put any pressure on you, make any suggestions as to who if  
4 anyone you should pick out?

5           A     None whatsoever, no.

6           Q     And then you said that was the first of three  
7 photo lineups you saw?

8           A     Correct.

9           Q     When is the next time that you saw a photo  
10 lineup?

11          A     The next time I believe was on the following  
12 night, I believe. You know, I'm not so sure. It's been  
13 16 months, so. I think it was Monday night.

14          Q     Okay. And was that photo lineup, was it the  
15 same or a different photo lineup from the one that you had  
16 seen the day before?

17          A     It was a different lineup.

18          Q     Do you remember picking anybody out in that one?

19          A     Yes, I do.

20          Q     All right. Do you remember at any time  
21 identifying a photo of Marvin Haynes?

22          A     Yes, I do.

23          Q     Which photo lineup was it that you identified  
24 the photograph of Marvin Haynes?

25          A     I think it was the second lineup. I think it

1 was the second lineup.

2 Q All right. That's your best recollection today?

3 A Yeah. I'm totally confused for days here  
4 because it just was into -- so I do believe it was the  
5 second.

6 Q Is it possible it could have been the third?

7 A Possibly.

8 Q All right. But you recall it today as best you  
9 can recall it being the second lineup?

10 A Second -- I just absolutely don't remember.

11 Q Okay.

12 A Which one it was but I'm guessing it could have  
13 been the second. I'm just not sure.

14 Q All right. At the time that you were -- let's  
15 just talk about the lineup that you were shown to, and you  
16 identified a photograph of Marvin Haynes, okay?

17 A All right.

18 Q Now, do you recall where that took place?

19 A I believe that lineup was at my home.

20 Q All right. And do you remember who it was that  
21 showed you the photo lineups?

22 A Sergeant Mattson.

23 Q All right.

24 A I believe.

25 Q Was he with anybody or was he alone?

1           A     He was with another sergeant or another  
2     detective.

3           Q     Did Sergeant Mattson put any pressure on you,  
4     make any suggestions?

5           A     None.   None.

6           Q     And do you remember identifying the photograph  
7     of the person that robbed your, tried to rob the flower  
8     shop?

9           A     Correct.

10          Q     Did they ask you to do anything with that once  
11     you made your identification?

12          A     I do believe they asked me to sign the back.  
13     I'm not quite sure, I just can't recall. I think I did,  
14     though. I think I had to initial it or, I can't remember  
15     but I think so.

16                   MR. FURNSTAHL: May I approach?

17                   THE COURT: You may.

18     BY MR. FURNSTAHL:

19          Q     Again, Exhibit 46 is a brown manila envelope  
20     that I've marked as Exhibit 46, correct?

21          A     Correct.

22          Q     And inside are a number of photos, correct?

23          A     Um-hum.

24          Q     Is there one with your name on it?

25          A     Yes.

1 Q And who is that a picture of?

2 A That's Marvin Haynes.

3 Q And whose signature is that in the upper  
4 left-hand --

5 A That's mine.

6 Q When you identified the photograph of the  
7 defendant, would you explain or describe for the jurors  
8 how certain you were when you made your identification?

9 A On the lineup or the --

10 Q On the photo lineup.

11 A On the photo. I was very adamant that that was  
12 him.

13 Q All right. And then following this, were you  
14 asked to view a live lineup? A standup lineup?

15 A Yes, I was.

16 Q Do you remember when that occurred?

17 A I believe that was on Thursday.

18 Q All right. And was something going on with your  
19 brother's --

20 A My brother's wake was that day. That was the  
21 only day they could line it up, I guess.

22 Q You went to your brother's wake, I take it?

23 A Yes.

24 Q And did you view, do you recall if you viewed  
25 the lineup before or after you went to your brother's --

1 A Before. Before.

2 Q Would you describe for the jurors your emotional  
3 condition when you were looking at the live lineup?

4 A It was very -- it was very emotional. Very  
5 emotional.

6 Q Do you recall requiring or asking for any kind  
7 of assistance?

8 A I needed a chair to sit down first. It was  
9 taking its toll on me.

10 Q Had you been getting any sleep in the days since  
11 the event?

12 A No, no.

13 Q Do you remember having a reaction to one of the  
14 persons in the lineup?

15 A Yes, I do.

16 Q What was your reaction?

17 A I got right off the chair.

18 Q And do you remember if you said anything?

19 A All I said is that's him.

20 Q Was there any doubt in your mind at that point?

21 A No doubt.

22 Q Who was that person that you identified?

23 A Marvin Haynes.

24 Q The defendant?

25 A Right. Correct.



1           Q     Do you remember if you asked to look at the  
2 lineup a second time?

3           A     I did. I did.

4           Q     All right. Why did you ask that?

5           A     I want to be positive on something so I asked  
6 them to just let them all go through. I didn't ask for  
7 one in particular, I think I asked for the first three or  
8 the last three, I can't recall but I wanted to look again  
9 and make sure.

10          Q     And why was that important to you?

11          A     It's very important to me. Very important.

12          Q     Why is that?

13          A     Because I want to be positive. I don't want to  
14 be in between.

15          Q     All right. Are you positive or are you --

16          A     I'm positive.

17          Q     All right. Would you describe the emotional  
18 reaction you had when you, if you recall, when you were  
19 looking at the live lineup the second time?

20          A     It was the same as the first. I knew that  
21 that's who it was.

22          Q     Okay. Now, just a couple more questions. Ms.  
23 McDermid, do you know who Ravi Seeley is?

24          A     No, I don't.

25          Q     Have you ever heard that name before?

1 A No.

2 Q Mentioned to you?

3 A It doesn't sound familiar to me.

4 Q Do you know any member of the family of Ravi  
5 Seeley?

6 A No, I don't.

7 Q Did you reach out to anyone in the neighborhood,  
8 specifically Ravi Seeley, to come forward or do you have  
9 any connection with Ravi Seeley?

10 A None. No, I don't.

11 MR. FURNSTAHL: If I can have a moment,  
12 Judge?

13 THE COURT: You may.

14 BY MR. FURNSTAHL:

15 Q When you were going through the live lineup, did  
16 the officers at that time make any suggestions, anything  
17 like that, put any pressure, suggest that you pick one  
18 person out of the lineup or not?

19 A They weren't near me.

20 Q Thank you, ma'am.

21 MR. FURNSTAHL: That's all I have.

22 THE COURT: Cross-examination, Mr. Benson.

23 MR. BENSON: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BENSON:

1           Q     Good afternoon.  You've used Marvin Haynes's  
2     name quite a bit today.  On May 16th, as of that date as a  
3     point of reference, you never knew the name Marvin Haynes?

4           A     Never.

5           Q     You say that you, or you testified that you  
6     recognized the person in the store from seeing him before?

7           A     Correct.

8           Q     Okay.  But like I said you never at that point  
9     heard the name Marvin Haynes?

10          A     Correct.

11          Q     Okay.  All right.  I want to ask you some  
12     questions about that period of time before the gun was  
13     drawn so I want to take you back a little bit.  When you  
14     first saw the person that came into the store you were in  
15     the kitchen?

16          A     Correct.

17          Q     And you saw this person out the kitchen window?

18          A     Correct.

19          Q     And you saw like this whole person, right?

20          A     Correct.

21          Q     Okay.  And that person walked around the store  
22     and into the front door, is that right?

23          A     He walked into the front door, correct.  Yeah.

24          Q     He walked into the front door.  And in fact you  
25     thought that when you first saw this person that this

1 person might be going to catch the bus?

2 A Correct.

3 Q All right. Then that he came into the store and  
4 at that point there's a little bit of an exchange such as  
5 you indicated you would be right there and that person  
6 indicated okay?

7 A Correct.

8 Q Okay. And once you saw that person, you  
9 directed them towards the coolers?

10 A He walked over to the coolers. I didn't have to  
11 direct him because they are sitting right there in the  
12 front so they are right at eye level, so.

13 Q You let the person know that you would be with  
14 him, go ahead and look around?

15 A Right.

16 Q All right. And that person did that, correct?

17 A Correct.

18 Q And then the person took a, you know, grabbed  
19 some flowers or grabbed a vase, right?

20 A No. He did not grab the vase.

21 Q Okay. The person ended up with a vase and said  
22 they wanted more flowers in the vase?

23 MR. FURNSTAHL: Objection.

24 THE WITNESS: He picked it out --

25 THE COURT: Wait a minute. Don't answer.

1           There's an objection. What's the objection?

2                   MR. FURNSTAHL: Assumes facts not in  
3           evidence regarding whether he grabbed the vase.

4                   THE COURT: Sustained.

5   BY MR. BENSON:

6           Q     You've testified about the person in the store  
7           wanting to have more flowers added to a particular vase?

8           A     Correct.

9           Q     And you spoke to the person about that, you  
10          spoke about the amount of those flowers in the vase?

11          A     Um-hum. Correct.

12          Q     Okay. And when you spoke to that person, that  
13          person indicated to you that they were going to pay by  
14          Visa?

15          A     Correct.

16          Q     And you had had an opportunity up until that  
17          point to at least look at this person and assess that  
18          person to some extent?

19          A     To some extent, yes.

20          Q     Okay. And the -- well, Mr. Furnstahl asked you  
21          about your heightened awareness as you sometime have given  
22          the neighborhood and everything?

23          A     Correct.

24          Q     And you indicated that that was in part because  
25          of the crime rate within the neighborhood?

1           A     That's right, correct.

2           Q     So when this individual who was in the store  
3 told you that they were going to pay for this item by  
4 Visa, that didn't raise any alarm to you?

5           A     No. Two-thirds pay by Visa.

6           Q     And in fact the individual before they pulled  
7 the gun or, at least, before they pulled the gun they were  
8 in there, in the store about five to six minutes?

9           A     Correct.

10          Q     Okay. And during your conversation with this  
11 individual you were able to make an assessment that this  
12 person seemed to, he spoke with clarity?

13          A     Yes, he did.

14          Q     Seemed educated?

15          A     Well, when you say educated, he talked like he  
16 was -- he didn't talk slang talk. He talked --

17          Q     Okay.

18          A     -- very courteous. I'll put it that way.

19          Q     And you recall giving a statement to Sergeant  
20 Mattson regarding the events of that day? This would have  
21 been the day after the incident?

22          A     The day of the incident. It was the day of the  
23 incident and I vaguely remember it, yes.

24          Q     Okay. Do you recall describing to Sergeant  
25 Mattson --

1 MR. FURNSTAHL: Sorry counsel. Could you  
2 give me the page, please? For reference, yes.

3 MR. BENSON: Be supplement 17.

4 MR. FURNSTAHL: Thank you.

5 MR. BENSON: Page four.

6 MR. FURNSTAHL: Thank you, sir.

7 BY MR. BENSON:

8 Q You indicated to Sergeant Mattson that the  
9 person spoke, it was not a hip-hop type speaking, he spoke  
10 with clarity?

11 A Correct.

12 Q That's fair to say? All right. And you are  
13 also -- Sergeant Mattson, do you recall Sergeant Mattson  
14 asking you as if he had an education, and your answer was  
15 absolutely?

16 A I said he talked like he had an education. I  
17 don't know about an education. I said he talked like he  
18 was, he was very courteous which did not put my antennas  
19 up.

20 Q I understand. And he also, this person in the  
21 store, told you that it was his mother's birthday, that's  
22 why he was shopping for the flowers?

23 A Correct.

24 Q And this person used the word "chiropractor," in  
25 saying that his mother was a chiropractor?

1 A Correct.

2 Q And he said that very clearly?

3 A Yes, he did.

4 Q I believe today you testified that the person in  
5 the store indicated that he had been going to school?

6 A I can't recall exactly what he said about  
7 school, but I thought I had the impression he was talking  
8 about the university. I was not, I wasn't really  
9 listening. I was trying to do what he wanted done to  
10 these flowers so I was, some things I caught, some things  
11 I didn't. I caught the mother's birthday, chiropractor,  
12 but I'm not so sure about the school. I'm not, I'm just  
13 not remembering all that.

14 Q Okay. But the impression was that this person  
15 who is in the store raised no alarms when they wanted to  
16 use a Visa card, right?

17 A Well, no. No, he did not.

18 Q And when you were looking at the person it  
19 seemed like he should have a Visa card? Or that he should  
20 have one; it didn't surprise you that he would have one?

21 A It doesn't surprise me because everybody has  
22 one.

23 Q And you indicated that, or at least your  
24 thoughts are as far as your remembrances that you had the  
25 impression that this person was talking about the



1 university or going to the university?

2 A I just can't recall anything about his  
3 schooling. If he said something about school it went over  
4 my head.

5 Q Okay.

6 A That I can recall.

7 Q All right. Now, after this person left the  
8 store, after this person -- after you left the store,  
9 after the gun was displayed and you left out of the store  
10 you saw this person again?

11 A Yes, I did.

12 Q And that was as you were attempting to get to  
13 the second house down the street which was the house from  
14 which 911 was called?

15 A Correct.

16 Q And as you looked, I believe it was to your  
17 right, you saw this person again?

18 A Yes.

19 Q And this person, you were able to see once again  
20 the person's whole body?

21 A Yes. I could see him going down the alley.

22 Q Okay. But at this point that person had the  
23 hood up and they were kind of walking, they weren't  
24 running but they were walking fast?

25 A Walking fast.

1           Q     Now, once you got to the house, Edda McCabe's  
2 house, at some point someone gave you the phone and the  
3 911 dispatch operator was on there?

4           A     I think she dialed 911 and she talked first. I  
5 can't really tell you, I don't remember, but I do remember  
6 saying something on 911 and then I handed her back the  
7 phone and they said don't put -- stay on the line, and I  
8 can remember telling them just here, just take this phone,  
9 I'm going to see what's happening here.

10          Q     Okay. So you do remember at least speaking to  
11 the 911 operator?

12          A     I do recall some of it, yeah.

13          Q     And do you recall the 911 operator asking you  
14 for a description of the person that was in the store?

15          A     I don't think she asked me. I don't know if she  
16 did.

17          Q     Do you recall telling the 911 operator that the  
18 shooter was an African American male?

19          A     I could have. I could have. I just, I'll tell  
20 you the truth, I do not remember what I said.

21          Q     Okay.

22          A     Too much on that call. I don't even remember if  
23 I said that.

24          Q     I understand that, ma'am. I just want to ask  
25 you in particular some details so that at least you can

1 recall or not recall whether you said these details.

2 A Okay.

3 Q Do you recall telling the 911 operator that the  
4 shooter was about five-foot-ten to five-foot-eleven?

5 A I don't even think I was on that phone long  
6 enough to, I just don't recall. I really don't.

7 Q Okay.

8 A I don't know what exactly what I said to her. I  
9 didn't think I was on there more than a second and that  
10 Mrs. McCabe, if that's the neighbor's name, I think she  
11 did the talking. I'm not quite sure.

12 Q Okay. Let me ask you. Do you recall telling  
13 the 911 operator that the shooter was about 180 pounds?

14 A I don't recall that either. I just do not  
15 recall that.

16 Q Do you recall telling the 911 operator that the  
17 shooter was of thin build?

18 A I don't recall that either. I'm not so sure  
19 what I told that operator. I'm just not sure --

20 Q Okay.

21 A -- what I said.

22 Q Do you recall telling the 911 operator that the  
23 shooter was in his early 20s?

24 A No.

25 Q And ma'am, how tall are you?

1 A I am five-six.

2 Q Five-six?

3 A Five-six and a quarter or so. Around there.

4 Q You would agree that five-ten or five-eleven is  
5 taller than five-six?

6 A Oh yeah.

7 Q That would be taller than you?

8 A Pardon me?

9 Q That would be taller than you are?

10 A Taller than I am, right.

11 Q And ma'am, fair to say that you weigh less than  
12 180 pounds? That's fair to say?

13 A Yeah. That's fair to say.

14 Q I won't ask you how much you weigh. But it's  
15 fair to say you weigh less than 180 pounds?

16 A Right.

17 Q You weigh quite a bit less than 180 pounds,  
18 that's fair to say?

19 A Not quite a bit but somewhat.

20 Q Okay. Okay. All right. Now, after you got off  
21 the phone with the 911 operator, you went back to the  
22 store as you've testified?

23 A Correct.

24 Q And once you got to the store, there were a  
25 couple of police officers that arrived before some other

1 police officers, is that right?

2 A No.

3 Q Do you recall or -- do you recall being pulled  
4 aside by one or two female police officers?

5 A That was after I had already been into the  
6 store, yes, correct.

7 Q So you were in the store and then these other  
8 police officers arrived, these --

9 A They arrived after I was in the store, correct.

10 Q And correct me if I'm wrong, those were the  
11 first police officers that arrived once you were in the  
12 store?

13 A I think so. I don't recall who arrived.

14 Q Okay. One of these police officers was an  
15 Officer Rollins. Do you recall that name?

16 A No, I don't.

17 Q Do you recall speaking to one of the female  
18 police officers and having them try and settle you down or  
19 calm you down?

20 A You know, I really don't remember who I talked  
21 to. I don't know. I remember there was police officers  
22 there but I'm not so sure.

23 Q Okay.

24 A What -- I was absolutely out of it.

25 Q That's understandable, ma'am. One of these

1 police officers, do you recall giving them a description  
2 of the shooter?

3 A I don't remember talking to really anybody.

4 Q Okay. Do you remember telling one of those  
5 police officers or a police officer on May 16th that the  
6 shooter was around age 22?

7 A I'm not, I'm not sure about that. I'm not sure  
8 that I said any age. I'm not denying it. I'm just not  
9 positive that I even talked to them. I just don't  
10 remember talking to them.

11 Q I understand.

12 A You know, I just --

13 Q That's why I'm asking you in particular detail.

14 A Yeah.

15 Q Just to give you an opportunity. Do you recall  
16 talking to -- well, with respect to these officers, do you  
17 remember giving, saying that the shooter had a short,  
18 short close-cropped hairstyle?

19 A Vaguely. I remember something about hair.

20 Q Okay. Do you remember telling them that the  
21 shooter had short hair?

22 A I remember saying it was close to his head. I  
23 don't know, say that it was short. I said it was close to  
24 his head and it was not bald. They asked me was it bald,  
25 I said no. I remember that part.



1           improper foundation.

2                   MR. BENSON: Your Honor, if you would like  
3           me to -- I was trying to move things along.

4                   THE COURT: You may ask a question first  
5           and if she doesn't remember you can then ask that.

6   BY MR. BENSON:

7           Q     In that statement to Sergeant Mattson, Sergeant  
8           Mattson asked you the question, what kind of hairstyle did  
9           he have, your answer was I think he had a close-cropped,  
10          it wouldn't be bald, natural. Is that your -- do you  
11          recall that?

12          A     Yeah, um-hum.

13                   MR. BENSON: May I approach the witness,  
14          Your Honor?

15                   THE COURT: You may.

16                   MR. BENSON: Actually I just need to  
17          approach counsel for a moment.

18                   THE COURT: All right.

19                   THE WITNESS: Your Honor, could I be  
20          excused for a minute? I'm going to be sick.

21                   THE COURT: Go ahead. Step down there.

22                                   (Witness leaves the courtroom.)

23                   MR. FURNSTAHL: Are you waiting for us?

24                   THE COURT: Why don't you come on up a  
25          minute.



1 (Off-the-record discussion at  
2 the bench. Witness returns.)

3 THE COURT: Are you okay, ma'am?

4 THE WITNESS: Thank you, yes.

5 MR. FURNSTAHL: Judge, we have some  
6 stipulations.

7 THE COURT: Okay.

8 MR. FURNSTAHL: With respect to Exhibit 45,  
9 it's stipulated that Exhibit 45 was the first photo  
10 lineup that was shown to Ms. McDermid by Sergeant  
11 Zimmerman on May 16, 2004.

12 THE COURT: And what exhibit?

13 MR. BENSON: And Your Honor, I will mark  
14 this in a moment. I'll mark it as Exhibit No. 93,  
15 and this will be the second photo lineup that was  
16 shown to Ms. McDermid. This would be, yeah, the  
17 second photo lineup that was shown to Ms. McDermid we  
18 believe on May 17th. And then Exhibit 46, the one  
19 including the photograph of Marvin Haynes, is Exhibit  
20 No. 46. And that will be the third lineup that was  
21 shown.

22 MR. FURNSTAHL: What --

23 THE COURT: Do we have a date on the third  
24 one?

25 MR. FURNSTAHL: The date on the third one

1           was May 19th.

2                   MR. BENSON: Your Honor, if I may approach  
3           real quick?

4                   THE COURT: You may.

5 BY MR. BENSON:

6           Q     Ma'am, I want to ask you about -- showing you  
7     first of all Exhibit No. 45 which you've already  
8     identified when Mr. Furnstahl was asking you questions,  
9     you indicated that the second photograph in here was a  
10    person that you knew from the time he was a child in the  
11    neighborhood?

12           A     Correct.

13           Q     Correct? And while you don't know this person's  
14    name, as you sit here now you can see this person's  
15    hairstyle, correct?

16           A     Correct.

17           Q     And it's fair to say that that's a short natural  
18    hairstyle?

19           A     Correct.

20           Q     Okay. Now, showing you number, picture number  
21    four, I think you were asked about that as well, and I  
22    believe you testified today that you don't recall that  
23    photo in particular, is that right?

24           A     No.

25           Q     All right. But at least with respect to photo

1 number four you agree that's a short hairstyle as well?

2 A Correct.

3 Q Now, ma'am, I'm showing you what I've marked as  
4 Exhibit No. 93 for identification purposes, and this  
5 document has six photos on the front, is that correct?

6 A Um-hum. Correct.

7 Q And these are six photos which, following that,  
8 if you can look through it, just look through it briefly,  
9 ma'am.

10 Okay. And can you agree that the six photos on the  
11 eight and a half by 11 sheets following the front page are  
12 individual photos of -- enlarged photos of each of the six  
13 pictures on the first page?

14 A Correct.

15 Q Okay. And then ma'am, and 46, as you've  
16 indicated already earlier today, this was a lineup which  
17 included a photograph of Marvin Haynes, correct?

18 A I believe so. Correct.

19 Q Okay. And you agree the individuals in this  
20 lineup all have short hair?

21 A Correct.

22 Q All right. Now, with respect to the first two  
23 lineups, Exhibit No. 45 and Exhibit No. 93, you were --  
24 actually why don't you -- you were first questioned by  
25 Sergeant Zimmerman, if you remember that name, with

1       respect to that first lineup -- strike that.

2               You've indicated that there were three lineups,  
3       photograph lineups that you observed?

4               A       Correct.

5               Q       All right. With respect to the first lineup, an  
6       officer showed you these smaller pictures that were in  
7       Exhibit No. 45, correct?

8               A       Correct.

9               Q       And then the second lineup that you had, and I  
10      think and hopefully you can remember now, you were shown  
11      the identical lineup but you were shown larger  
12      photographs, is that correct? Larger photographs of the  
13      first --

14              A       I believe you are right. I don't know for sure  
15      if they showed me the same or what, I don't know.

16                      MR. BENSON: May I approach one more time?

17                      THE COURT: You may.

18      BY MR. BENSON:

19              Q       Ms. McDermid, I would like to turn your  
20      attention to the fifth page of this document which would  
21      be the fourth photograph. Do you see that photograph?

22              A       Yeah.

23              Q       Is it fair to say that that photograph that you  
24      are looking at right now is actually, it's the same  
25      photograph that I asked if you recognized and the State

1 asked you if you recognized which was photograph number  
2 four within the lineup?

3 A You are asking me what? If I recognize this?

4 Q What I'm asking you is the photograph you are  
5 looking at now?

6 A Yeah.

7 Q And actually let's make this a little easier for  
8 everybody.

9 Ma'am, showing you a particular page from Exhibit No.  
10 93, this photograph you would agree was an enlarged  
11 photograph of the smaller picture from Exhibit No. 45.  
12 Can you agree to that?

13 A Yeah. Yes, sir.

14 Q All right. And now on the reverse side of that  
15 photograph, see if this comes in, members of the jury can  
16 you see this? On the back side there's an, it says  
17 75 percent to 80 percent sure and a signature. Is that  
18 your signature?

19 A Correct.

20 Q And it's dated 5/17 2004?

21 A Um-hum.

22 Q I'm going to show you once again, ma'am, from  
23 Exhibit No. 45 which was the first lineup that you saw,  
24 this individual, that individual is a person that you knew  
25 from your neighborhood, right?

1 A Correct.

2 Q With the short hairstyle, right?

3 A Correct.

4 Q And once again just for clarity, number four is  
5 the same picture that you saw just previously, correct?

6 A Correct.

7 Q All right.

8 THE COURT: When you say just previously,  
9 counsel, so the record is clear, you are talking  
10 about the fifth page of Exhibit 93, correct?

11 MR. BENSON: Yes, Your Honor. Thank you.

12 BY MR. BENSON:

13 Q And finally, ma'am, with respect to these  
14 photos, from Exhibit No. 46, this was a photograph that  
15 you identified of Marvin Haynes, correct?

16 A Correct.

17 Q And that's your signature?

18 A Correct.

19 Q And you agree that each and every one of the  
20 people in which you either identified or recognized in  
21 Exhibits No. 45, Exhibit No. 93, and Exhibit No. 46, each  
22 of those individuals had what could be characterized as a  
23 short natural close-cut hairstyle?

24 A Correct.

25 Q And then the lineup, as far as the in-person

1 lineup that you attended, you were seated, you were tired  
2 or were emotionally exhausted that day, correct?

3 A I asked for a seat after the lineup started  
4 because I was not feeling real good, correct.

5 Q Understood. Okay. So when the individuals  
6 first walked in and you observed the individuals, you are  
7 on one side of a, basically there's a glass partition on  
8 the window, the individuals are on the other side?

9 A Correct.

10 Q And you were seated as they walked into the  
11 room?

12 A Correct.

13 MR. BENSON: If I may have one moment, Your  
14 Honor.

15 THE COURT: You may.

16 MR. BENSON: Thank you, Your Honor. No  
17 other questions.

18 THE COURT: Redirect, Mr. Furnstahl?

19 MR. FURNSTAHL: Just a couple questions.

20 REDIRECT EXAMINATION

21 BY MR. FURNSTAHL:

22 Q At the live lineup you mentioned in the response  
23 to counsel's questions that you were behind a glass  
24 partition?

25 A Correct.

1           Q     Could the persons that were involved in the  
2 lineup then could they see you?

3           A     No, they couldn't.

4           Q     Counsel had asked you to compare a photograph of  
5 an individual that you were shown, that you picked out of  
6 a first lineup and compared that to the photograph of the  
7 defendant that you picked out in the third lineup, do you  
8 remember that?

9           A     Yes, I do.

10          Q     Directing your attention to Exhibit 67, is that  
11 an eight-by-ten of the person that you picked out of the  
12 first lineup?

13          A     Correct.

14          Q     And Exhibit 68, is that an eight-by-ten of the  
15 defendant that you picked out of the third lineup?

16          A     Yes, it is.

17                   MR. FURNSTAHL: We would offer Exhibits 67  
18 and 68.

19                   MR. BENSON: No objection.

20                   THE COURT: Okay. Exhibits 67 and 68 will  
21 be received.

22 BY MR. FURNSTAHL:

23          Q     Ms. McDermid, do you know a Max Bolden?

24          A     No, sir.

25          Q     All right. Thank you, ma'am.



1 MR. FURNSTAHL: That's all I have.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Benson, anything else?

4 MR. BENSON: No, Your Honor.

5 THE COURT: Counsel, why don't you approach  
6 for a minute?

7 (Off-the-record discussion at  
8 the bench out of hearing of the jurors.)

9 THE COURT: You can step down, ma'am.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: You can call your next witness.

13 MR. FURNSTAHL: We'll call Ravi Seeley.

14 Whereupon,

15 RAVI SEELEY,  
16 after having been first duly sworn, was examined  
17 and testified as follows:

18 THE COURT: Go ahead and be seated in the  
19 witness stand.

20 MR. FURNSTAHL: Can we approach, Judge?

21 THE COURT: You may.

22 (Off-the-record discussion at  
23 the bench out of hearing of the jury.)

24 THE COURT: Mr. Seeley, I notice that you  
25 spoke rather softly when you were sworn in. Will you

1           try to speak up as best you can so everybody can hear  
2           you, okay?

3                   THE WITNESS: Okay.

4                   THE COURT: Would you state your full name  
5           for the record?

6                   THE WITNESS: Ravi Seeley.

7                   THE COURT: Go ahead, Mr. Furnstahl.

8                           DIRECT EXAMINATION

9           BY MR. FURNSTAHL:

10           Q     Mr. Seeley, how old are you?

11           A     16.

12           Q     Sorry, little bit louder.

13           A     16.

14           Q     Now from time to time I might need to remind  
15    you, okay, so don't be embarrassed by that, okay? Have  
16    you ever testified before?

17           A     No.

18           Q     So this is a whole new experience for you, okay?

19           A     Yes.

20           Q     I want you to think that you are just having a  
21    conversation, we are alone, we are just having a  
22    conversation, okay, and I want you to speak up loud enough  
23    so if I'm in the back of the room I would be able to hear  
24    you, okay?

25           A     All right.

1           Q     Then I need you to, see the person to your left,  
2 she's a court reporter. She's taking down everything that  
3 we say, so I'll need you to say yes or no if you get a  
4 question that calls for a yes or no answer, because if you  
5 say uh-huh or um-hum like that it doesn't always translate  
6 very well, okay? So you won't be able to nod your head or  
7 anything like that too, okay?

8           A     Okay.

9           Q     If there is ever a time when you are confused  
10 about a question or something like that, you just feel  
11 free to ask us to reask the question, okay?

12          A     (Nods head.)

13          Q     Is that a yes?

14          A     Yes.

15          Q     Now, you mentioned you are how old?

16          A     16.

17          Q     And are you in high school?

18          A     Yeah.

19          Q     What year are you starting?

20          A     Tenth.

21          Q     Tenth?

22          A     Yeah.

23          Q     Okay. I want to talk to you about the incident  
24 at the flower shop. You know that -- you know what I'm  
25 talking about?

1 A Yeah.

2 Q Do you know the people that own the flower shop?

3 A No.

4 Q Did you know Randy Sherer?

5 A No.

6 Q Do you know who that is?

7 A No.

8 Q Have you ever heard that name before?

9 A No.

10 Q Do you know Jerry Sherer?

11 A No.

12 Q Do you know Cynthia McDermid?

13 A No.

14 Q All right. So you have no connection whatsoever  
15 to those names?

16 A No.

17 Q Now, do you remember being in the area of the  
18 flower shop on that day?

19 A Yeah.

20 Q Did you see someone?

21 A Yeah, I saw a lot of people.

22 Q But I mean did you see someone coming out of the  
23 flower shop? Remember hearing a shot?

24 A Yeah, I heard a shot.

25 Q And after you heard a shot did you see someone

1 coming out of the flower shop?

2 A I can't remember.

3 Q Okay. At some point in time did you see someone  
4 coming out of the flower shop?

5 A No.

6 Q You understand what I'm asking you?

7 A I think so.

8 Q Okay. You were shown a photo lineup, is that  
9 right?

10 A Yeah.

11 Q Did you pick someone out of that photo lineup?

12 A Yeah.

13 Q And who did you identify that person as being?

14 A I don't know. I can't remember.

15 Q You can't remember any of that?

16 A (Shakes head.)

17 Q Is that a no?

18 A Yeah, that's a no.

19 Q Did you say where you saw that person from  
20 before?

21 A Yeah.

22 Q Where did you see him from before?

23 A On the street.

24 Q Okay. On the street, what area of the street?

25 When you say the street, what do you mean? Not

1 necessarily specific street but the general area, what  
2 area are you talking about?

3 A Maybe like a block away from the flower shop.

4 Q Okay. And when you identified the person out of  
5 the photo lineup, did you indicate if that person had a  
6 connection to the flower shop?

7 A Yeah.

8 Q What did you say, when you identified what did  
9 you say that was about?

10 A I saw that person by there during the time in  
11 the flower shop.

12 Q Now, had you seen that person before, before  
13 that day?

14 A Yeah.

15 Q Do you have a church over there that you go to?

16 A Yeah.

17 Q And is it correct that that church is on Lyndale  
18 just south of Lowry?

19 A Yup.

20 Q All right. When you saw that person for the  
21 first time, how long before the -- was that before or  
22 after the flower shop incident?

23 A Before.

24 Q All right. And how long before?

25 A A week before.

1 Q Do you remember what that was? Was that a  
2 holiday the week before?

3 A Yeah. It was Mother's Day.

4 Q It was what?

5 A Mother's Day.

6 Q Okay. Did you see the individual that you  
7 picked out of the photo lineup being connected to the  
8 flower shop incident, you saw that person the week before?

9 A And the week that it happened. The same day.

10 Q You saw him twice, the week before and the week  
11 that it happened, right?

12 A Yeah.

13 Q First I want to talk to you about the week  
14 before, okay?

15 A Okay.

16 Q Were you attending your church that day?

17 A Yeah.

18 Q That was the one that we indicated was on  
19 Lyndale south of Lowry someplace, right? Is that a yes?

20 A Yeah.

21 Q Okay. And at some point in time did you leave  
22 your church to get out and walk around or do something?

23 A Yeah. Me and my cousin left to go to the flower  
24 shop.

25 Q To go where?

1 A To the flower shop.

2 Q Why did you want to go to the flower shop?

3 A To get our mother some roses.

4 Q Okay. Because of Mother's Day?

5 A Yeah.

6 Q Now, you said you went with your cousin?

7 A Yeah. His name is Michael Sukar.

8 Q Michael Sukar?

9 A Yeah.

10 Q After you left the church to go to the flower  
11 shop, were you approached by an individual?

12 MR. BENSON: Objection. Leading, Your  
13 Honor.

14 THE COURT: Sustained.

15 BY MR. FURNSTAHL:

16 Q Well, after you left the church to go to the  
17 flower shop, what happened?

18 A We were walking on the other side of the block,  
19 not on Lowry, and some guy had approached me.

20 Q Some guy approached you?

21 A Yeah. In a good way.

22 Q Pardon me?

23 A In a good way, not like he was trying to hurt  
24 me.

25 Q Did you have some conversation with this person?



1 A Yeah.

2 Q And what was the conversation about?

3 A About buying drugs.

4 Q About what?

5 A Buying drugs.

6 Q Buying drugs?

7 A (Nods head.)

8 Q Did you ask the person or did he ask you?

9 A He asked me.

10 Q What did he ask you, as best you can recall?

11 Specifically what did he ask you?

12 A If I wanted to buy any weed.

13 Q Wanted to buy some?

14 A Weed.

15 Q Weed?

16 A Yeah.

17 Q Okay. Ask you anything else?

18 A No. Yeah, he said my clothes. He mentioned my

19 clothes, how they look good.

20 Q Anything else?

21 A I can't remember.

22 Q Anything about him asking for money, anything

23 like that?

24 A Oh yeah. He said something about money but I

25 can't remember.

1 Q Okay. Do you remember specifically everything  
2 that happened?

3 A Then he pointed us out, he pointed us out to the  
4 flower shop, the directions to the flower shop.

5 Q How long -- and how long were you, did you  
6 encounter this person? How long did this last, this  
7 conversation?

8 A Maybe about two to three minutes.

9 Q Were you face-to-face to the person?

10 A Yeah.

11 Q Close to you?

12 A Yeah.

13 Q How close was he, about?

14 A Probably like here to (indicates).

15 Q Couple feet?

16 A Yeah.

17 Q Okay. Now, the week after, the week after is  
18 the -- was that your understanding of the flower shop  
19 incident?

20 A Yeah.

21 Q Were you walking around with anyone on a break  
22 from church at that time?

23 A Yeah. I was walking with two of my friends.

24 Q And at any point in time did you see the  
25 individual that you just described having approached you

1 the week before?

2 A Yeah.

3 Q Tell us about that. What happened, where was he  
4 and what happened?

5 A I saw him by the flower shop.

6 Q What was he doing at that time?

7 A After the shooting.

8 Q Okay. Did you see him before that?

9 A Yeah. I saw him by the, kind of by the, yeah,  
10 right by the church.

11 Q Okay. And would that be in the neighborhood of  
12 the --

13 A Well see, you know, that wasn't the guy I saw.  
14 That was a different guy. There was a different guy I saw  
15 too and like before there was another guy that he was with  
16 the day before on Mother's Day, that he went up to and  
17 shook hands with me.

18 Q All right. So the guy that you saw on Mother's  
19 Day, you saw him approach a second person?

20 A No, no -- yeah. He approached a second person.  
21 That was his friend, I guess.

22 Q I'm sorry?

23 A His friend.

24 Q All right. Are you nervous?

25 A No, not really.

1           Q     Okay. Can you speak a little bit louder then  
2 maybe? Your voice is very soft.

3           Now, so the person that approached you on Mother's  
4 Day, you saw him then the day of the flower shop incident,  
5 is that right?

6           A     Yeah.

7           Q     Now, did you hear a gunshot coming from the  
8 flower shop?

9           A     Yeah, I heard a gunshot.

10          Q     All right. Now, at sometime -- what I'm asking  
11 is, at sometime prior to the gunshot that you heard coming  
12 from the flower shop, did you see this guy that had  
13 approached you the week before? Do you understand my  
14 question? Or did you see him after the gunshot?

15          A     I saw him after the gunshot.

16          Q     Did you ever see him before the gunshot?

17          A     Yeah, I think so. I can't remember if that was  
18 him or his friend.

19          Q     Okay.

20          A     I saw one of them.

21          Q     But you saw what?

22          A     One of them.

23          Q     Okay. But the guy that you saw after the  
24 gunshot at the flower shop, was that the same guy that --

25          A     I saw last week.

1 Q It was the same guy?

2 A Yeah.

3 Q Any doubt?

4 A No.

5 Q Okay. And about where were you when you heard  
6 the gunshot from the flower shop? About where were you,  
7 how far away?

8 A Not too far away. Across the street and then  
9 probably about a couple feet away.

10 Q Okay. Do you know which direction you would be,  
11 north, south, east or west?

12 A Facing the flower shop.

13 MR. FURNSTAHL: May I approach?

14 THE COURT: You may.

15 BY MR. FURNSTAHL:

16 Q Ravi, I'm going to show you what's been received  
17 in evidence as Exhibit No. 1. This is an aerial  
18 photograph of this area, okay? Here's Lowry and here's  
19 Lyndale. Your church is somewhere down here, correct?

20 A Correct.

21 Q And this has been, right where I'm pointing  
22 right here, 3300, this has been identified as the location  
23 of the flower shop, okay? Just to orient you.

24 A Okay.

25 Q All right. Now, you said when you saw, when you

1       heard the gunshot coming from the flower shop, you were  
2       facing the flower shop?

3           A       Yeah.

4           Q       Were you looking this direction, this direction,  
5       this direction or what?

6           A       Straight.

7           Q       Straight up?

8           A       Yeah.

9           Q       So you were someplace down in here?

10          A       Yeah.

11          Q       Do you know about where? If you can point as  
12       best you can recall.

13          A       Maybe like right around here (indicates).

14          Q       The record should reflect he's pointing just to  
15       the south of the first building that's on the east side of  
16       the road south of the intersection of 33rd and Lyndale  
17       Avenue.

18                So you hear the gunshot from the flower shop, and are  
19       you already walking in that direction, or does that turn  
20       you to go that direction?

21          A       No, I kept on walking.

22          Q       Was your friend with you before the gunshot?

23          A       Yeah.

24          Q       And then what?

25          A       After the gunshot they ran.

1 Q I'm sorry?

2 A They ran or left or something. I turned around  
3 and they were gone.

4 Q Okay. So they took off once they heard the  
5 gunshot?

6 A Yeah.

7 Q All right. And what do you see? Are you  
8 looking at the flower shop?

9 A Yeah.

10 Q What do you see?

11 A I can't really remember.

12 Q Okay. Do you see a person?

13 A Yeah, I saw a person. I saw the same guy I saw  
14 the week before.

15 Q Do you remember today, thinking back to when  
16 this happened, do you remember exactly where it was that  
17 you saw him?

18 A No.

19 Q Are you certain that it was the same person?

20 A Yeah. I'm positive.

21 Q Any doubt in your mind?

22 A No.

23 Q All right. Now, later on -- well, did you hear  
24 the police sirens coming to that area?

25 A Kind of.

1 Q Do you remember?

2 A I remember walking back out then and there was  
3 like the yellow things that caution, whatever.

4 Q The yellow what?

5 A The yellow strip things.

6 Q The yellow tape?

7 A Yeah.

8 Q You remember seeing that?

9 A Yeah. And they were blocking off the road.

10 Q And they were blocking off the road?

11 A Yeah.

12 Q Okay. Did you at some point in time tell  
13 anybody what you saw?

14 A Not that I could remember, no.

15 Q Do you remember talking to a police officer at  
16 your school?

17 A Yeah. See, I didn't really want to talk to him  
18 but the other friend that was with me went down there and  
19 talked to him and brought my name into it.

20 Q Okay. Did you talk to that officer?

21 A Yeah, I talked to him.

22 Q And then after that did you talk to some  
23 Minneapolis officers?

24 A Yeah.

25 Q All right. Did they show you some photographs?



1 A Yeah.

2 Q Did you pick out the person that you saw outside  
3 the flower -- or?

4 A Yeah, I picked out the person.

5 Q Was that the same person you saw the week  
6 before?

7 A Yup.

8 Q And do you remember if they asked you to put  
9 your signature or anything like that on the photograph?  
10 Do you remember?

11 A No.

12 Q Okay.

13 MR. FURNSTAHL: May I approach?

14 THE COURT: You may.

15 BY MR. FURNSTAHL:

16 Q Ravi, I have a brown manila envelope that I've  
17 marked as Exhibit No. 47, correct?

18 A Yeah.

19 Q And I've taken a bunch of pictures out of  
20 Exhibit No. 47, correct?

21 A Yeah.

22 Q And I'm showing you what is numbered as number  
23 five out of Exhibit No. 47, correct?

24 A Yes.

25 Q And do you see the initials up in the upper

1 right-hand corner?

2 A R.K.S., yes.

3 Q What does that stand for?

4 A Me.

5 Q You are Ravi Seeley?

6 A Yeah.

7 Q Does it have the date there?

8 A Yup.

9 Q What's the date?

10 A 5/19/04.

11 Q Okay. Is this a person then that you saw  
12 outside the, after the shooting at the flower shop?

13 A Yes.

14 Q Any doubt?

15 A Just looking at him now and then before.

16 Q What do you mean looking at him now?

17 A Like in this picture now, thinking about it  
18 before when it happened.

19 Q Uh-huh?

20 A That's my doubt. Not really.

21 Q Okay. Did you have any doubts when you  
22 identified the photo to the officer?

23 A Not that I can think of, no.

24 Q Okay. Now, do you remember going to look at  
25 some live persons in a different kind of lineup?

1 A Yeah.

2 Q Do you remember that?

3 A I went to a lineup.

4 Q Okay. Do you remember picking somebody out of  
5 that lineup?

6 A Yeah.

7 Q Do you remember if that was the same person or a  
8 different person from the one that you picked out of the  
9 other, the lineup, the photograph lineup?

10 A I think it was the same person.

11 Q And did you have any doubts about that at the  
12 time that you made that identification?

13 A Yeah, I did.

14 Q Did you express those to the officer?

15 A Yeah.

16 Q Are you sure?

17 A Yeah.

18 Q Are you nervous, Ravi, or scared?

19 A No.

20 Q Are you sure?

21 A Positive.

22 Q Do you remember telling officers at the time  
23 that you picked the photograph out that I showed you in  
24 Exhibit 47, that you were certain about your  
25 identification? Do you remember telling the officers

1       that?

2           A       No.

3           Q       Do you remember telling the officers at the time  
4       of the live lineup that you were certain of your  
5       identification?

6           A       Yeah -- kind of. I told them that I was kind of  
7       shaky on it, but.

8           Q       You were kind of what?

9           A       Shaky on it. I couldn't really remember. I  
10      could remember but I wasn't too sure with all the people  
11      that were there lined up.

12          Q       Okay.

13          A       I was very confused I think between two people.

14          Q       Okay. Do you remember talking to me the other  
15      day?

16          A       Yeah.

17          Q       Do you remember telling me that the  
18      identifications that you -- and do you remember Sergeant  
19      Mattson being there?

20          A       Yeah.

21          Q       And do you remember telling us that the  
22      identifications that you made in the photo lineup --

23          A       Were positive, yeah.

24          Q       And the standup lineup were what?

25          A       I can't remember.

1 Q Do you remember telling us that you were  
2 positive?

3 A Yeah. Kind of, yeah, I can remember that.  
4 About the pictures, yes, but not about the lineup.

5 Q About the picture but not about the standup  
6 lineup?

7 A Yes.

8 Q Okay. Did anybody put any pressure on you to  
9 pick somebody out of any of these lineups?

10 A No.

11 Q So the one that you picked out were persons that  
12 you picked out because you recognized them?

13 A Yeah.

14 MR. FURNSTAHL: If I can have a moment,  
15 Judge?

16 THE COURT: You may.

17 BY MR. FURNSTAHL:

18 Q Going back to the day of the flower shop  
19 shooting and the question of whether or not you saw the  
20 guy before the shooting, okay? Do you know what I'm  
21 asking you?

22 A No.

23 Q Well, you testified that you saw a person the  
24 week before the flower shop shooting, correct?

25 A Yeah.

1           Q     You said, you testified that the same person was  
2 the person that you saw around the flower shop after the  
3 shooting, right?

4           A     Yeah.

5           Q     Do you recall if the person was leaving the  
6 flower shop at the time that you saw him at that time?

7           A     Yeah.

8           Q     Do you remember telling that to the police  
9 officers that talked to you about this?

10          A     Yes. That he was leaving the flower shop.

11          Q     All right. Do you remember what direction he  
12 was going?

13          A     No. I think -- yeah. I think he was going  
14 straight.

15          Q     Straight -- go ahead and use the pointer and  
16 indicate the direction.

17          A     The flower shop is right there, that way  
18 (indicates).

19          Q     The record should reflect he was pointing in an  
20 easterly direction towards the alley located between  
21 Lyndale and Sixth Street North.

22                Now, before seeing the person leaving the flower shop  
23 and then going eastbound on the street there, I want to  
24 talk to you about the question of whether or not you saw  
25 him the day of the shooting but sometime before you heard

1 the shot fired, okay?

2 A Okay.

3 Q Do you remember telling the officers that you  
4 saw the person mean-mug you?

5 A Yeah.

6 Q Is that what happened?

7 A Yeah.

8 Q Are you certain now?

9 A I remember that.

10 Q Pardon me?

11 A I remember that part.

12 Q You remember giving a statement to that?

13 A Yeah.

14 Q So you saw the person that was running from the  
15 flower shop, you saw him after the shot, before the shot,  
16 on the same day mean-mug you and then the week before?

17 A Yeah.

18 Q Is that right?

19 A That's right.

20 Q Now, anything else you want to add about that?  
21 Do you have any confusion or anything like that?

22 A No, not really. Not that I can think of.

23 Q Did I confuse you with my questions, or?

24 A No.

25 Q All right. Thank you, Ravi.

1 MR. FURNSTAHL: That's all I have.

2 THE COURT: All right. Cross-examination,  
3 Mr. Benson.

4 MR. BENSON: Thank you, Your Honor. May I  
5 approach the witness, Your Honor?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MR. BENSON:

9 Q Good afternoon, Mr. Seeley. I want to show you  
10 a picture that the prosecutor just showed you, number  
11 five. That's the person that has your signature on the,  
12 above the photo, correct? Or at least your initials?

13 A Yeah.

14 Q Okay. And this was the person last year who you  
15 identified, this photo as possibly being there that day?

16 A Yeah.

17 Q Okay. Just so we're all clear, okay, Ravi, it's  
18 your initials R.K.S., correct?

19 A Yes.

20 Q That is the photograph we are talking about?

21 A Yeah.

22 Q Okay. And is that the, that's the only  
23 photographic lineup you were shown, correct?

24 A Yeah.

25 Q And you can agree that that person in this



1 lineup has short hair?

2 A Yeah.

3 Q Okay. And you were, when you spoke to the  
4 police at your school and then when you spoke to the  
5 Minneapolis police, you gave them a bit of a description  
6 of the person that you saw that day after you heard the  
7 shots, right?

8 A Yeah.

9 Q And that person had short hair that was possibly  
10 faded on the sides. Do you recall that description?

11 A No.

12 Q Okay. Do you recall that the person had a  
13 natural haircut, short hair faded on the sides, possibly  
14 was wearing a light blue sweat shirt?

15 MR. FURNSTAHL: Objection. Hearsay.

16 THE COURT: Overruled. You can answer. Do  
17 you remember that?

18 THE WITNESS: No.

19 BY MR. BENSON:

20 Q Okay. Do you remember providing the officers a  
21 description of the person that you saw that day?

22 A Yeah.

23 Q Okay. And the person you saw that day had short  
24 hair?

25 A Yeah.

1 Q And was the hair faded on the sides or --

2 A Not that I can remember.

3 Q Huh?

4 A Not that I can remember.

5 Q But you remember it was short?

6 A Yeah.

7 Q As far as faded on the side, that would be kind  
8 of like your hair as it appears now, correct?

9 A Yes.

10 Q All right. I want to ask you a few questions  
11 about what you just testified to. With respect to the  
12 live lineup, you testified that you had some doubts about  
13 the person that you picked in the live lineup?

14 A Yeah.

15 Q And you testified -- you have to speak up just a  
16 little bit. But you testified that you expressed those  
17 doubts to the officers that day?

18 A Yes.

19 Q Okay. And the officers that were at the lineup  
20 was one -- do you remember Sergeant Mattson?

21 A No.

22 Q Do you remember a kind of stocky white detective  
23 that may have been asking you some questions?

24 A I saw a lot of white people.

25 Q Okay. All right. But there was somebody when

1       you were on your side of the window or your side of the  
2       glass, there was at least one police officer standing next  
3       to you or behind you?

4             A       Yes.

5             Q       Okay. And how many officers were there, tell me  
6       that?

7             A       I think two or three.

8             Q       Two? Okay. You told, at least one or two, you  
9       told a couple of them that you were shaky on your --

10            A       No, I told one of them.

11            Q       You told one of them. Which one?

12            A       The one I was closest. I can't remember who it  
13       was.

14            Q       But you told him that you weren't sure about the  
15       selection that you picked?

16            A       Yes.

17            Q       Okay. That you had doubts about that selection?

18            A       Yes.

19            Q       All right. And as you sit here today, it's fair  
20       to say you have doubts about that selection?

21            A       Yes.

22            Q       And I don't want to put words in your mouth but  
23       that's what you said, correct?

24            A       Yeah.

25            Q       And also today when you were shown the

1 photographs which I displayed on the monitor, you said  
2 today that you, you have a doubt now as to whether this  
3 was the person that you saw on the day of the shooting?

4 MR. FURNSTAHL: Objection. Misstates the  
5 evidence.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: Yes.

8 BY MR. BENSON:

9 Q That's what you said today?

10 A Yeah.

11 Q Okay. And now I'm asking you, it's in fact the  
12 case that you do have doubts as far as whether that person  
13 in that photo was the person that you saw on the date of  
14 the flower shop incident?

15 A Yeah.

16 Q Okay. Going back to a week before the flower  
17 shop incident, you testified about Mother's Day and you  
18 indicated that you saw an individual on Mother's Day that  
19 you thought was the same individual that you saw a week  
20 later on the day of the flower shop incident?

21 A Yeah.

22 Q Any doubts about that, whether it was the same  
23 person?

24 A No.

25 Q Okay. So we're on the same page there. That

1 was the same person. But you also indicated today that  
2 there was another individual on Mother's Day, there was  
3 another individual with the person?

4 A He wasn't with him. He walked up to him.

5 Q He walked up to him?

6 A Yeah.

7 Q Okay. And what -- so this other individual --  
8 we are talking about Mother's Day -- walked up to the  
9 person that you saw on the flower shop day incident,  
10 right?

11 A Yes.

12 Q Okay. How, if at all, does that play into your  
13 confusion?

14 A My confusion?

15 Q Strike that. This person who you saw with the  
16 person -- on Mother's Day you saw the person who  
17 previously you had identified as possibly being the  
18 photograph I've displayed to the jury?

19 A Yeah.

20 Q You saw that person on Mother's Day?

21 A Yes.

22 Q You saw that person on Mother's Day --

23 A That person, no. I'm telling you I'm not sure  
24 if that was that person.

25 Q The person that was up on that screen you don't

1 know if that is the person that you saw?

2 A If I were to choose it out again that's the  
3 person -- yeah, that's the person, from what I chose  
4 that's who I thought the person was, but.

5 Q Is it fair to say that --

6 A Because he looked like that, but.

7 Q So basically the photograph that you saw that  
8 was shown to the jury, let's just make it clear here, all  
9 right? This person, this is showing from Exhibit No. 47  
10 for the record, picture number five, this person you are  
11 not sure, you don't know if this was the person that you  
12 saw on the date of the flower shop incident, right?

13 A I'm pretty sure that that's the person but I'm  
14 not like positive. I'm pretty sure that that's the  
15 person.

16 Q You have some doubt?

17 A Yeah.

18 Q Okay. And then also you have some doubt as to  
19 whether this is the person that you saw the week before,  
20 of course, on Mother's Day, right?

21 A Yes.

22 Q Okay. But as you sit here and as we've already  
23 talked about, you definitely, you have doubts, you had  
24 doubts last May when you were looking at the live lineup,  
25 correct?

1 A Yes.

2 Q And you expressed those doubts to some, to a  
3 Minneapolis police officer?

4 MR. FURNSTAHL: Objection. It's redundant.

5 THE COURT: What was the objection?

6 MR. FURNSTAHL: Redundant. Asked and  
7 answered.

8 THE COURT: Sustained.

9 MR. BENSON: And you have doubts as you sit  
10 here today with respect to that live lineup?

11 MR. FURNSTAHL: Same objection.

12 THE COURT: Sustained. He's answered it a  
13 couple times.

14 MR. BENSON: Nothing further, Your Honor.

15 THE COURT: Redirect.

16 MR. FURNSTAHL: Yes.

17 REDIRECT EXAMINATION

18 BY MR. FURNSTAHL:

19 Q Ravi, you remember going with me and Sergeant  
20 Mattson to the scene last weekend?

21 A Yes.

22 Q And do you remember what you told us about your,  
23 how certain you were of your identification in the photo  
24 lineup and in the live lineup? Do you remember what you  
25 told us last weekend?

1           A     I remember about the photograph, the photo  
2 lineup but not the live lineup.

3           Q     Do you remember what you told us about the photo  
4 lineup?

5           A     Yeah.

6           Q     What did you tell us in terms of how certain you  
7 were that was the person?

8           A     I told you I was pretty sure that that was the  
9 person, but right now just looking at it, looking at his  
10 face on the picture I'm starting to have doubts. But  
11 yeah, I'm still pretty high positive. More of a positive  
12 than a doubt.

13          Q     Okay. Let me ask you this, Ravi, when you  
14 talked to the police back then, did they want to take a  
15 taped statement from you? You know what I mean by a taped  
16 statement?

17          A     Yeah, I think they did. I can't remember.

18          Q     Do you remember if they did or not?

19          A     No, I can't remember.

20          Q     Do you remember telling them you didn't want  
21 one, didn't want them to take a taped statement?

22          A     No, I don't remember.

23          Q     Now, Ravi, does your memory get better or worse  
24 as time goes by?

25          A     Worse.



1 Q Worse?

2 A Yeah.

3 Q All right. So would your memory be better  
4 closer to when you talked about this -- closer to when the  
5 incident happened as opposed to today?

6 A Yeah.

7 Q All right. So would your statements about what  
8 happened, you gave statements to the police shortly after  
9 this incident happened, would they be a more accurate  
10 reflection of your memory than your memory is today?

11 A Yeah.

12 Q And when you talked to the police back then,  
13 were you telling the truth?

14 A Yeah, if I can remember, yeah.

15 Q Were you trying to lie to them?

16 A No.

17 Q Did you have any interest in lying to them?

18 A No, not really, no.

19 Q So back then your memory was fresher and you  
20 were telling the police the truth?

21 A Yes.

22 Q Are you nervous about seeing the defendant in a  
23 courtroom?

24 A No.

25 Q Okay. Are you sure?

1           A     Positive.

2           Q     Okay. Let's go back. And you said today that  
3 you have some doubts. What's your feeling today about  
4 your identification?

5                     MR. BENSON: Objection. Asked and  
6 answered, Your Honor.

7                     MR. FURNSTAHL: I haven't asked that.

8                     THE WITNESS: What?

9                     THE COURT: I'll allow you to answer one  
10 time as to what your feelings are about the doubts  
11 you expressed.

12                    THE WITNESS: My feelings for doubt that --  
13 it's just that looking back at it and just the whole  
14 memory like it being a year and a half ago, and then  
15 up until now like, like I can't be sure on something  
16 if I can't remember it so I'm going to tell you guys  
17 that I don't really remember.

18 BY MR. FURNSTAHL:

19           Q     But your memory was better back when the photos  
20 were shown, the officer showed the photos to you?

21           A     Yes.

22           Q     And you also said that when you looked at the  
23 live lineup that you told the officer at that time that  
24 you had some doubts?

25           A     Yes. I forgot which officer it was but I

1       whispered it to him.

2               Q       You whispered it to him?

3               A       Yeah.

4               Q       Is it possible your memory is not good on that  
5 particular point?

6               A       That's the only part I can really remember.

7               Q       Okay.

8               A       Is telling him that I didn't really, I wasn't  
9 really positive of my choice.

10              Q       Do you remember, do you remember when you saw  
11 the defendant come into the room during that live lineup  
12 that you told the officer there well, I recognize him, he  
13 looks like who I saw. Do you remember saying that?

14              A       Yeah.

15              Q       And was that your feeling at the time?

16              A       Yeah. But then I went up, I whispered in his  
17 ear but I'm not too sure about that.

18              Q       That's what you whispered in his ear?

19              A       Yeah.

20              Q       And you are sure about that?

21              A       Yeah. Positive.

22              Q       And do you remember when you talked to the  
23 officers who showed you the photographic lineup, do you  
24 remember that?

25              A       Yeah.

1 Q When the officers showed you the photo lineup?

2 A They came over, yeah.

3 Q Did they come to your house?

4 A Yeah.

5 Q And were these the same or different officers  
6 that you saw during the live lineup?

7 A I can't remember that.

8 Q Okay. Because of the time that's passed?

9 A Yeah.

10 Q Do you remember telling the officer back --  
11 well, you remember him showing you the photos?

12 A Yeah.

13 Q And you picked somebody out?

14 A Yeah.

15 Q And you initialed the picture, correct?

16 A I couldn't really remember initialing.

17 Q We showed you where you initialed this. That's  
18 your initials, right?

19 A Yeah.

20 Q Why did you initial that person?

21 A That's who I thought it was at the time.

22 Q Okay. That is when your memory was fresh?

23 A Yeah.

24 Q And you were telling the truth?

25 A Yes.

1           Q     Do you remember after that talking to one of the  
2 officers about what you saw? Do you have a memory today  
3 about doing that?

4           A     No.

5           Q     Do you remember telling the officer that you  
6 were on break from your church?

7           A     Yeah.

8           Q     That you were walking -- you were going to the  
9 Chinese store with a friend?

10          A     Yeah.

11          Q     That while going to the Chinese store you passed  
12 by the guy that you picked out of the photograph?

13          A     Yeah. That's when I told you guys I saw him by  
14 my church.

15          Q     And that you had seen him before?

16          A     Yeah.

17          Q     You had seen him --

18          A     The week before.

19          Q     On Mother's Day?

20          A     Yeah.

21          Q     And you thought that the guy was going to bother  
22 you again?

23          A     I can't remember saying that.

24          Q     Do you remember telling the officer that when  
25 you saw him, this person that you picked out of the photo

1 lineup by the store before the shooting at the flower  
2 shop, that this person mean-mugged you?

3 A Yeah.

4 Q Remember that happening?

5 A Yes.

6 Q Pardon me?

7 A Yes.

8 Q Okay. So you did see the -- is it your memory  
9 today that you did see the person that you picked out of  
10 the lineup twice on the day of the flower shop shooting?

11 A Yeah.

12 Q Once mean-mugging and once right after the  
13 shooting?

14 A Yeah.

15 Q Do you remember telling the officer that on  
16 Mother's Day --

17 MR. BENSON: Objection, Your Honor. Can we  
18 approach?

19 THE COURT: State the legal objection  
20 first.

21 MR. BENSON: Hearsay, Your Honor.

22 THE COURT: All right. You may approach.

23 (Off-the-record discussion at  
24 the bench out of hearing of the jurors.)

25 BY MR. FURNSTAHL:

1           Q     Going back to when I'm asking you questions  
2     about when you talked to the officer after they showed you  
3     the photo lineup, okay? Do you remember telling the  
4     officers that on Mother's Day that the guy that you picked  
5     out of the photo lineup, he approached you begging for  
6     money? Remember that?

7           A     No.

8           Q     Do you remember telling the officer that you  
9     were engaged in a conversation with the person that you  
10    picked out of the lineup about your clothing?

11          A     Yeah. I remember about the money but I can't  
12    remember him begging me about the money.

13          Q     Do you remember some conversation about money  
14    but not begging?

15          A     Yeah.

16          Q     Do you remember telling the officer that, that  
17    the friend, that the person that you picked out of the  
18    photo lineup and the friend that he was with stood across  
19    the street from the flower shop on Lyndale?

20          A     No, I don't remember.

21          Q     Don't remember that?

22          A     No.

23          Q     Do you remember telling the officer that the  
24    person you picked out of the photo lineup and the friend  
25    that he was with when they were across the street from the

1 flower shop, it looked like they were planning something?

2 A No.

3 Q You don't remember that?

4 A No.

5 Q Because all this time has passed?

6 A Yeah.

7 Q And then on the day that you saw him the first  
8 time on the day of the flower shop shooting, do you  
9 remember telling the officer that you were concerned that  
10 the male was going to pester you for money again?

11 A No.

12 Q You don't remember that?

13 A No.

14 Q And as a result of your concern that he was  
15 going to pester you for money, you and your friend left  
16 the area where he was. Do you remember telling him that?

17 A No.

18 Q All right. And then you and your friend -- then  
19 you and your friend watched this male walk quickly in the  
20 direction of the rose shop or flower shop?

21 A I can't remember.

22 THE COURT: What did you say?

23 THE WITNESS: I can't remember.

24 BY MR. FURNSTAHL:

25 Q And then you and your friend were telling the



1 officer that you and your friend left the Chinese store  
2 and were walking in the area?

3 A I remember that.

4 Q And that you and your friend got near Jerry's  
5 Flower Shop, right?

6 A Yeah.

7 Q And you told the officer that you heard a  
8 gunshot?

9 A Yes.

10 Q What?

11 A Yeah.

12 Q Then you saw the same person --

13 MR. BENSON: Objection, Your Honor. Can we  
14 approach?

15 THE COURT: You may.

16 (Off-the-record discussion at  
17 the bench out of hearing of the jurors.)

18 BY MR. FURNSTAHL:

19 Q Do you remember telling the officer that after  
20 the gunshot you saw the same male and that you were  
21 certain that that was the same male that you had seen  
22 minutes earlier?

23 A Yes. I wasn't certain -- that I was certain  
24 about that.

25 Q You were certain?

1           A     But I can't remember if I saw his friend at that  
2 time or not.

3           Q     But I'm just asking you about that person, not  
4 his friend.

5           A     Yeah, I was certain.

6           Q     Thank you, Ravi.

7                     MR. FURNSTAHL: That's all I have.

8                     THE COURT: Mr. Benson.

9                     MR. BENSON: Thank you, Your Honor.

10                    RECROSS-EXAMINATION

11           BY MR. BENSON:

12           Q     Just a few more questions, Ravi. Mr. Furnstahl  
13 just asked you some more questions regarding this lineup  
14 procedure, and I just want to make sure I'm clear on some  
15 things and we're all clear.

16                     During that live lineup where you had one person come  
17 forward then another person come forward then another  
18 person come forward, at some point you said something to  
19 the effect of that's him or that looks like the guy?

20           A     Yeah.

21           Q     Right? But you also told that officer that you  
22 are not -- you weren't sure about that?

23                     MR. FURNSTAHL: Objection. It's redundant.

24                     THE COURT: Overruled. You can answer.

25                     THE WITNESS: Yeah.

1 BY MR. BENSON:

2 Q Okay. And in fact you just testified when Mr.  
3 Furnstahl was just asking you questions that in fact you  
4 whispered in that officer's ear and told that officer you  
5 are not sure about that, right?

6 A Yes. Yes.

7 Q Okay. And just finally, as you sit here today,  
8 is it fair to say you are not sure about that photo that  
9 was shown to the jury on the monitor?

10 MR. FURNSTAHL: Objection. Redundant and  
11 beyond the scope of redirect.

12 MR. BENSON: Well, actually the State  
13 brought it up again on redirect, Your Honor.

14 THE COURT: Overruled. You can answer.

15 BY MR. BENSON:

16 Q You are not sure about your identification with  
17 respect to that photo that was on that screen earlier  
18 today?

19 A Yes, but I'm more sure than not sure.

20 Q But you are not sure?

21 A Yeah. And yesterday, the day I met him or the  
22 day he came and got me, I was sure.

23 Q Okay. Did he show you another picture?

24 A No.

25 Q Did he show you the picture again?

1 A No.

2 Q So they were asking you questions about whether  
3 you were sure about your identification but they didn't  
4 show you that picture again?

5 A No, they didn't.

6 Q This is the first time you've seen that picture  
7 since last year?

8 A Yeah.

9 Q And who was there? It was Mr. Furnstahl and one  
10 of the detectives?

11 A Yes.

12 Q All right. So fair to say when they were asking  
13 you if you were sure about this identification, they  
14 didn't give you any tools with which to be sure with, is  
15 that fair to say?

16 A Yeah.

17 Q They didn't show you the photo?

18 A No, they didn't.

19 Q They didn't take that photo that was shown to  
20 the jury and say is that the guy that was there on May  
21 16th?

22 A No, they didn't.

23 Q They didn't do that?

24 A No.

25 Q But you did in fact, back last year when your

1 memory was the freshest that it's ever been, back in May  
2 when you saw the live lineup, you told an officer that you  
3 weren't sure?

4 MR. FURNSTAHL: Objection. Redundant.

5 THE COURT: Sustained.

6 MR. BENSON: Nothing else, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. FURNSTAHL:

9 Q So when he was asking about not being sure when  
10 you see the photograph today, but back when you saw this,  
11 when you were first shown the photographic lineup and you  
12 picked that one photograph out of the lineup, you were  
13 sure at that time, correct?

14 A Yeah.

15 Q I'm sorry?

16 A Yes.

17 Q Thank you.

18 MR. FURNSTAHL: That's all I have.

19 THE COURT: You can step down.

20 (Witness excused.)

21 THE COURT: Members of the jury, we'll take  
22 our afternoon recess at this time. Please remember  
23 to leave your notebooks on your chair. It will be  
24 about 15 minutes.

25 (Recess. The following is

1 outside the presence of the jury.)

2 THE COURT: All right. Since we don't have  
3 the next witness we'll listen to argument with regard  
4 to the two issues, one from this morning and the  
5 hearsay issue from this afternoon.

6 Let's see, I guess we can start with, Mr.  
7 Furnstahl had an objection with regard to the  
8 cross-examination by defense counsel of the victim's  
9 sister, Ms. McDermid, and basically the objection  
10 made was hearsay regarding questions asked by Mr.  
11 Benson on the specifics of descriptions given to  
12 Sergeant Mattson by the victim's sister. Do you want  
13 to --

14 MR. FURNSTAHL: The record should reflect  
15 that we went to a side bar to discuss this and this  
16 was at the time when defense counsel was questioning  
17 the witness about statements that she gave in her  
18 formal Q and A to Sergeants Mattson and Keefe. That  
19 was the objection that I had. And I indicated to  
20 Court and counsel at the time that I did not want to  
21 continue to object to every question but I asked for  
22 a continuing objection on hearsay grounds regarding  
23 questions about the statement that she gave to  
24 Sergeants Mattson and Keefe, and I believe counsel  
25 was in agreement that I could do that.

1 THE COURT: Okay. With regard to that  
2 issue, Mr. Benson.

3 MR. BENSON: Your Honor, I was in agreement  
4 that Mr. Furnstahl could raise this continuing  
5 objection. However, in response I would just note a  
6 couple things.

7 One, I don't believe that the questions I was  
8 asking did amount to hearsay in that the description  
9 of the shooter in this case is an issue that I  
10 believe is one of, falls under a statement of  
11 identification. There is a description given by the  
12 individual that observed something and a description  
13 that they provided to a law enforcement officer.

14 Now, that's somewhat of a -- and I know it is a  
15 broad reading, however 801(d)(1)(c), statements that  
16 are non hearsay, one of identification of a person  
17 made after perceiving the person if the court is  
18 satisfied that circumstances of prior identification  
19 demonstrate reliability.

20 Now, this wasn't a per se identification -- this  
21 wasn't an identification procedure that I was asking  
22 questions about but it was a description given by Ms.  
23 McDermid. But alternatively as we discussed at the  
24 bench, I was also giving her an opportunity and  
25 confronting her with what is my belief from the

1           discovery I've been given she told Sergeant Mattson,  
2           and of course when Sergeant Mattson testifies I will  
3           complete that impeachment, if you will, or tie up  
4           those remarks I elicited from her. So in either  
5           event the information is admissible and it is  
6           relevant to this proceeding.

7                     I do note the State's ongoing objection.

8                     MR. FURNSTAHL: Well, I would agree that if  
9           we apply counsel's definition of the prior  
10          identification exclusion to the hearsay rule to  
11          across the board not just to Ms. McDermid but also to  
12          Ravi Seeley, then fine, I'll withdraw my objection.  
13          Either he has to admit that that application applies  
14          to both persons or it's -- or not.

15                    THE COURT: That's what the Court indicated  
16          when, the second time this was raised was when the  
17          cross-examination -- well, it was actually on  
18          redirect examination by the prosecutor of Ravi Seeley  
19          regarding the identification issue when he was then  
20          reading from the statement that Mr. Seeley had given  
21          to one of the detectives in this case, in reading  
22          specific instances of that statement kind of one line  
23          at a time, and so I indicated initially to counsel  
24          that it appeared to be, that this is the same thing  
25          as the McDermid cross-examination but then we went a



1 little further on that and I for the second time  
2 indicated that we really are beyond the scope of  
3 redirect at that point in time, we were going beyond  
4 just identification and we were trying to get in some  
5 other stuff that wasn't covered on direct.

6 MR. FURNSTAHL: I would agree that  
7 counsel's recitation of the rule is correct so any  
8 statements made by Ms. McDermid regarding the prior  
9 identification is admissible under the rules since  
10 she did come up here and testify and was subject to  
11 cross-examination, and under the rule that would  
12 apply to Ravi Seeley.

13 The only hearsay objection I could make then is,  
14 and I don't recall everything about what was in the  
15 record at that time, if there were any  
16 non-identification type questions that were asked of  
17 Ms. McDermid regarding the contents of the statement,  
18 that would be hearsay.

19 THE COURT: I think it actually would be  
20 the other way around. I don't recall any  
21 non-identification questions being asked by the  
22 defense of Ms. McDermid, but I think that if there  
23 were any non-identification questions being asked it  
24 was being asked when you were talking about  
25 additional things on redirect of --

1 MR. FURNSTAHL: Ravi Seeley.

2 THE COURT: Ravi Seeley.

3 MR. BENSON: Your Honor, if I may.

4 THE COURT: Go ahead.

5 MR. BENSON: And that was the point in  
6 which I raised my objection, Your Honor, because  
7 given the Court's prior ruling and what my reading of  
8 the law would be, the statements that Mr. Furnstahl,  
9 the questions he was asking about Ravi Seeley's  
10 identification, the process and all that, and also  
11 what he told the police about the identification, I  
12 really don't have any problem with. We'll deal with  
13 those as they fall.

14 The problem I have is when we get into  
15 recounting what Ravi Seeley told the police officers  
16 last year about this other individual talking about  
17 what was said to him, whether it was mean-mugged,  
18 whether he was, whether this person, you know, was  
19 begging him for money or whether this person is  
20 commenting on his clothes, those statements are  
21 hearsay. They have nothing to do with the  
22 identification. I mean, the State could argue that  
23 because of all those circumstances he's able to  
24 identify the person better. However, that's not what  
25 that rule contemplates, in my mind. I think that

1           they went too far and those statements were the  
2           statements that I objected to as hearsay and that  
3           they went further than just prior statements of  
4           identification or description of a perpetrator,  
5           whatever.

6                       MR. FURNSTAHL: I would agree with  
7           counsel's recitation of the rule. The questions  
8           beyond identification questions could not be used  
9           substantively because they do not fall within the  
10          exclusion to the hearsay rule, the prior  
11          identification exclusion, but they are necessary for  
12          foundation to introduce a prior statement so that it  
13          is admissible, it is admissible to impeach the  
14          person's testimony. And that was the reason why I  
15          was asking those questions.

16                      THE COURT: And then of course there is a  
17          concern about, about just calling somebody for  
18          impeachment purposes, although clearly there was a  
19          reason for Mr. Seeley to be on the stand. His memory  
20          in terms of the identification was fairly limited and  
21          then cross-examination brought out more details, or I  
22          should say redirect brought out more details, that  
23          the Court did indicate I was a little concerned about  
24          that. But at this point in time we'll consistently  
25          apply the ruling and that is that the testimony will

1 stand at this point in time.

2 I think if there was anything beyond  
3 identification testimony it was on redirect of Ravi  
4 Seeley.

5 MR. FURNSTAHL: Probably was.

6 THE COURT: But I don't think it's anything  
7 that is at this time prejudicial to the defense,  
8 although I probably would have limited it more if we  
9 would have had an opportunity to really clarify that  
10 before, you know, without causing a ruckus in front  
11 of the jury.

12 MR. FURNSTAHL: Judge, I'm reminded that  
13 the concern that you had, I can't remember the name  
14 of the rule that relates to introducing statements  
15 only for the purpose of impeaching it?

16 THE COURT: The Dexter case.

17 MR. FURNSTAHL: Dexter case. Yeah. That  
18 is only a problem where the person doesn't testify  
19 and -- or where you don't have a basis for thinking  
20 that --

21 THE COURT: Maybe I misspoke. I don't  
22 think I did. I think the Dexter case is for when you  
23 call a witness and you are really calling them more  
24 to impeach them with their own prior statement than  
25 you are with what their testimony is. I think that's

1           what I was referring to. But in this case we are  
2           going to let it stand.

3                   Now, we are going to have Sergeant Mattson at  
4           nine o'clock tomorrow morning? Hopefully?

5                   MR. FURNSTAHL: Yeah.

6                   THE COURT: Now, the last thing I want to  
7           comment on, as I indicated to counsel I wouldn't  
8           comment on the reliability of the statements of Mr.  
9           Clifton and Mr. Harper until I had had a chance to  
10          listen to the statements.

11                   I have -- counsel provided me the last one, Mr.  
12          Harper's statement on Friday. I did listen to that,  
13          and I believe, as I indicated last week, the Robinson  
14          case says reliability as opposed to merely against  
15          penal interest being the only basis on which that  
16          could be received, and I think both with regard to  
17          Mr. Clifton and with regard to Mr. Harper, they are  
18          similar in two instances. Number one, they both have  
19          a relationship interest with the defendant, and I  
20          mean by relationship interest I mean they are blood  
21          relatives of the defendant. And secondly, they have  
22          the same fear of potential retaliation.

23                   Those are the two things that I can say would  
24          indicate that their statements at the time given have  
25          some indicia of reliability and so that would fit --

1           that would be the part that I would indicate in terms  
2           of the analysis we went through last week with regard  
3           to those, the statement of Clifton and the statement  
4           of Harper that were given to the police officers.

5           So I will find that they have that amount of  
6           reliability, which is basically the equivalent of  
7           it's not the same as being against a penal interest  
8           because it's clearly not against their penal  
9           interest, but it may be against the penal interest of  
10          a blood relative. It's certainly against their  
11          relationship interest with their own relative and it  
12          is against a potential fear of retaliation, so I will  
13          allow it.

14                       MR. FURNSTAHL: Those statements are  
15                       admissible?

16                       THE COURT: Pardon me?

17                       MR. FURNSTAHL: You are saying both  
18                       statements are admissible?

19                       THE COURT: Yes.

20                       MR. FURNSTAHL: You wanted to make a record  
21                       about my objection in opening too, Judge.

22                       THE COURT: Yes. That's right. We did  
23                       need to do that, too.

24                       Do you want to state for the record what you  
25                       believe your objection -- why you believe your

1 objection was proper?

2 MR. FURNSTAHL: Yes, sir.

3 Counsel at the point where he was arguing in his  
4 opening statement about the defendant's statement  
5 and/or interrogation by the Minneapolis police  
6 department, I raised an objection, approached the  
7 bench and we had an off-the-record discussion at the  
8 bench. I had indicated to the Court that it was not  
9 my intention to introduce the defendant's statements  
10 made during the interrogation, because as you know  
11 from listening to that there's nothing that is  
12 inculpatory in those statements. And that is my  
13 position. I'm not going to do that.

14 Defense counsel -- and then therefore my  
15 position was is that counsel's arguments about the  
16 details about that interrogation would therefore be  
17 hearsay. Counsel then responded that it was his  
18 intention, and I don't want to speak for him, but  
19 what I heard was that it was his intention to  
20 introduce -- to have the defendant take the stand.  
21 And I agreed that if the defendant takes the stand  
22 then those statements can be admitted, whether as a  
23 prior inconsistent or prior consistent statement.  
24 Based upon the rules of evidence there is a basis for  
25 their admission.

1           And I believe the Court made the comment to the  
2 effect that if the defendant did not take the stand  
3 -- and maybe I'll defer to you on that point.

4           THE COURT: I'll cover that part.

5           MR. FURNSTAHL: But what I wanted to say,  
6 then the other thing I wanted to say was regarding  
7 whether or not -- regarding the issue of -- I  
8 indicated to the Court that there might be an issue  
9 that the defense opened the door based upon the  
10 argument he was making in opening statement that the  
11 cops wanted to close the case and therefore had an  
12 incentive to arrest the defendant. He said that the  
13 cops during the interrogation of the defendant tried  
14 to trick him, gave him false information, implied  
15 that they had fingerprints, DNA and video tapes and  
16 so forth. As you recall, we discussed this when  
17 counsel made the request for this Court to revisit  
18 the ruling of Judge --

19          THE COURT: Connolly.

20          MR. FURNSTAHL: Connolly. Thank you. And  
21 I indicated at that point in time that there was  
22 information at that time that the cops were saying  
23 we've got information that you did it, and the  
24 defense was alleging that that was not accurate  
25 information. I pointed out that they in fact did



1 have information, that being from an unidentified  
2 informant.

3 And so it seems to me that -- and I'm not ready  
4 to argue its admissibility at this time but giving  
5 you a heads-up that we may be arguing that the  
6 comments in opening statements have opened the door  
7 to the introduction of that evidence to show that --  
8 to rebut this allegation that the police had an  
9 incentive to arrest the defendant or that the police  
10 were using trickery in order to get the defendant to  
11 arrest --

12 I indicated to the Court that I have requested  
13 some research be done on this issue by my law clerks.  
14 I'm asking them to see if they can find case law that  
15 talks about somebody opening the door. And in  
16 addition I've asked them to look to see if there  
17 might be any Crawford law on this point.

18 MR. BENSON: Your Honor, if I can just  
19 respond.

20 THE COURT: Go ahead.

21 MR. BENSON: We did this briefly at the  
22 bench. With respect to my opening remarks regarding  
23 what the police officers told Mr. Haynes in the  
24 interrogation, the earlier discussion that we had was  
25 I characterized these as lies in a prior motion, that

1           they lied to Mr. Haynes.

2           If you'll recall from my opening statement I  
3           used the word too they tried to trick him, tried to  
4           deceive him. I used implication quite a bit because,  
5           one reason based upon the State's objections  
6           previously I think in oral argument we can call it  
7           what we want but I don't think the State objects that  
8           there are points in the interrogation where they  
9           asked Marvin at least the questions how would your  
10          prints be found in that store, how would you be on a  
11          videotape, which is they are implying that, they are  
12          trying to get him to confess to something. That's  
13          what police do. That's their interrogation tactics..  
14          That in and of itself, that has nothing whatsoever to  
15          do with any unidentified source or anonymous tip so  
16          that could not possibly open the door.

17          I don't recall my opening statement that I did  
18          anything to say that they just grabbed Marvin Haynes  
19          out of the clear blue sky and threw him in here and  
20          charged him with that. I don't believe I said that.  
21          Even if that was said, the issue with respect to this  
22          unidentified source or this anonymous tip, we dealt  
23          with this in front of Judge Connolly to this  
24          incident. I moved to exclude any mention of an  
25          anonymous tip, any mention of an unnamed source, any

1 mention of a concerned citizen because I had no  
2 discovery regarding that so to our understanding it  
3 was the police that didn't know who the source of  
4 that information was. There was a person in between  
5 the information, and whoever, whichever police  
6 officer received the information. There was somebody  
7 reporting that somebody had told them that, so I  
8 objected to that information coming out at all  
9 because that amounts to hearsay clearly, if not  
10 double hearsay.

11 But also under confrontation grounds in that  
12 I've not had an opportunity to -- I would not have an  
13 opportunity to cross-examine that person as to the  
14 basis of their information and reliability of their  
15 information here in court. Those are arguments that  
16 were made in front of Judge -- not Connolly, last  
17 year. So I would just submit to the Court that if it  
18 gets to that point we'll argue some more. However,  
19 the way I look at it is if the State feels I opened  
20 the door, the Court agrees that I've opened the door,  
21 then we've got issues of who that witness was,  
22 whether they provided that information in a timely  
23 fashion since the jury has already been sworn and  
24 whether they would get into that information anyway.

25 At this point I don't know if the State knows

1           who that person was that was the origination of the  
2           anonymous tip of an unidentified source. I don't  
3           know if they know that or not. They haven't informed  
4           me of that. I do not who the in-between person was.  
5           This is a can of worms the Court may have to deal  
6           with.

7                         THE COURT: Let me just indicate this.  
8           Number one, that is what, some of the conversation we  
9           had at the bench and the Court indicated that, that  
10          at the present time based on what the defense counsel  
11          said to me at the bench after the objection, that I  
12          would allow him to continue the opening statement and  
13          that only if the defendant didn't testify then we'll  
14          talk about whether or not the jury should be told to  
15          disregard this interrogation testimony if there is no  
16          actual testimony about it.

17          I would agree that having read the statement  
18          that there clearly was implication by the police that  
19          there was either fingerprints or DNA or that they  
20          might have it in an effort to get the defendant to  
21          give out some information. And I've not seen  
22          anything yet that should indicate I should overrule,  
23          in any way change Judge Connolly's rulings that he  
24          made last year when counsel made this argument in  
25          full, so at this point in time I'm not going to do

1           that. And if counsel comes up with something else  
2           you can let me know but at this point in time I don't  
3           see that we're in a different position.

4                       MR. FURNSTAHL: Judge, one thing I would  
5           ask just with respect to the interrogation  
6           information, so we don't have difficulty with the  
7           jurors hearing inadmissible evidence since they know  
8           that the statements of the attorneys are not  
9           evidence, I would ask that there not be any questions  
10          of Sergeant Mattson or Sergeant Keefe should he  
11          testify regarding the interrogation unless and until  
12          the defendant takes the stand.

13                     I will make the officers available so that they  
14          can recall them and ask the questions at that point  
15          in time, but if they are allowed to do that before  
16          the defendant testifies and then he subsequently  
17          decides he's not going to testify and it's his  
18          decision to make, then the cat is out of the bag and  
19          we've got some problems.

20                     MR. BENSON: Your Honor, with respect to  
21          the interrogation -- well, with the interrogation,  
22          that's a separate issue from what the State's concern  
23          is or at least what I understood their concern to be.  
24          It's my understanding that their concern, which is  
25          often the State's concern, is that they don't want me

1 to stand up in opening statement and tell the jury  
2 that Mr. Haynes, you know, told these officers at the  
3 very beginning he didn't do anything, that he didn't  
4 do it. That's his testimony. They don't want me  
5 testifying for Marvin, and that's the concern that  
6 they raise. And I did it for the, just for the  
7 record so it's clear, I did inform the Court that  
8 given like everything that I know about this case at  
9 this time I expect Marvin to testify.

10 That's a separate issue because they are worried  
11 about self serving hearsay and that statement, but  
12 that's a separate issue than the interrogation  
13 techniques. I can question all I want about the  
14 interrogation techniques, about the questions that  
15 they asked Marvin, things like that, and that doesn't  
16 get into eliciting like his response or his statement  
17 that I didn't do anything.

18 THE COURT: Let me just say this. I  
19 understand exactly what you are saying and I  
20 understand what you -- if I hear coming out of the --  
21 if I hear a question asked that will in fact require  
22 the officer to provide the defendant's response, that  
23 would be a different story.

24 MR. BENSON: Yes. I think that's what --  
25 that was my understanding of what the State's concern

1 is.

2 MR. FURNSTAHL: No, that was part of the  
3 concern. I also indicated to the Court that just the  
4 mention that there was an interrogation invites  
5 speculation from the jury that -- as to what the  
6 defendant said during that interrogation. And  
7 counsel told the jurors during his opening statement  
8 what in fact he said and it was on the basis of those  
9 two concerns that counsel said that represented to  
10 the Court that it was his intention to call the  
11 defendant to the stand, because while there is -- it  
12 is two separate issues, it's basically the same  
13 concern, that is that inadmissible evidence not be  
14 heard by this jury.

15 Now, there's a proper way to do it, there's an  
16 improper way to do it. I agree that if the defendant  
17 testifies then all this stuff comes in. But if he  
18 doesn't testify, just asking about interrogation  
19 techniques and so on and so forth invites that  
20 speculation. And I'm not going to be asking that,  
21 those kinds of questions on direct examination so  
22 there's a third, another ground for that not to be  
23 admitted and that is that it would be beyond the  
24 scope of direct examination.

25 So on a 403 ground it would be a reason plus the

1 other rule of evidence that prohibits that.

2 THE COURT: I don't recall there's a rule  
3 that prohibits beyond the scope of direct.

4 MR. FURNSTAHL: The rule says that  
5 cross-examination is generally to be related to  
6 matters that are brought out on direct examination.  
7 If I take a moment I can find that, find that one.

8 THE COURT: Go ahead, Mr. Benson, while  
9 he's looking.

10 MR. BENSON: Actually I'll wait until --

11 THE COURT: All right.

12 MR. FURNSTAHL: Rule 611(b) scope of  
13 cross-examination.

14 THE COURT: Wait a minute.

15 MR. FURNSTAHL: Page 1203 in my book. 611.

16 THE COURT: Paren B?

17 MR. FURNSTAHL: Correct.

18 THE COURT: Yup.

19 MR. FURNSTAHL: I think the purpose for the  
20 rule, Judge, is because of the benefit of asking  
21 leading questions on cross-examination if the  
22 proponent of the testimony seeks to introduce that  
23 it's appropriate that that be done by asking non  
24 leading questions on direct examination.

25 THE COURT: Well, the cross-examination



1 should be limited to subject matter that direct  
2 examination and matters affecting the credibility of  
3 the witness, the court may in the exercise of  
4 discretion permit inquiry into additional matters as  
5 if on direct examination. Meaning that covering your  
6 leading type of thing for cross-examination, correct?

7 MR. FURNSTAHL: Right. I agree that you  
8 have the authority to authorize it. All I'm saying  
9 is that we have a 403 problem and we have this  
10 problem, and I think the 403 problem obviously is  
11 more salient than this one.

12 MR. BENSON: I would just respond briefly,  
13 Your Honor, that the -- I don't believe there's a 403  
14 problem with respect to the interrogation itself. I  
15 understand and I recognize the Court's ruling and I  
16 also, you know, I've already acknowledged what I said  
17 at the bench, that I do intend, right now I expect  
18 Marvin is going to testify. However, as far as if  
19 the State keeps Sergeant Mattson available that's one  
20 issue, but the interrogation is something entirely  
21 separate and I do appreciate and understand the  
22 State's concern with respect to me putting forward my  
23 client's statements then turning around and saying we  
24 don't want him to testify. That's a concern the  
25 State always has and that's something that's separate

1 from this officer's interrogation techniques.

2 THE COURT: Well, I can tell you this.

3 Number one, if the defendant testifies we're much  
4 clearer because as the defense says that he's going  
5 to, we can certainly separate out the testimony of  
6 the investigating officers into the part that's  
7 presented before and then allow counsel to go into  
8 the interrogation after the defendant testifies.  
9 That's assuming we can get the officers back here. I  
10 mean, we already adjourned a little early today  
11 because Sergeant Mattson, who is now here I see,  
12 wasn't here when we were ready for him so that means  
13 we'll have to have him available to be here when we  
14 need him.

15 And actually I should have probably asked  
16 Sergeant Mattson to step up while we did the rest of  
17 this argument but I think we are done now, are we  
18 not, counsel?

19 MR. FURNSTAHL: I think we are, Judge.

20 THE COURT: All right. Are we clear enough  
21 so that we know where we are?

22 MR. BENSON: Yes, Your Honor.

23 THE COURT: All right. Then we'll adjourn  
24 until nine o'clock tomorrow.

25 MR. FURNSTAHL: I guess being old, Judge, I

need a little bit of clarification. You are saying that these kind of questions can't be asked?

THE COURT: Yeah, I'm saying that -- the defense is saying that the defendant is going to testify. We're not going to go into interrogation techniques on cross-examination until that happens and then it will be fair game.

MR. FURNSTAHL: All right. Thank you.

(Whereupon, the proceedings  
conclude this day.)


\* \* \*

STATE OF MINNESOTA) ) ss.  
COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

I, Jolyn R. Lund, Official Court Reporter, do hereby certify that the above and foregoing is a true and accurate transcription of my original stenographic notes in said matter.

Date: March 7, 2006

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

04035635  
A052444 936 (7)

1 STATE OF MINNESOTA FILED DISTRICT COURT  
2 COUNTY OF HENNEPIN 06 MAR -3 PM 12:45 FOURTH JUDICIAL DISTRICT

3 ----- M ----- DEPUTY  
4 COURT ADMINISTRATOR

5 State of Minnesota, D.C. File No.04035635  
S.Ct. File A05-2444

6 Respondent/Plaintiff,

7 vs.

**TRIAL TRANSCRIPT**

8 MARVIN HAYNES, JR.,

VOL. VI, pp. 936-1120

9 Appellant/Defendant.  
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10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, and a jury, at 659-C  
13 Hennepin County Government Center, Minneapolis,  
14 Minnesota, on the **30th day of August, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.  
22  
23

24 CLERKS: Toni Rahn, Andrea Martin

25 REPORTER: Jolyn R. Lund

04035635

## I N D E X

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Tawanda Logan

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Officer Andrew Stender

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## E X H I B I T S

	<u>Identified</u>	<u>Offered</u>	<u>Rec'd</u>
No. 47 - Seeley lineup	971	971	971
No. 48 - copy 911 tape	1007	1007	1007
No. 50 - Live lineup video	1013	1025	1025
No. 69 - Stipulation			948
No. 96 - Haynes booking photo	1039	1040	1040

1 (Whereupon, the following  
2 proceedings occur outside the presence of the jury.)

3 THE COURT: We'll first hear argument of  
4 counsel regarding the statement of Mr. Seeley that  
5 counsel intends to use in the examination of the  
6 officer, and I guess I probably should hear from the  
7 defense first on that.

8 MR. BENSON: May we step forward a bit?

9 THE COURT: Sure.

10 MR. BENSON: Your Honor, I did make a  
11 motion in limine following up with my hearsay  
12 objection yesterday regarding Ravi Seeley's  
13 out-of-court statements, particularly in this case  
14 Detective Mattson or another officer, I believe, will  
15 come in and testify regarding what Ravi Seeley may  
16 have told them last year.

17 I asked that that examination be limited to  
18 issues involving the identification process, what was  
19 said during that process, and/or what the description  
20 of the person who Ravi Seeley identified last year,  
21 descriptive details pursuant to our argument  
22 yesterday afternoon.

23 The State, I understand, wants to go into  
24 further matters that they had raised yesterday.  
25 However, I submit to the Court that those matters,

1 outside of the identification issue, would be hearsay  
2 and should not be allowed at this point.

3 Also, the State has indicated that it intends to  
4 ask something of the nature of, or ask one of the  
5 officers did Ravi Seeley want to have his identity  
6 kept secret, we believe because of a concern for his  
7 safety.

8 As I did in the case of Tim Clifton, I'm moving  
9 this Court to prevent the State from getting into  
10 that issue in particular. I think it puts a,  
11 somewhat of a pall over this whole proceeding. The  
12 jury may start to speculate as to whether or not Mr.  
13 Haynes is a threat to Ravi Seeley or is a threat to  
14 any other witness.

15 I think it's particularly important that that be  
16 kept out at this point because Ravi Seeley had ample  
17 opportunity yesterday to express any concern that he  
18 may have with respect to testifying. He was asked on  
19 direct examination by -- or redirect by Mr. Furnstahl  
20 whether he wanted, you know, whether he was nervous.  
21 His answer was no; whether he was intimidated at all  
22 because he was sitting in court facing Mr. Haynes at  
23 this time, his answer was no, and I think the jury  
24 can determine based upon demeanor, and the State can  
25 argue whatever they want in closing, but the jury can

1 determine how those questions were answered whether  
2 he was being truthful or not. My impression doesn't  
3 really matter. I felt he responded frankly. The  
4 State's impression doesn't matter. Ultimately it's  
5 the jury's determination.

6 However, to put in now after this witness has  
7 already indicated that he doesn't have any concern  
8 about testifying or any fear about testifying, to put  
9 in now that he said this a year ago about keeping his  
10 identity a secret, I don't believe it's relevant, and  
11 if at all relevant it's definitely less relevant than  
12 it is prejudicial, and it's prejudicial, extremely  
13 prejudicial given those issues and that would be  
14 under Rule 403.

15 And I had another issue as well but let's  
16 address that first.

17 MR. FURNSTAHL: Well, with respect -- other  
18 than, I guess it's clear that any statements  
19 regarding the prior identification are admissible so  
20 we're focusing now on any other statements, any other  
21 out-of-court statements that Mr. Seeley made. I  
22 agree that they are hearsay just as the out-of-court  
23 identification for (inaudible) is hearsay, but it  
24 falls within one of two hearsay exceptions: Either  
25 as a prior consistent statement or as a prior



1 inconsistent statement. If it's admissible as a  
2 prior consistent statement, then it comes in as  
3 substantive evidence. If it's admissible as a prior  
4 inconsistent statement, then it's admissible to  
5 challenge the credibility of the witness.

6 And under the rules I'm entitled to challenge  
7 the credibility of Ravi Seeley. We'll be doing that  
8 with other witnesses as well and on other points and  
9 I'm sure counsel will have no objection to that  
10 because it works to his benefit.

11 Sergeant Mattson will be testifying that Ravi  
12 Seeley did not whisper in his ear that he wasn't sure  
13 of his identification at the standup lineup. Officer  
14 Maki from the St. Louis Park police department, to  
15 whom Ravi Seeley reported this, will testify that the  
16 only report he got this from was from Ravi Seeley.  
17 It wasn't another kid named Ravi Seeley, and that  
18 that's what forced Ravi Seeley's hand in this case.

19 But I think what we want to do is we want the  
20 witness -- we want to be able to introduce what the  
21 witness said about the incident back when he talked  
22 to the officers in May of 2004. He indicated on a  
23 number of points that he could not recall all of the  
24 incident so that evidence clearly is admissible as  
25 either a prior consistent or prior inconsistent

1 statement. And I'm not going to break down which is  
2 which because I think either way it becomes  
3 admissible. Some things he remembered; some things  
4 he didn't. Either way those things that he  
5 remembered, it's a prior consistent statement. Those  
6 things he couldn't remember or he had a different  
7 statement, it becomes a prior inconsistent statement.

8 THE COURT: Let me have you focus for one  
9 minute on the nondisclosure of his identity issue,  
10 and I want to frame that because yesterday on  
11 redirect, or re-redirect, you asked him whether or  
12 not he was -- he was concerned last year and had  
13 asked that his statement not be recorded and he said  
14 he didn't remember that, basically. I don't remember  
15 you asking him about his identity. I don't think  
16 that was on the record. We did have a discussion  
17 beforehand where counsel asked outside the hearing of  
18 the jury that his name not be spelled because his  
19 mother was concerned about their name being in the  
20 phone book and their church is close to the location,  
21 so that was put on the record or it was discussed by  
22 counsel and before the testimony of this witness.

23 I previously ruled on Mr. Clifton, that his  
24 being known as Witness D had really no probative  
25 value because there was no evidence that I saw, I

1 mean other than what counsel said the police officer  
2 would say, there was no evidence he chose that he was  
3 in any way scared, not wanting his name disclosed.  
4 Is this one different?

5 MR. FURNSTAHL: Yes, it is. For this  
6 reason: Because now Ravi Seeley has testified.  
7 Counsel has indicated in our -- I don't know if he  
8 indicated on the record right now but he indicated in  
9 our conversation in chambers just before coming out  
10 here on the record that there is in fact a basis for  
11 me to argue that he was scared, that he was  
12 intimidated. It's for the jury to make that  
13 conclusion and we do have evidence of that. And his  
14 demeanor, counsel indicated that his demeanor was one  
15 that would suggest that, and I would agree with that.  
16 In addition we have these prior statements.

17 Now, this is different from Timothy Clifton  
18 because you were looking at Timothy Clifton's  
19 situation in a vacuum just as we did with Ravi  
20 Seeley's situation in a vacuum prior to his  
21 testifying, and I recall asking him very specifically  
22 not just if he didn't want to give a formal statement  
23 but also if he did not want his name disclosed. And  
24 my recollection was that in both -- to both questions  
25 he said I couldn't recall. And we want that evidence

1 to demonstrate that this young boy is intimidated by  
2 this whole process. He demonstrated that by his  
3 demeanor on the stand, he demonstrated that in his  
4 past statements. It's different from Clifton because  
5 now you have, now we have the witness testifying  
6 whereas before all you had was the statement of  
7 Timothy Clifton and you were looking at it in a  
8 vacuum.

9 MR. BENSON: Your Honor, if I can just  
10 respond?

11 THE COURT: Go ahead on that issue, yeah.

12 MR. BENSON: On that issue, Your Honor, as  
13 far as what I said in chambers and what I said here,  
14 I said there is evidence from which the State can  
15 argue whatever they want with respect to whether Ravi  
16 Seeley is intimidated or not. I don't agree with  
17 that because I don't think it's a good argument. I  
18 think he answered those questions frankly. He  
19 listened to the questions that were asked and he  
20 responded. The State didn't get the responses that  
21 they obviously expected, but obviously the State can  
22 argue to the jury at the end of this case that okay,  
23 he was intimidated even though he said he wasn't.  
24 That's something that if the State wants to argue  
25 that obviously they can argue that.

1 I would argue something to the contrary. By no  
2 means am I giving credit to their position here that  
3 yeah, because they can argue that fact that they  
4 should be allowed to bring in a statement from a year  
5 and a half ago that he didn't want his name  
6 disclosed.

7 THE COURT: And just for the record, the  
8 statement a year and a half ago does say at the  
9 beginning he asked that his name not be disclosed?

10 MR. FURNSTAHL: Yes. He did not give a  
11 formal Q and A. The statements that we have are  
12 recorded in a summary of Officer Jerry Wehr and Pat  
13 Kemp, and in that he indicated that he did not want  
14 his name disclosed. They referred to him as Witness  
15 B as in boy.

16 THE COURT: Is that a correct recitation,  
17 counsel?

18 MR. BENSON: I'm taking a look to see if  
19 that was actually mentioned. I don't see it.

20 MR. FURNSTAHL: I don't see it offhand  
21 where it's specifically mentioned in the report. I  
22 think it's pretty clear from the report given the  
23 fact that there's other references, particularly to  
24 the friend that was with him at the time, I think  
25 there's a specific reference in that that he referred

1 to him as Witness C and he didn't want his name  
2 disclosed. Apparently the officer -- unless it's  
3 here and I'm not finding it -- didn't specifically  
4 say that but that's what happened. If the Court  
5 needs it I can have the officer testify and give an  
6 offer of proof. I don't think it's any surprise to  
7 anybody, though.

8 THE COURT: Here's what I'm going to say  
9 with regard to this issue. Number one, I would say  
10 with regard to Mr. Seeley's demeanor, he could  
11 interpret his demeanor to be that he wasn't  
12 intimidated, that might be one way of interpreting  
13 it. He clearly answered the question counsel asked  
14 him about whether or not he wanted his statement  
15 taped. He clearly answered that question "I don't  
16 remember." I really don't believe he was asked the  
17 question about his name.

18 Secondly, his mother did ask that we not spell  
19 his name on the record beforehand and there was  
20 information that he didn't want his church disclosed,  
21 so there's at least some information here which is  
22 different from with Mr. Clifton where there was no  
23 information that he was in any way intimidated.

24 I'll allow you to ask about that name but the  
25 officer had better have the recollection that he

1           didn't want his name disclosed. I'll find that to  
2           have some probative value with regard to his demeanor  
3           and his testimony that he actually gave in this case.

4                   And off the record.

5                                   (Off-the-record discussion.)

6                   MR. FURNSTAHL: It's okay to ask him about  
7           name?

8                   THE COURT: Yeah. That's what I just said.

9                   MR. FURNSTAHL: And how about the not  
10          wanting to have the tape of the --

11                  THE COURT: You asked him that already and  
12          he said he didn't remember, but if that's in there  
13          you can ask him that.

14                  MR. FURNSTAHL: Okay.

15                  THE COURT: All right. Now, I'm going to  
16          read the stipulation into the record before we start  
17          and then are we ready to go then with the witness?

18                  MR. FURNSTAHL: Yeah. I got a whole bunch  
19          of them stacked up.

20                                   (Off-the-record discussion.)

21                  MR. FURNSTAHL: There's a couple areas that  
22          we may, in cross-examination, depends upon how the  
23          cross-examination goes and we want to seek to  
24          introduce evidence under Rule 608(b) of the case that  
25          applies that rule, State v. Fallin, F-A-L-L-I-N, 540

1 N.W.2d 518, a 1995 case. There are two other cases  
2 that specifically deal with a witness giving prior  
3 false statements that we think clearly comes in under  
4 608(b), and I've noticed counsel on two. I think I  
5 gave you three but there's only two.

6 MR. BENSON: There was two.

7 MR. FURNSTAHL: I would give those -- I got  
8 a couple case cites to the Court on that, first is  
9 United States v. Reid, R-E-I-D, 634 F.2d 469, and  
10 then U.S. v. Mansaw, M-A-N-S-A-W, 714 F.2d 785. And  
11 I'll approach the Court and get a ruling before I go  
12 anywhere with that stuff.

13 THE COURT: That's not going to happen  
14 today?

15 MR. FURNSTAHL: No. I'm just giving you a  
16 heads-up.

17 MR. BENSON: I'll argue that point then,  
18 Your Honor.

19 THE COURT: All right.

20 (The following is in the  
21 presence of the jury.)

22 THE COURT: Good morning, members of the  
23 jury.

24 I'm going to read you a stipulation which has  
25 been entered as Exhibit 69. A stipulation is an



1 agreement between the attorneys.

2 The parties agree and stipulate that the jury  
3 may accept the following facts as true. Exhibit 45  
4 is the first photo lineup that was shown to Cynthia  
5 McDermid. It was shown to her by Sergeant Rick  
6 Zimmerman on May 16, 2004. Exhibit 49 is the second  
7 photo lineup that was shown to Cynthia McDermid. It  
8 was shown to her by Sergeant Bruce Folkens on May 17,  
9 2004. Exhibit 93 is a copy of Exhibit 49.  
10 Exhibit 93 will be withdrawn in favor of the  
11 original. Exhibit 46 is the third photo lineup that  
12 was shown to Cynthia McDermid. It was shown to her  
13 by Sergeant Dave Mattson on May 19, 2004.

14 Counsel, you may call your next witness.

15 MR. FURNSTAHL: We call Sergeant Bruce  
16 Folkens.

17 Whereupon,

18 BRUCE FOLKENS,  
19 after having been first duly sworn, was examined  
20 and testified as follows:

21 THE CLERK: Please state your full name and  
22 spell your last for the record.

23 THE WITNESS: It's Sergeant Bruce Folkens,  
24 F-O-L-K-E-N-S.

25 THE COURT: Okay, Mr. Furnstahl.

1 MR. FURNSTAHL: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. FURNSTAHL:

4 Q Sergeant Folkens, how are you employed?

5 A By the Minneapolis police department.

6 Q Are you a licensed peace officer in the state of  
7 Minnesota?

8 A Yes, sir, I am.

9 Q How long have you been a police officer?

10 A About 17 years.

11 Q And how long have you been a police officer with  
12 the Minneapolis police department?

13 A The whole 17 years.

14 Q What's your present assignment?

15 A I'm a sergeant in the homicide unit.

16 Q Is that -- is your title sergeant detective or  
17 just sergeant or what is it?

18 A My rank is sergeant. I'm a detective.

19 Q And did you hold that position in May of 2004?

20 A Yes, sir, I did.

21 Q Now, in May of 2004, did you have an occasion to  
22 show a photo, an array of a photo lineup to a person  
23 identified to you as Cynthia McDermid?

24 A Yes, sir, I did.

25 Q What was the date that you did that?

1           A     May 17, 2004.

2           Q     Now, at the time were you assigned to the case  
3 that was relevant to the photo lineup?

4           A     No, sir, I was not.

5           Q     Did you have any information about that other  
6 than what may have been in the press or something like  
7 that?

8           A     Just what was in the news media.

9           Q     Did you understand it was connected to a certain  
10 case?

11          A     To a homicide investigation at a flower shop on  
12 the north side of Minneapolis.

13          Q     All right. Did you have any idea who a suspect  
14 may or may not be?

15          A     No, sir, I did not.

16          Q     Did you have any idea as to whether or not the  
17 photo display that you showed to Ms. McDermid contained a  
18 potential suspect?

19          A     No, I did not.

20          Q     Did you have some training with respect to --  
21 well, if you would describe the way that you showed the  
22 photo lineup to Ms. McDermid.

23          A     I showed Ms. McDermid a sequential photo lineup.  
24 I tell people in a sequential photo lineup that, number  
25 one, that I do not have knowledge of the case, I don't

1 know if there's a suspect or a witness within the photo  
2 lineup. I also explain to them that they are under no  
3 obligation to pick anybody in that photo lineup.  
4 Furthermore, I tell them how I'm going to show the photo  
5 lineup, that I will show them six photographs individually  
6 one at a time. They will be allowed to look at the  
7 photograph as long as they like and then give the  
8 photograph back to me with a response whether they  
9 recognize that person or not.

10 Q So in this case is it correct then that you did  
11 not lay out all six photographs and let Ms. McDermid  
12 compare and so forth?

13 A No, sir. I gave them to her one at a time and  
14 she would look at one photograph then hand it back to me  
15 with a response whether she recognized that person or not.

16 Q Now, did this represent a change in some of the  
17 procedures that have been used in the past by the  
18 Minneapolis police department with respect to showing  
19 photo arrays?

20 A Yes, sir, it is.

21 Q What had been done in the past?

22 A Before we would show six photographs on a single  
23 sheet of paper, printed on one single sheet of paper, and  
24 they would be allowed to look at all six photographs at  
25 the same time.

1           Q     And with respect to the person that was showing  
2 the photo array to the witness, would that person be  
3 connected or unconnected to the case? In the past?

4           A     In the past, it would just generally be the  
5 investigator that was assigned to the case would show  
6 their own photo lineups. Under the sequential photo  
7 lineups, if personnel allows it and staffing situations  
8 allow, we generally like to have a person not involved in  
9 the case show the photo lineup for objectivity.

10          Q     Okay. Now, you said that if personnel allows  
11 for it. What do you mean by that?

12          A     There are certain cases where you have  
13 multitudes of witnesses, and for instance on the overnight  
14 shift there may be only two or four of you working that  
15 night so there's just really no way to show a photo lineup  
16 without having knowledge of the case.

17          Q     Okay. In this case you had no knowledge?

18          A     I had no knowledge of this case.

19          Q     Directing your attention --

20                   MR. FURNSTAHL: May I approach?

21                   THE COURT: You may.

22 BY MR. FURNSTAHL:

23          Q     -- to Exhibit 49, this has been stipulated to  
24 and admitted as the photo array that you showed to Ms.  
25 McDermid on May 17th. Can you confirm that? Does that

1 appear to be the photo array?

2 A Yes, sir, it is.

3 Q Could you just again explain and physically show  
4 the jurors the photo array in the manner that you showed  
5 it to Ms. McDermid?

6 A Okay. The photos are one at a time, I would  
7 hand one photo to Ms. McDermid, she would be allowed to  
8 hold the photo, look at it for as long as she wanted and  
9 then she would hand it back to me and then I would again  
10 then show her --

11 Q Right now the way you held the first photograph  
12 you can still see the second photograph.

13 A I would have them basically upside down on my  
14 tablet.

15 Q Okay. Go ahead.

16 A Then she would hand this one back, indicate yes  
17 or no whether she recognized the person. In this case she  
18 did not recognize photograph number one. I then showed  
19 her photograph number two. Ms. McDermid looked at this  
20 photograph, thought that she recognized it as somebody  
21 from within the neighborhood of the flower shop who may  
22 have done business there in the past but indicated that  
23 this was not a suspect or a witness in the case that she  
24 was a witness to. I showed her photograph number three.  
25 There she said no, she did not recognize that person.

1       Number four, Ms. McDermid paused and then indicated that  
2       she wasn't a hundred percent sure but she thought this  
3       person looked like the suspect. And she further added  
4       that she wasn't a hundred percent positive but more like  
5       75 to 80 percent. At that time I asked Ms. McDermid to  
6       turn it over and sign her name to it and also write the 75  
7       to 80 percent on the back to indicate that that's what she  
8       said as far as probability of this being the suspect.  
9       After that photograph was -- I showed her number five, she  
10      said that she didn't recognize that party. And then I  
11      showed her number six and she also said no, she did not  
12      recognize this party -- person.

13           Q       Now, did she describe to you her emotional  
14      affect at the time that you were showing her the photo  
15      lineup?

16           A       Yeah. She said that she was still very  
17      traumatized, shall I say, very confused, very excited,  
18      just kind of a bundle of nerves.

19           Q       And do you remember exactly what it was that --  
20      did you record this in a police report?

21           A       I did, sir.

22           Q       Would looking at the report refresh your  
23      recollection?

24           A       It would.

25           Q       Do you have it with you?

1 A Yes.

2 Q Go ahead and look at it silently to yourself for  
3 a moment, please. Very bottom.

4 What did she tell you?

5 A Um, she stated that she was still in a state of  
6 shock and could not be sure of an identification at this  
7 time.

8 Q And then after you showed her photograph number  
9 four and she said she was maybe 75 to 80 percent sure, did  
10 she also say something else?

11 A She said that she was confused and could not be  
12 a hundred percent sure.

13 Q Thank you, sir.

14 MR. FURNSTAHL: That's all I have.

15 THE COURT: Cross-examination, Mr. Benson?

16 MR. BENSON: Yes, Your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. BENSON:

19 Q Sergeant, you showed that lineup, which is  
20 Exhibit No. 49, you showed that to Ms. McDermid on May  
21 17th?

22 A I did, sir.

23 Q At the time that you showed her that lineup,  
24 were you aware that Sergeant Zimmerman had already shown  
25 her the same pictures earlier?



1 A No, sir, I was not.

2 Q Okay. And in fact you indicated that you were  
3 not -- you didn't know anything about the case?

4 A Just what I learned through the media reports of  
5 it.

6 Q You were aware at least that there was an  
7 incident at a flower shop on May 16th, the day before?

8 A Yes, I did.

9 Q I want to talk to you briefly about the process  
10 that you employed, the sequential method.

11 A Okay.

12 Q You testified that one of the reasons you do the  
13 sequential method is to try and get a reliable  
14 identification?

15 A That is the reason for showing a sequential  
16 lineup, yes, sir.

17 Q Okay. And you also talked about with respect to  
18 your, the procedure you ran, you were brought in because  
19 you had nothing really to do with the case?

20 A I didn't know any specifics of the case or  
21 suspects or anything.

22 Q Okay. I believe you testified that it was  
23 dealing with a matter of objectivity?

24 A Correct.

25 Q And what you mean by that is that they are

1 bringing in somebody unrelated to the case because they  
2 wouldn't want to have a person doing the identification  
3 tipped off as to who the suspect might be. Is that fair  
4 to say?

5 A I think we just want to be as fair as possible  
6 to the witness, that we get a reliable identification if  
7 there's any identification to be made.

8 Q But with respect to your testimony earlier, the  
9 reason for bringing someone in that's not related to the  
10 case is because you wouldn't want to have that person  
11 making an identification either intentionally or  
12 inadvertently tipped off as to who the suspect would be?

13 A We want to make sure that doesn't happen,  
14 correct.

15 Q Exactly. That's why you bring in somebody  
16 that's not related to the investigation itself?

17 A If at all possible due to staffing, yes.

18 Q I would imagine at least at that time on May  
19 17th you were called in instead of the investigating  
20 officers to do the task, correct?

21 A I was asked by one of the investigating officers  
22 if I would do it for them, yes.

23 Q Because they didn't want to do that lineup  
24 procedure because it could give rise to or give a concern  
25 that any identification might not be as reliable?

1 MR. FURNSTAHL: Objection. Calls for  
2 speculation as to what the other officers were  
3 thinking.

4 THE COURT: Overruled. It's a general  
5 question with regard to police knowledge. Go ahead.

6 THE WITNESS: Could you repeat your  
7 question?

8 BY MR. BENSON:

9 Q Let me break it down.

10 A Okay.

11 Q Sergeant Mattson asked you to do the  
12 identification on May 17th, correct?

13 A Correct, sir.

14 Q Okay. And from your testimony earlier you  
15 indicated that other officers unrelated to the case are  
16 brought in to do identifications if at all possible?

17 A Yes.

18 Q And the reason for that is to make it as  
19 objective a lineup procedure as possible?

20 A Correct.

21 Q And you know from your training with this new  
22 lineup procedure plus your training and experience that  
23 oftentimes an officer could tip somebody off even  
24 inadvertently as to the identity of a suspect?

25 MR. FURNSTAHL: Objection to that as

1 argumentative and calls for speculation.

2 THE COURT: Overruled. You can answer.

3 THE WITNESS: I wouldn't say, characterize  
4 oftentimes inadvertently or -- I believe that the way  
5 we used to do them with six-person lineups were very  
6 objective in how we handled the lineups. I  
7 personally take great pains not to indicate to  
8 somebody if there is a suspect in a lineup or not.

9 BY MR. BENSON:

10 Q Okay. But the use of someone who is unrelated  
11 to the investigation, the purpose of that is to avoid even  
12 an inadvertent tipping off as to who the suspect is?

13 MR. FURNSTAHL: Objection. It's redundant.

14 THE COURT: Sustained.

15 BY MR. BENSON:

16 Q Now, on May 17th, you've indicated Ms. McDermid  
17 signed the back of one of those photos?

18 A Yes, she did.

19 Q And she said she was 75 to 80 percent certain  
20 that that was the person?

21 A That's what she said, the best that she would  
22 feel at. Or certainty.

23 Q Okay. And you are aware --

24 MR. BENSON: May I approach, Judge?

25 THE COURT: You may.

1 BY MR. BENSON:

2 Q Do you still have the exhibits, sir?

3 A Yes.

4 Q Sir, I'm showing you picture number four, is  
5 that correct?

6 A Yup.

7 Q Okay. For the record, I'm showing exhibit  
8 number or picture number four from Exhibit No. 49.

9 Sergeant Folkens, this was the person that Ms.  
10 McDermid identified as being 75 to 80 percent sure was a  
11 suspect?

12 A That's one that she indicated she had 75 to 80  
13 percent certainty.

14 Q Okay. Just to be clear as far as what her words  
15 were, on the back it says 75, 80 percent sure and it's  
16 signed Cynthia McDermid 5/17/04, is that correct?

17 A Correct, sir.

18 Q All right.

19 MR. BENSON: No other questions, Your  
20 Honor.

21 THE COURT: Redirect, Mr. Furnstahl?

22 MR. FURNSTAHL: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. FURNSTAHL:

25 Q Sergeant Folkens, you indicated that the

1 previous method of showing a lineup you thought was an  
2 antiseptic way to do that, a way so that an identification  
3 isn't suggested, is that right?

4 A I did, sir.

5 Q Would you describe for the jurors how, the  
6 method of the old way?

7 A Once again the method of the old way of doing it  
8 was having six photographs on one single sheet of paper.  
9 What we tell people when we showed those photographs was  
10 basically the same: I'm going to show you a photo lineup  
11 of six people, a suspect may or may not be in this photo  
12 lineup, you are under no obligation to pick anybody nor  
13 should you feel compelled to pick anybody in the photo  
14 lineup, please take your time, look at this photo lineup,  
15 look at the pictures individually, and if you recognize  
16 somebody please tell us who it is.

17 And then the lineup would be handed -- the only  
18 difference that I saw from the old way to the new way is  
19 we're handing them photographs one at a time in the new  
20 way and the other ones there was a possibility that they  
21 could compare pictures.

22 Q Now, so this is just -- the way that you  
23 described it, you showed the photo array to Ms. McDermid,  
24 essentially you could call it a new and improved way?

25 A Yeah, it's just new procedure.

1           Q     But so far as you are concerned the old way was  
2 all right?

3           A     I had as many non identifications and  
4 identifications, roughly the same ratio as I did then as I  
5 do now when I show photo lineups.

6           Q     Now, did you, for example you specifically, have  
7 you received training in showing photo arrays to  
8 witnesses?

9           A     We have got some in-service type training in  
10 respect to showing sequential photo lineups.

11          Q     And does the training teach you to not tip your  
12 hand or tip to the witness that a suspect might be in the  
13 photo array?

14          A     Yes, it does. It re-enforces that you should be  
15 very sterile, shall we say, in how you show the photo  
16 lineup.

17          Q     And do you follow that proper procedure in the  
18 photo arrays that you do, not just with the new technique  
19 but the old technique?

20          A     Yeah. I try to be very consistent throughout  
21 how I show photo lineups.

22          Q     Is it important not to tip to a witness who is a  
23 -- if a suspect is in the photo array?

24          A     Yeah, I think it's very important to not tip  
25 your hand.

1 Q Why is that?

2 A Because you want the truth from what the victim  
3 recalls.

4 Q Thank you, sir.

5 MR. FURNSTAHL: That's all I have.

6 THE COURT: Anything else, Mr. Benson?

7 MR. BENSON: Yes, briefly, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MR. BENSON:

10 Q So we can agree it's important not to tip your  
11 hand as far as who the target is or who the suspect is?

12 A Absolutely, sir.

13 Q And we can agree -- or can we agree that the new  
14 way, one of the factors of the new way is if at all  
15 possible to have someone not related to the investigation  
16 conduct the identification procedure?

17 A If staffing allows it, yeah. It's a preferred  
18 method.

19 Q Okay. And that once again is to avoid a  
20 situation where someone would inadvertently or  
21 intentionally tip their hand?

22 MR. FURNSTAHL: Objection. It's redundant,  
23 Judge.

24 THE COURT: Overruled. I'll allow him to  
25 answer because he talked about it on redirect. Go



1 ahead.

2 THE WITNESS: I believe it's important that  
3 we don't tip our hands and the new procedure as  
4 presented to us was as another failsafe way of trying  
5 not to have that happen.

6 BY MR. BENSON:

7 Q Okay. By having someone not involved in the  
8 investigation do the procedure?

9 MR. FURNSTAHL: Objection, redundant.

10 THE COURT: Sustained.

11 MR. BENSON: Thank you, Sergeant. No other  
12 questions.

13 MR. FURNSTAHL: Nothing further.

14 THE COURT: You can step down, Sergeant.

15 THE WITNESS: Thank you, Your Honor.

16 (Witness excused.)

17 MR. FURNSTAHL: Call Sergeant Jerry Wehr.

18 THE COURT: Sergeant, step right up here in  
19 front and raise your right hand to be sworn.

20 Whereupon,

21 GERHARD WEHR,

22 after having been first duly sworn, was examined  
23 and testified as follows:

24 THE CLERK: Please state your full name and  
25 spell your last for the record.

1 THE WITNESS: Gerhard Wehr, W-E-H-R.

2 THE COURT: Okay, Mr. Furnstahl.

3 MR. FURNSTAHL: Thank you.

4 DIRECT EXAMINATION

5 BY MR. FURNSTAHL:

6 Q How are you employed, sir?

7 A I'm a sergeant with the Minneapolis police  
8 department.

9 Q And so are you a licensed peace officer in the  
10 state of Minnesota?

11 A Yes, I am.

12 Q Where are you employed?

13 A The city of Minneapolis in the homicide  
14 division.

15 Q And how long have you been with the city of  
16 Minneapolis as a police officer?

17 A 19 years.

18 Q How long have you been in the homicide division?

19 A Three years.

20 Q So were you in that division in May of 2004?

21 A That's correct.

22 Q And did you have an occasion to speak to a  
23 person identified to you as Ravi Seeley?

24 A Yes, I did.

25 Q Did you have a partner with you at that time?

1 A Yes. Sergeant Pat King.

2 Q Did the two of you meet with Mr. Seeley?

3 A That's correct.

4 Q And without giving an address, could you  
5 indicate where it was that you met with Mr. Seeley?

6 A It was at his home.

7 Q All right. Now, had you been assigned, you or  
8 Sergeant King been assigned to the flower shop murder?

9 A No, we were not.

10 Q Were you aware that it had occurred prior to  
11 speaking to Mr. Seeley?

12 A Yes.

13 Q Were you aware as to whether or not a suspect  
14 had been identified?

15 A No.

16 Q Did you have any contact with that  
17 investigation?

18 A None.

19 Q What was the purpose, if you had no contact with  
20 that investigation, what was the purpose for your and  
21 Sergeant King having gone to speak to Mr. Seeley?

22 A Sergeants Mattson and Keefe requested that we go  
23 show a sequential lineup. We had a new system in place  
24 with lineups. It was called the sequential lineup where  
25 somebody outside of the case who has no relationship to

1 the case, doesn't know anything about the case, would show  
2 the lineup to a witness.

3 Q Did you have a sequential lineup then when you  
4 went to meet Mr. Seeley?

5 A Yes.

6 Q And did you prepare that or did someone prepare  
7 that for you?

8 A Somebody else prepared it.

9 Q Do you know who prepared it?

10 A Either Sergeant Keefe or Mattson.

11 Q Okay. Do you know for sure?

12 A I do not know.

13 Q Do you know if the sequential lineup that you  
14 had with you when you went to meet with Ravi Seeley,  
15 whether or not it in fact contained a photograph of a  
16 suspect?

17 A I would assume it would have a suspect.

18 Q But did you know?

19 A I did not know.

20 Q And did you have any idea or any assumption as  
21 to which of the photographs might be the suspect that's,  
22 you know, was contained in the photo array?

23 A No, I did not.

24 Q Now, when you met with Mr. Seeley, at some point  
25 in time did you request to take a formal question and

1 answer statement from him?

2 A Yes, we did.

3 Q Is that something that's usually -- that's a  
4 fairly routine procedure when you have a witness that has  
5 some information on something as serious as a homicide?

6 A That's correct.

7 Q In this case Mr. Seeley did not want to give a  
8 formal statement, is that correct?

9 A That's correct.

10 Q He did not want his identity made known, is that  
11 correct?

12 A Correct.

13 Q And you accommodated his wishes?

14 A Yes, we did.

15 Q Now, with respect to taking a -- and then as a  
16 result of which did you prepare a supplement or a report  
17 that you and Sergeant King prepared in relation to your  
18 contact with Mr. Seeley?

19 A Yes, we did.

20 Q And did that supplement contain your comments  
21 that Mr. Seeley made to you in respect to what he knew  
22 about the flower shop murder?

23 A Yes.

24 Q Also discussed the procedures and the results of  
25 the photo array?

1 A That's correct.

2 Q Now, with respect to obtaining a formal Q and A  
3 from a witness, you've been a cop for how long?

4 A 19 years.

5 Q Have you testified before?

6 A Yes, I have.

7 Q Any idea how long you've testified -- how many  
8 times you've testified, rather?

9 A No idea.

10 Q Bunch of times?

11 A A lot.

12 Q Is it helpful to you to have a supplement or  
13 report of your own to help you refresh your recollection  
14 about events?

15 A Yes, it is.

16 Q And has it been your experience that a witness  
17 can use a formal statement that they have given to refresh  
18 their recollection about the events?

19 A Yes.

20 Q And has that been the experience when a case say  
21 doesn't come to trial for 14 or 15 months after the event?

22 A It's very helpful.

23 Q Now, with respect to the photo array that you  
24 showed to Mr. Seeley --

25 MR. FURNSTAHL: May I approach?

1 THE COURT: You may.

2 BY MR. FURNSTAHL:

3 Q Directing your attention to Exhibit 47, I'd ask  
4 you if you could look at that and if you can identify  
5 that, please?

6 A Yes. This would be the photo lineup that I  
7 showed Mr. Seeley.

8 MR. FURNSTAHL: We would offer the exhibit.

9 MR. BENSON: No objection, Your Honor.

10 THE COURT: Exhibit 47 will be received.

11 BY MR. FURNSTAHL:

12 Q Now, would you put those in the order that you  
13 showed them to Mr. Seeley? Are they one through six?

14 A Yes, they are.

15 Q And with the photographs, could you explain and  
16 show the jurors the procedure that you followed when you  
17 showed the photo array to Ravi Seeley on May -- what date  
18 was it?

19 A May 19th, I believe.

20 Q Yes.

21 A Basically you ask them, you tell them you are  
22 going to show them six photographs, the person or the  
23 suspect may or may not be in the photograph or any of the  
24 photographs, you are not obligated to choose anyone, if  
25 you recognize anyone at all please let me know how you

1 know them and from where, and again you are not obligated  
2 to choose anybody, if you want to look at the lineup a  
3 second time or any photo a second time I'll need to show  
4 you the whole series in sequential order again, so.

5 Then it would go something like one, two, and then  
6 you look for their responses, either nodding their head or  
7 saying something, four, five, and six. Then if they want  
8 to look at them again you go through the same order.

9 Q Was that the procedure that you followed then  
10 with Mr. Seeley?

11 A That's correct.

12 Q Now before I forget, what time of the day was it  
13 on May 19th that you met with Mr. Seeley?

14 A It was in the evening. Probably 7:30 -- or  
15 5:30, six o'clock, I believe. I'm not sure.

16 Q Would looking at your report refresh your  
17 recollection?

18 A Yes.

19 Q Do you have it with you?

20 A I do. It was four o'clock on May 19th.

21 Q So four in the afternoon?

22 A Four in the afternoon Mattson and Keefe asked us  
23 to go speak to the witness and then we had to drive to his  
24 house, so.

25 Q So however much --



1           A     It was probably about an hour, around  
2 five o'clock.

3           Q     Five o'clock in the afternoon?

4           A     Correct.

5           Q     Best estimate?

6           A     Yes.

7           Q     Now, when you are showing the photo -- the  
8 sequential lineup to Ravi Seeley, at any point in time  
9 does he make any comments regarding any identification?

10          A     Yes, he did.

11          Q     What did he do?

12          A     Well, we got to number five he said that looks  
13 -- hold on to that one, was his initial thing. Then we  
14 got to six and he stated that looks like the other guy.

15          Q     What did he mean by the other guy?

16          A     Well, we clarified that later is he thought five  
17 and six had been together a week prior to that shooting on  
18 a Sunday, I believe it was Mother's Day where he had seen  
19 both of these parties walking around the neighborhood.

20          Q     Then after you -- so that was the first time you  
21 went through the sequential lineup?

22          A     Correct.

23          Q     Did you go through it a second time?

24          A     Yes, I did.

25          Q     Was that at his request or your request?

1 A His request.

2 Q And tell us what happens.

3 A Went through the exact same order again then we  
4 got to number five, he stated that's him, that's the one I  
5 saw at the flower shop.

6 Q Did he express any confusion or doubt at that  
7 point in time?

8 A No.

9 Q And then what does he say about number six?

10 A He said that looks like the guy again who was  
11 with him on Mother's Day, but he wasn't sure.

12 Q Now, prior to showing that --

13 MR. FURNSTAHL: And may I approach?

14 THE COURT: You may.

15 BY MR. FURNSTAHL:

16 Q Is it correct that photo number five is a  
17 photograph of Marvin Haynes Jr.?

18 A Correct.

19 Q And this is a photograph from August 22nd of  
20 2002?

21 A That's correct.

22 Q So a couple years old at the time that you  
23 showed it to Ravi Seeley?

24 A Yes.

25 Q And did you have Ravi Seeley do anything to

1 indicate that that was the person that he identified?

2 A He initialed and dated the top of the photo.

3 Q Now, at the time that you showed the sequential  
4 lineup to Ravi Seeley, did you have any idea that Marvin  
5 Haynes may or may not be a suspect in the flower shop  
6 murder?

7 A No, I didn't.

8 Q Did you learn that sometime later on?

9 A Yes.

10 Q When did you learn that?

11 A After the fact when I handed the lineup to  
12 Sergeant Keefe.

13 Q So did you have any opportunity or any ability  
14 to inadvertently or otherwise suggest to Ravi Seeley that  
15 he should pick out the photograph of Marvin Haynes?

16 A No.

17 Q Did Sergeant King have any such knowledge?

18 A No.

19 Q You guys were working other details?

20 A Excuse me?

21 Q Were you guys working other cases?

22 A Yes, we were.

23 Q Plenty enough to do in the homicide division  
24 without being involved in somebody else's case, is that a  
25 fair statement?

1 A That's correct.

2 Q Now, following that, did you take a statement  
3 from Mr. Seeley?

4 A We did not take a taped statement.

5 Q Okay. Let me clarify. Following that did you  
6 talk to Ravi Seeley?

7 A Yes.

8 Q And by statement, you mean a formal Q and A?

9 A Correct.

10 Q And he did not want to go on tape?

11 A That's correct.

12 Q He had some concerns about that?

13 A About his safety, yes.

14 Q And you accommodated him?

15 A Correct.

16 Q At this point in time did you have any knowledge  
17 that he picked the right guy or the wrong guy out of the  
18 photo array?

19 A Well, I know that -- I have no idea if he picked  
20 the right guy. I know that he picked a suspect.

21 Q Okay. And do you have any knowledge as to what  
22 information he has about the flower shop murder?

23 A No.

24 Q All right. So when you go out there, Sergeant  
25 Mattson and Sergeant Keefe ask you to show a photo array

1 to Ravi Seeley but they do not brief you on what  
2 information he may or may not have?

3 A That's correct.

4 Q All right. So when you and Sergeant King talked  
5 to him then, what did he say? What does he tell you?

6 A Sergeant King did most of the interview. I was  
7 sitting next to him. He asked him where he was, what  
8 about church. He tells us he was going to church, he was  
9 with his friend, they had left church earlier, they were  
10 just walking around the neighborhood when they see number  
11 five, Marvin Haynes, and the other guy walking around.  
12 And then he goes into a story about what happened on  
13 Mother's Day, that these two approached them, asked them  
14 for money, made some comments about his clothing and  
15 that's kind of how they remembered him, and then they  
16 walked away from him because they thought they were up to  
17 something.

18 Then he gets back to what happened on May 16th, I  
19 believe, the day of the murder, where he sees them again  
20 walking down the street, they pass each other. He doesn't  
21 want anything to do with them so then he walks away, turns  
22 and goes the other way, and then as they are walking  
23 getting closer to the flower shop he hears a gunshot, at  
24 which time he sees that same person, number five, running  
25 out of the flower shop.

1           Q     Okay. I want to go back over that again in a  
2 little bit more detail, okay? So initially he starts  
3 talking about --

4                     MR. BENSON: Objection, Your Honor.

5                     THE COURT: What's the objection?

6                     MR. BENSON: First of all, asked and  
7 answered. Secondly, can we approach?

8                     THE COURT: You may approach.

9                                     (Off-the-record discussion at  
10 the bench out of hearing of the jurors.)

11 BY MR. FURNSTAHL:

12           Q     Sergeant, I want to go into your conversation  
13 with Ravi Seeley in more detail, and do you have a copy of  
14 your report?

15           A     Yes.

16           Q     Do you have it in front of you?

17           A     That's correct.

18           Q     All right. I want to go through this step by  
19 step as you had with Mr. Seeley, Ravi Seeley, and if at  
20 any time you need to refer to your -- if you don't recall,  
21 ask to refer to your report and then read it silently to  
22 yourself before answering the question, okay?

23           A     Okay.

24           Q     All right. You said, now, first of all you told  
25 us basically the sequence of his statement to you was that

1 he talked about the day of the flower shop murder for a  
2 bit, then he talked about the week before, then he went  
3 back to the flower shop, is that right?

4 A That's correct.

5 Q All right. So let's talk about the first part  
6 where he talked about the day of the flower shop first,  
7 okay? Did he say where he was prior to seeing the  
8 suspect?

9 A He stated he was at church.

10 Q And what time was it that he left the church?

11 A I believe it was around 11:30 in the morning.

12 Q Did he say where he was going?

13 A To a store. I think he called it the Chinese  
14 store.

15 Q Did he say if he was going with anyone?

16 A He had a friend with him.

17 Q Did he say whether or not he passed anybody  
18 while going to the Chinese store?

19 A Yes, he did.

20 Q Who was that?

21 A I believe he passed the same guy that he picked  
22 out, number five. The guy kind of mean-mugged him, is  
23 what he stated.

24 Q Now, you said you believe he said that. Did he  
25 say that he believed? Was he unsure or did he say that

1 for certain?

2 A No. He said it for certain.

3 Q Did he say on how many occasions he had seen  
4 this person, the guy that he identified in photograph  
5 number four, how many prior occasions he had seen him?

6 A Photograph number five?

7 Q Yes.

8 A I believe it was two times. I would have to  
9 look at my report.

10 Q Go ahead and take a look.

11 A Yeah. It would have been two times, Mother's  
12 Day and then the day of the murder.

13 Q Okay. And did he say what he was concerned  
14 about when he saw him the second time, that is when he was  
15 walking to the Chinese store?

16 A Yeah. He thought he was going to pester him,  
17 bother him for money.

18 Q All right. Then did he talk about what occurred  
19 on Mother's Day?

20 A Yes, he did.

21 Q Did he say whether or not the person he  
22 identified in number five as, you know, photograph number  
23 five, whether or not that person approached him?

24 A Yes, he did.

25 Q And what was that person doing at that time?



1           A     He thought he was up to something. He was just  
2 standing on the corner. He thought he was up to  
3 something.

4           Q     Instead of referring to him as number five I'm  
5 going to refer to him by his name, Marvin Haynes, okay?

6           A     Okay.

7                     MR. BENSON: Objection, Your Honor. I ask  
8 that he be referred to as number five.

9                     THE COURT: What's the objection?

10                    MR. BENSON: That Ravi Seeley was  
11 identifying a photo rather than referring to him as  
12 Mr. Haynes.

13                    THE COURT: Well, he picked out the photo  
14 which is the photo of Marvin Haynes so I'll allow him  
15 to refer to him by name.

16 BY MR. FURNSTAHL:

17           Q     Did Ravi Seeley then indicate whether or not he  
18 had a conversation with Marvin Haynes, Jr.?

19           A     On the day of the murder?

20           Q     No. On Mother's Day. Talking about Mother's  
21 Day now.

22           A     I would have to look at my report.

23           Q     Go ahead. You stated that he had approached  
24 begging for money, then was there a conversation?

25           A     Yes, there was a conversation about his

1 clothing.

2 Q All right. And then did Ravi say whether or not  
3 later on on Mother's Day he saw Marvin Haynes, Jr. again?

4 A Yes, he did.

5 Q Was Marvin Haynes, Jr. with someone at that  
6 time?

7 A I would have to refresh my memory.

8 Q Go ahead. That's the reason we make reports,  
9 right?

10 A That's correct.

11 Q Directing your attention to the bottom of page  
12 one, what I'm asking is, later in the day on Mother's Day  
13 whether or not Ravi Seeley sees Marvin Haynes a second  
14 time on Mother's Day?

15 A Yes. He stated that he saw them, they were  
16 standing on the corner and that they looked like they were  
17 planning something.

18 Q Okay. So he sees him a second time?

19 A Correct.

20 Q Is he with anyone the second time he sees him on  
21 Mother's Day?

22 A Yes.

23 Q And does he indicate whether or not, does Ravi  
24 Seeley indicate whether or not that person, whether or not  
25 anyone in the photo array looked like the person that was

1 with Marvin Haynes the second time he sees him on Mother's  
2 Day?

3 A He thought that was number six.

4 Q All right. And did he say where he saw Marvin  
5 Haynes and the person that looked like number six was when  
6 he saw him, where they were when he saw them a second time  
7 on Mother's Day?

8 A He was on Lyndale Avenue on the corner looking  
9 at the flower shop.

10 Q All right. Did he tell you where exactly it  
11 was? Or which direction on 33rd?

12 A He told us it was south of 33rd on Lyndale.

13 Q Did he say what it appeared that Marvin Haynes  
14 and this other individual were doing?

15 MR. BENSON: Objection, asked and answered.

16 THE COURT: Sustained.

17 BY MR. FURNSTAHL:

18 Q Then he got back to talking to you about what  
19 happened on the day of the flower shop murder, is that  
20 correct?

21 A Correct.

22 Q Did he indicate whether or not he had any  
23 concerns about what Marvin Haynes was going to do when he  
24 saw him on the date of the flower shop murder?

25 A Yes, he did.

1 Q What did he say?

2 A He stated that as he walked past them and saw  
3 him the guy kind of mean-mugged him, he thought he was  
4 going to pester him, beg for some more money, he didn't  
5 know what was up.

6 Q So what did Ravi Seeley and his friend do then?

7 A I believe they walked across the street away  
8 from these two parties.

9 Q Did Ravi Seeley say whether or not he watched  
10 Marvin Haynes walk away?

11 A Yes.

12 Q Did he describe how he walked?

13 A He said he walked away quickly towards the rose  
14 shop.

15 Q What did you understand the rose shop to mean?

16 A To mean the flower shop.

17 Q And then did Ravi Seeley say what he and his  
18 friend did after he and his friend left the Chinese store?

19 A Yes.

20 Q What were they doing?

21 A They were walking around, they were just kind of  
22 away from church walking around through the neighborhood.

23 Q And did they hear anything?

24 A They heard a gunshot.

25 Q Where were they when they heard the gunshot?

1           A     They were I believe directly across the street  
2     from the flower shop.

3           Q     And then after he heard the gunshot, what did  
4     Ravi Seeley say he saw?

5           A     He said he saw Marvin Haynes run out of the  
6     front door of the flower shop.

7           Q     Did he say how far he was from Marvin Haynes at  
8     that time?

9           A     Stated 30 to 40 feet.

10          Q     And did he express any uncertainty as to whether  
11     or not it was the same male that he had seen earlier and  
12     twice on Mother's Day?

13          A     No. He was positive.

14          Q     Did he say what his friend did after hearing the  
15     gunshot?

16          A     He said his friend ran away, ran back towards  
17     the church.

18          Q     And did Ravi Seeley say anything about seeing  
19     anything about this on the news?

20          A     Yes, he did.

21          Q     And as a result of seeing it, something on the  
22     news about this, what did Ravi Seeley say he did?

23          A     He contacted the police and let them know that  
24     he had some information, or he thought he had information  
25     about what had happened at the flower shop.

1 Q Thank you, sir.

2 MR. FURNSTAHL: That's all I have.

3 THE COURT: Cross-examination, Mr. Benson?

4 MR. BENSON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BENSON:

7 Q Good morning, sir.

8 A Good morning.

9 Q Sergeant Wehr, you and Sergeant King conducted  
10 the interview of Ravi Seeley, is that right?

11 A Correct.

12 Q And when -- there's no other police officer  
13 there?

14 A Correct.

15 Q And after you conducted that interview you  
16 reported what you learned, you did a police report but you  
17 also reported it to Sergeant Mattson, is that correct?

18 A Sergeant Mattson or Keefe.

19 Q Okay. And Sergeants Mattson and Keefe were the  
20 lead officers or lead investigators in this case?

21 A That's correct.

22 Q All right. Now, Ravi Seeley, in addition to  
23 what you've reported, gave a description of the person  
24 that ran out of the store, is that correct?

25 A I would have to refer to my report, if I could.

1 Q Feel free. Feel free to look at the bottom of  
2 page one as far as a description.

3 A Um-hum. Yes, he did.

4 Q So Ravi Seeley gave a description. Did you take  
5 any notes in addition to this supplement?

6 A No, I did not.

7 Q Okay. Did Sergeant King?

8 A I don't recall if he did or not.

9 Q All right. Within the description, and let's  
10 ask from your recollection as you sit here now and if you  
11 need to refer to your report that's fine, but from the  
12 description that Ravi Seeley gave you, he indicated that  
13 there was -- a suspect had short hair?

14 A He indicated clothing, I believe, was what he  
15 indicated.

16 Q And it's fair to say clothing is what you have  
17 listed in your report, right?

18 A Correct.

19 Q Okay. But during the course of your, I mean  
20 your questioning of Ravi Seeley, he did give a description  
21 of the person, didn't he?

22 A I don't recall, no.

23 Q You don't recall? Well, if Sergeant Keefe and  
24 Sergeant Mattson had a description from Ravi Seeley of the  
25 description of the shooter, that would come from either

1       you or Sergeant King, is that fair to say?

2                   MR. FURNSTAHL:  Objection, calls for  
3       speculation.

4                   THE COURT:  Overruled.  You can answer if  
5       you know.

6                   THE WITNESS:  I don't believe Sergeant  
7       Keefe or Mattson had spoken with Mr. Seeley prior.

8                   MR. FURNSTAHL:  Can we approach, Judge?

9                   THE COURT:  You may.

10                               (Off-the-record discussion at  
11       the bench out of hearing of the jurors.)

12       BY MR. BENSON:

13               Q       So when you were questioning Ravi Seeley, did  
14       you ask what the shooter looked like?

15               A       He had already chosen him out of the lineup.

16               Q       But as you indicated you knew nothing about this  
17       case?

18               A       Correct.

19               Q       You know that Ravi Seeley chose a picture out of  
20       the lineup?

21               A       Correct.

22               Q       And at that time you didn't know that picture  
23       that he chose out of the lineup was a 2002 picture of  
24       Marvin Haynes?

25               A       Correct.



1           Q     And at the time that Ravi Seeley chose the  
2 picture out of the lineup, you didn't know that Marvin  
3 Haynes' hair was longer, was longer than was demonstrated  
4 in that picture?

5           A     That's correct.

6           Q     Okay. So is it your testimony that after Ravi  
7 Seeley picked number five saying that that looked like the  
8 person that ran out of the store --

9                     MR. FURNSTAHL: Objection to that. That  
10                    misstates the testimony.

11                   THE COURT: Sustained.

12 BY MR. BENSON:

13           Q     After Ravi Seeley picked picture number five  
14 which was a 2002 picture of Marvin Haynes, you never asked  
15 what the person looked like?

16           A     No.

17           Q     Okay. You made an assumption that the person  
18 looked like number five?

19           A     He chose him out of the lineup.

20           Q     But you made the assumption that he was right?

21           A     Correct.

22                   MR. FURNSTAHL: Objection. Argumentative  
23                    and irrelevant.

24                   THE COURT: Sustained.

25 BY MR. BENSON:

1           Q     And when you did that -- so you didn't ask at  
2 any point for a description of the person that Ravi Seeley  
3 saw?

4                   MR. FURNSTAHL:  Objection, redundant.

5                   THE COURT:  Overruled.  He can answer that  
6 one.

7                   THE WITNESS:  No.

8 BY MR. BENSON:

9           Q     Okay.  And you didn't -- when I asked that, you  
10 didn't ask for a description from Ravi Seeley of what did  
11 this person that ran out of the store, what did they look  
12 like?

13                   MR. FURNSTAHL:  Objection.  Asked and  
14 answered.

15                   THE COURT:  Sustained.

16 BY MR. BENSON:

17           Q     You didn't ask for any descriptive features of  
18 the person that ran out of the store?

19                   MR. FURNSTAHL:  Same objection, Judge.

20                   MR. BENSON:  Different question.

21                   THE COURT:  No, I think it's the same.

22                   I'll sustain it.

23 BY MR. BENSON:

24           Q     And you agree that that photograph, picture  
25 number five, shows a person with short hair?

1 A That's correct.

2 Q And when Ravi Seeley, when you went through the  
3 identification process, Ravi Seeley got to picture number  
4 five and Ravi Seeley told you to hold on to that one?

5 A Yes.

6 Q He was considering that one?

7 MR. FURNSTAHL: Objection. That calls for  
8 speculation.

9 THE COURT: Sustained.

10 BY MR. BENSON:

11 Q He told you to hold on to that picture?

12 A Correct.

13 Q Then he looked at number six?

14 A That's correct.

15 Q And when he looked at number six, he indicated  
16 that that might be the other person that was with the  
17 person on Mother's Day?

18 A Correct.

19 Q And you knew nothing about the investigation at  
20 that time as you've said, correct?

21 A That's correct.

22 MR. FURNSTAHL: Objection, redundant.

23 THE COURT: Overruled.

24 BY MR. BENSON:

25 Q Do you know now that number five and number six

1 have no connection whatsoever?

2 MR. FURNSTAHL: Objection. That assumes  
3 facts not in evidence.

4 THE COURT: You can answer if you know.

5 THE WITNESS: I have no idea if they are  
6 connected or not.

7 BY MR. BENSON:

8 Q Did you ask for a description from Ravi Seeley  
9 regarding a description of the, not the person that ran  
10 out of the flower shop, but the other person that was with  
11 the person that ran out of the flower shop?

12 A I believe he had only said there was one person  
13 running out of the flower shop. He didn't say there was  
14 two.

15 Q There was a person that ran out of the flower  
16 shop, according to Ravi Seeley?

17 A Correct.

18 Q Okay. Earlier in that day or the week before  
19 there was another person with that person that ran out of  
20 the flower shop, correct?

21 A Correct.

22 Q That would be the person that Ravi Seeley  
23 indicated was, looked like number six?

24 A Correct.

25 Q All right. Did you, during the course of your

1 interview with Ravi Seeley, you didn't ask for a  
2 description of that person, correct?

3 A Correct.

4 Q And you yourself, since May 19, 2004, you  
5 yourself have not shown Ravi Seeley that lineup again, is  
6 that correct?

7 A That's correct.

8 Q Is Sergeant King your partner?

9 A Yes, he was.

10 Q Is he still your partner?

11 A No.

12 MR. BENSON: May I have a moment, Your  
13 Honor?

14 THE COURT: You may.

15 BY MR. BENSON:

16 Q And Sergeant, May 19th was the last date that  
17 you spoke to Ravi Seeley, is that correct?

18 A It was the only day I spoke with him.

19 Q Thank you.

20 MR. BENSON: Nothing further, Your Honor.

21 THE COURT: Redirect, Mr. Furnstahl?

22 MR. FURNSTAHL: Yes.

23 REDIRECT EXAMINATION

24 BY MR. FURNSTAHL:

25 Q Was the contact with Ravi Seeley in showing him

1 the photo array and having the conversation with him, was  
2 that the sum and substance of the work that did you in  
3 this case?

4 A That's correct.

5 Q You didn't do anything else?

6 A No, I did not.

7 Q Now, counsel had suggested in his questions that  
8 with respect to photographs number five and six, he asked  
9 you whether or not you knew if they had any connection to  
10 each other. Do you remember that question?

11 A Yes, I do.

12 Q You don't know, is that right?

13 A I have no idea.

14 Q So far as you know, because you have limited  
15 contact with this case, there might be a connection  
16 between photographs five and six?

17 A There could be.

18 Q Number six could be the person that was with the  
19 defendant outside the flower shop on Mother's Day weekend  
20 looking like he was planning something?

21 MR. BENSON: Objection, speculation.

22 THE COURT: You can answer if you know.

23 THE WITNESS: I do not know.

24 BY MR. BENSON:

25 Q Or number six could look like the person that

1 was with the defendant the week before on Mother's Day,  
2 you just don't know, right?

3 A I don't know.

4 Q So if it's suggested that they have no  
5 connection, you are not the person that could testify  
6 whether they do or do not have a connection?

7 A That's correct.

8 Q And there's nothing in your report that would  
9 suggest to anybody that you were representing that the two  
10 have a connection?

11 A That's correct.

12 Q Now, counsel had pointed out that when you  
13 showed the sequential lineup to Ravi Seeley the first time  
14 he asked you to hold on to number five, is that right?

15 A That's correct.

16 Q Then did Ravi Seeley ask to see the lineup a  
17 second time?

18 A Yes, he did.

19 Q Did he say why?

20 A Because he wanted to be sure.

21 Q Did you, in your report did you record that?

22 A Yes, we did.

23 Q Was that in quotes or not?

24 A I believe it -- yes, it was.

25 Q So that is his quote, to be sure, he wanted to

1 see it the second time to be sure?

2 A Correct.

3 Q Then when he saw it the second time did he  
4 indicate any uncertainty?

5 A No, he did not.

6 Q He was sure?

7 A Yes, he was.

8 MR. FURNSTAHL: That's all I have.

9 THE COURT: Anything else, Mr. Benson?

10 MR. BENSON: No, Your Honor.

11 THE COURT: You can step down, Sergeant.

12 (Witness excused.)

13 THE COURT: Members of the jury, we'll take  
14 our morning recess at this time. Please remember to  
15 leave your notebooks on your chair and you have  
16 15 minutes.

17 (Recess.)

18 THE COURT: Okay, Mr. Furnstahl, you can  
19 call your next witness.

20 MR. FURNSTAHL: We would call Dennis Maki.  
21 Officer Maki.

22 Whereupon,

23 DENNIS MAKI,  
24 after having been first duly sworn, was examined  
25 and testified as follows:



1 THE CLERK: Please state your full name and  
2 spell your last for the record.

3 THE WITNESS: Dennis Maki, M-A-K-I.

4 THE COURT: Go ahead, Mr. Furnstahl.

5 DIRECT EXAMINATION

6 BY MR. FURNSTAHL:

7 Q How are you employed, sir?

8 A I'm a city of St. Louis Park police department  
9 police officer.

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

12 A Yes.

13 Q How long have you been so licensed?

14 A Ten years.

15 Q How long have you been with the St. Louis -- St.  
16 Louis Park, is that what you said? How long have you been  
17 with that department?

18 A Ten years.

19 Q So you were employed by them on May 18, 2004?

20 A Yes.

21 Q Were you on duty that day?

22 A Yes.

23 Q What was your assignment on May 18, 2004?

24 A Patrol officer.

25 Q As a patrol officer, would you check in with the

1 junior high schools in the area?

2 A Yes. The junior high school in St. Louis Park  
3 is in my patrol district and I'm a former school liaison  
4 officer so I'd frequently check in with the school.

5 Q So you were not necessarily assigned to the  
6 school at the time, you would just check in?

7 A Yes.

8 Q And was there a regular time when you would  
9 check in or just be intermittent?

10 A Intermittent.

11 Q On May 18, 2004, did you check in at the junior  
12 high school?

13 A Yes.

14 Q About what time was that?

15 A I would have to actually look at my report. I'm  
16 not sure of the time.

17 Q Do you have that with you?

18 A No, I do not.

19 MR. FURNSTAHL: May I approach?

20 THE COURT: You may.

21 THE WITNESS: It would be ten o'clock in  
22 the morning.

23 BY MR. FURNSTAHL:

24 Q Why don't you give that answer again so  
25 everybody hears it?

1 A Approximately ten o'clock in the morning.

2 Q Were you approached by anybody?

3 A Yes, I was..

4 Q By whom were you approached?

5 A A student of the junior high.

6 Q Do you remember his name?

7 A Ravi, I believe his last name was Seeley.

8 Q And did he provide you with some information?

9 A Yes, he did.

10 Q Was he with anybody or was he alone?

11 A He was with another student.

12 Q What information did he provide to you?

13 A He said that he had information of a homicide  
14 that just occurred in Minneapolis, and I wasn't sure what  
15 he was talking about at first and then in conversation it  
16 was the flower shop homicide. The student that was with  
17 him stated --

18 MR. BENSON: Objection. Hearsay.

19 THE COURT: Sustained.

20 BY MR. FURNSTAHL:

21 Q Forget about what the other student said.

22 A Okay. Ravi, I just questioned him to make sure  
23 that what he was talking about was that homicide, the  
24 flower shop homicide, and that information that he had was  
25 pertinent to the case. I can't remember the specifics

1       that I asked him like and he -- the information he gave me  
2       indicated that it would help Minneapolis homicide. I  
3       didn't want to taint his testimony or statements so I  
4       stopped my conversation with him and contacted Minneapolis  
5       homicide.

6           Q     All right. Did you make arrangements for  
7       someone from the Minneapolis homicide office to meet with  
8       Mr. Seeley?

9           A     Yes.

10          Q     Ravi Seeley?

11          A     Yes.

12          Q     When and where did that occur?

13          A     I believe it was a couple days later and it was  
14       at the St. Louis Park junior high.

15          Q     Would looking at your report refresh your  
16       recollection?

17          A     Yes. It would be the next day at approximately  
18       10:30 in the morning.

19          Q     Who did you arrange to meet with Ravi Seeley?

20          A     Sergeant Mattson of Minneapolis homicide.

21          Q     Okay. Now, going back to your initial -- well,  
22       when you met on the 19th, did you interview Ravi at that  
23       time?

24          A     When Sergeant Mattson was there?

25          Q     Yeah. And I'm asking did you interview him?

1 A No.

2 Q And were you careful not to interview him on the  
3 18th?

4 A Yes.

5 Q All right. Why was that?

6 A I didn't want to taint his story or the case  
7 involved with the homicide.

8 Q All right. Now, going back to your initial  
9 contact with Ravi on May 18th, you said that he was with  
10 another person?

11 A Yes.

12 Q Was that another young student?

13 A Yes.

14 Q And who first approached you? Was it Ravi or  
15 the other student?

16 A They were both together.

17 Q All right. Who first talked to you? Was it  
18 Ravi or the other student?

19 A I couldn't specifically answer that. I can't  
20 recall.

21 Q Did anyone come to you and indicate to you that  
22 they had -- did anyone other than Ravi come to you and  
23 indicate to you that they had information on the flower  
24 shop murder and then provide you Ravi Seeley's name that  
25 resulted in you going to look for Mr. Seeley?

1 A No.

2 Q Was it Ravi that provided that information?

3 A Yes.

4 Q He volunteered it?

5 A Yes.

6 Q And your being at the high school that day, that  
7 was not a regular stop?

8 A At the junior high, no, it was not a regular  
9 stop.

10 Q You just happened to be driving by and stopped  
11 in?

12 A Yes. I was for four years the school liaison,  
13 DARE officer so I knew pretty much all the students in the  
14 junior high. That's one of the reasons I swing by there.

15 Q How long had you left your position as DARE  
16 officer, how long prior to May 18th had you been gone and  
17 on patrol?

18 A I was off the DARE position for about a year,  
19 but the officer who had taken over for me was injured so I  
20 refilled the position for about six months. At the time  
21 of this incident I believe that was about six months and I  
22 was off the DARE position.

23 Q So students who were at the junior high school  
24 wouldn't necessarily know what time you were going to show  
25 up or not show up?

1 A No.

2 Q Thank you, sir.

3 MR. FURNSTAHL: That's all I have.

4 THE COURT: Cross-examination, Mr. Benson?

5 MR. BENSON: No questions, Your Honor.

6 THE COURT: You can step down, Officer.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MR. FURNSTAHL: Then call Tawanda Logan.

10 Whereupon,

11 TAWANDA LOGAN,

12 after having been first duly sworn, was examined

13 and testified as follows:

14 THE CLERK: Please state your full name and  
15 spell your last for the record.

16 THE WITNESS: Tawanda Logan, L-O-G-A-N.

17 THE COURT: Okay, Mr. Furnstahl.

18 MR. FURNSTAHL: Thank you.

19 DIRECT EXAMINATION

20 BY MR. FURNSTAHL:

21 Q Good morning, Ms. Logan.

22 A Good morning.

23 Q Do you know Max Bolden?

24 A Yes.

25 Q How do you know him?

1 A He's my stepson.

2 MR. FURNSTAHL: May I approach?

3 THE COURT: You may.

4 BY MR. FURNSTAHL:

5 Q Showing you what's been received into evidence  
6 as Exhibit 67, is that your stepson Max?

7 A Yes.

8 Q Do you recall being contacted by the Minneapolis  
9 police department on June 2, 2004?

10 A Yes.

11 Q And asked you about Max's whereabouts at the  
12 time of the flower shop murder?

13 A Yes.

14 Q You know where Max was at that time, right?

15 A Yes.

16 Q Where was he?

17 A Sioux Falls, South Dakota.

18 Q What was he doing there?

19 A He lives there.

20 Q Was he living there at the time?

21 A Yes.

22 Q Thank you ma'am.

23 MR. FURNSTAHL: That's all I have.

24 THE COURT: Any questions, Mr. Benson?

25 MR. BENSON: No, Your Honor.



1 THE COURT: Thank you. You can step down,  
2 ma'am.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MR. FURNSTAHL: Then we'll call Sergeant  
6 Dave Mattson.

7 Whereupon,

8 DAVID MATTSON,  
9 after having been first duly sworn, was examined  
10 and testified as follows:

11 THE CLERK: Please state your full name and  
12 spell your last for the record.

13 THE WITNESS: David Mattson, M-A-T-T-S-O-N.

14 THE COURT: Okay, Mr. Furnstahl.

15 MR. FURNSTAHL: Thank you.

16 DIRECT EXAMINATION

17 BY MR. FURNSTAHL:

18 Q How are you employed, sir?

19 A By the city of Minneapolis police department.

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

22 A Yes.

23 Q For how long?

24 A Since 1984.

25 Q How long have you been employed by the

1 Minneapolis police department?

2 A Since 1987, April of 1987.

3 Q What was your assignment in May of 2004?

4 A I was an investigator in the homicide unit.

5 Q Sergeant detective?

6 A Yes.

7 Q And were you assigned to the alleged murder at  
8 the, at Jerry's Flower Shop in north Minneapolis?

9 A Yes.

10 Q Did you have a partner at that time?

11 A I did.

12 Q What was his name? What was his name?

13 A Mike Keefe, sergeant.

14 Q He's no longer your partner, right?

15 A Correct.

16 Q You guys move around a little bit?

17 A Yes.

18 Q Okay. Did you go to the scene of the flower  
19 shop?

20 A I did.

21 Q And did you ask or did someone ask that the area  
22 be canvassed?

23 A Yes.

24 Q Was that done?

25 A Yes, it was.

1 Q Anybody come forward with information?

2 A No.

3 Q Is this an area that people generally like to  
4 volunteer information?

5 A No.

6 Q All right. And also did you, as part of your  
7 investigation, did you -- is it your routine to obtain a  
8 copy of the 911 call?

9 A Yes.

10 Q Did you do that?

11 A Yes.

12 Q You or Sergeant Keefe?

13 A Yes.

14 MR. FURNSTAHL: May I approach?

15 THE COURT: You may.

16 BY MR. FURNSTAHL:

17 Q Showing you what I've marked as Exhibit 48, is  
18 that correct that that's a copy of the 911 call?

19 A Yes. I think they have the case number  
20 incorrect but the date and time are correct.

21 MR. FURNSTAHL: We would offer Exhibit 48.

22 THE COURT: Any objection, Mr. Benson?

23 MR. BENSON: No, Your Honor.

24 THE COURT: Exhibit 48 will be received.

25 MR. FURNSTAHL: We would ask to publish it

1 at this time.

2 THE COURT: All right. Go ahead. For the  
3 record the court reporter will not describe the tape.

4 (911 tape is played to the jury.)

5 BY MR. FURNSTAHL:

6 Q Now, Sergeant, as part of your investigation,  
7 were you aware that dogs were brought in to try to track  
8 the route that the shooter went after leaving the flower  
9 shop?

10 A Yes.

11 Q And you were aware of the direction the tracking  
12 went?

13 A Yes.

14 Q And the approximate location where the dogs lost  
15 the scent?

16 A Yes.

17 Q There was a photo lineup that was prepared and  
18 shown to Ms. McDermid on the afternoon of May 16th by  
19 Sergeant Zimmerman, is that correct?

20 A Yes, sir.

21 Q Does that contain a photograph of one of the  
22 persons that lived in the house nearby where the dogs lost  
23 the scent?

24 A It does.

25 Q Is that the reason why that was put together?

1 A Yes.

2 Q Did you have any other suspects at that time?

3 A No.

4 Q And then you are aware that Ms. McDermid  
5 identified number two in that photo lineup as someone that  
6 lived in the area?

7 A Yes, I believe so.

8 Q And that was in fact the person that lived in  
9 the house next to where the dogs lost the track?

10 A Yes.

11 Q All right. You are aware that the following day  
12 the same photo lineup with larger photos was shown to Ms.  
13 McDermid by Sergeant Folkens?

14 A Yes.

15 Q All right. And then on May 19, 2004, you and  
16 Sergeant Keefe showed Ms. McDermid a different photo  
17 lineup?

18 A That's correct.

19 Q One that contained a photograph of Marvin  
20 Haynes?

21 A Yes.

22 Q So is it correct -- just yes or no on this -- is  
23 it correct that sometime after Sergeant Folkens showed the  
24 lineup to Ms. McDermid a second time, you asked --  
25 Sergeant Keefe received information that caused you to

1 look towards the defendant as far as your investigation?

2 A Yes.

3 Q And then you prepared a photo array?

4 A Yes.

5 Q That included a photograph of the defendant?

6 A Correct.

7 MR. FURNSTAHL: Do you have Exhibit 46?

8 It's been, Exhibit 46 is received, right, Judge?

9 THE COURT: It is.

10 BY MR. FURNSTAHL:

11 Q Been received into evidence that Exhibit 46 is  
12 the photo array that you showed to Ms. McDermid, you and  
13 Sergeant Keefe showed to Ms. McDermid on May 19, 2004. Do  
14 you recognize that?

15 A Yes.

16 Q Would you explain for the jurors the way -- who  
17 showed it to her, was it you or Sergeant --

18 A We were both there. We went to her house. I  
19 think it was at the kitchen table.

20 Q Do you recall which of the two of you were  
21 holding the photos and showing them to her?

22 A I think I did and Sergeant Keefe was sitting  
23 across the table.

24 Q Would you explain and show the jurors the way  
25 that you showed the photo lineup, the photo array, to Ms.

1 McDermid?

2 A Okay. In this particular photo array we showed  
3 her six photographs, each one has a front and side view,  
4 and since there's identifying information on the bottom  
5 with names and such, we folded those over and they were  
6 shown as you see them here so that you could only see the  
7 photograph and the words on the top which don't have any  
8 identifying information, and they were shown one at a  
9 time. When she got done we moved to the next one.

10 Q So you would place them down in front of her?

11 A Yes.

12 Q And then would you, after you put number one  
13 down, would you put number two down on top of number one  
14 or near it or what?

15 A I think, because this is the way I always do it  
16 is I remove it, I'll show one and she's done looking at it  
17 that's off the table or out of sight so that they can  
18 focus on the next one and so on.

19 Q Now, would you explain to the jurors the  
20 reaction that Ms. McDermid had when you showed her  
21 photograph number five?

22 A When we showed her this photograph, she kind of  
23 had this shocked look on her face and basically she put  
24 her hand or finger down on it and said oh my god, or words  
25 to that effect, that's the guy, that's him, that's the

1 one.

2 Q Did she express any confusion or uncertainty at  
3 that point in time?

4 A No.

5 Q Then did you go on and show her photograph  
6 number six?

7 A Yes.

8 Q Any reaction to number six?

9 A No.

10 Q Any reaction to photographs one through four?

11 A No.

12 Q The only one she reacted to was photograph  
13 number five?

14 A Correct.

15 Q Who is photograph number five a photograph of?

16 A In these records it's Marvin Jr., Haynes.

17 Q Is that the defendant?

18 A Yes.

19 Q That's on old photograph, too, is that correct?

20 A Correct.

21 Q From 2002?

22 A Yes, sir.

23 Q Now, it's correct that following that a live  
24 lineup was put together?

25 A Yes. I believe it was the next day.



1 Q All right. And where did that take place?

2 A At the Hennepin County Juvenile Center.

3 Q Was Mr. Haynes in custody at that point in time?

4 A Yes.

5 Q He was in custody as of the day before?

6 A Yes.

7 Q And did you ask the personnel at the juvenile  
8 detention center to try to arrange a photo lineup -- a  
9 standup lineup rather, a live lineup?

10 A Yes, we did.

11 Q Do you have any say into who they could use or  
12 whatnot?

13 A No.

14 Q That was videotaped, was it not?

15 A It was.

16 MR. FURNSTAHL: May I approach?

17 THE COURT: You may.

18 BY MR. FURNSTAHL:

19 Q Showing you what's been marked as Exhibit 50,  
20 can you identify Exhibit 50, please?

21 A Yes. This is the juvenile detention center,  
22 it's the filming of the lineup as the suspects or the  
23 subjects, I should say, were presented to the witnesses  
24 one at a time.

25 Q Who viewed the live lineup? What witnesses?

1           A     Ravi Seeley, Cynthia McDermid, and then I was  
2     there and Officer Scott Peterson was there.

3           Q     Okay. But as far as witnesses it was just Ravi  
4     Seeley and Cynthia McDermid?

5           A     Yes.

6           Q     And could you -- during the course of the lineup  
7     being shown to Ravi Seeley, did he ever whisper in your  
8     ear that he was uncertain about his identification?

9           A     No.

10          Q     Are you certain about that?

11          A     Yes, sir.

12          Q     Is that something that you would make note of?

13          A     Yes, I would have.

14          Q     Now, was Sergeant Keefe present during that?

15          A     He was on the other side of the glass from us  
16     having the people brought out to be viewed.

17          Q     What I would like you to do before we show the  
18     photo lineup -- before we show the live lineup, would you  
19     kind of set the stage, would you explain for the jurors  
20     what your responsibilities were, what Sergeant Keefe's  
21     responsibilities were, what Officer Peterson was doing and  
22     how this physically was laid out?

23          A     Okay. The way the lineup was done, it was done  
24     behind a glass so that the subjects being shown didn't see  
25     who was looking at them at the time. It's kind of a half

1 mirrored glass so we can see in, they can't see out at us.

2 Sergeant Keefe is on one side, he's bringing the  
3 people into a room one at a time. I'm standing out in the  
4 hallway with the witness that's being shown the lineup and  
5 we are watching them as they come into that room and they  
6 are making their opinions as the witnesses see them.

7 Q Can you hear what's going on on the other side?

8 A No, we couldn't.

9 Q And where are you positioned in respect -- well,  
10 first of all, who's shown the live lineup first, Mr.  
11 Seeley or Ms. McDermid?

12 A Ravi Seeley was.

13 Q Where were you positioned when Ravi Seeley was  
14 watching the live lineup?

15 A I believe I was kind of back just a little bit  
16 behind him and off to the right.

17 Q Why were you back behind him?

18 A I don't want him to like look at me and take a  
19 cue off of me to otherwise taint anything. I want it to  
20 be his live reaction, his own reaction.

21 Q Were you in a position to see his reaction?

22 A Yes.

23 Q Did you record his reaction?

24 A No.

25 Q I mean, not by --

1           A     We didn't tape-record anything. I just noted  
2 his reaction.

3           Q     Did you put it in a report, is what I was  
4 getting at?

5           A     Yes.

6           Q     All right. Was Marvin Haynes, was he one of the  
7 persons in the live lineup?

8           A     He was.

9           Q     You say Ravi Seeley was the first person to see  
10 it?

11          A     Yes.

12          Q     Did Ravi Seeley have any reaction or say  
13 anything when he saw Marvin Haynes come into the live  
14 lineup?

15          A     He did.

16          Q     What did he say?

17          A     It was like whoa, that looks like the guy I saw.

18          Q     Do you remember exactly what it was that he  
19 said?

20          A     I think that's how I put it in my report and I  
21 put it in to the best of my recollection at that time.

22          Q     Okay. And then do you know if Ravi Seeley  
23 looked at the live lineup once or more than once?

24          A     He did it once.

25          Q     All right. Did he express -- well, but nothing

1 about whispering in your ear that he wasn't certain?

2 A No.

3 Q Then Cynthia McDermid, she looked at it the next  
4 time?

5 A Yes.

6 Q Do you know if, or did you take care that Ms.  
7 McDermid was away from Ravi Seeley so that he could not  
8 tell her who he picked or anything like that?

9 A They had actually been in separate rooms at the  
10 time. I think we had Cynthia sitting out in, I don't know  
11 if it was a room or a different hallway, whatever, but  
12 they weren't where they could see each other while the  
13 lineups were being done.

14 Q Did you do that specifically for the purpose so  
15 that they would not taint each others' identification?

16 A Yes.

17 Q Did you have any idea that they were going to be  
18 able to identify anybody in the live lineup?

19 A Not necessarily.

20 Q Now, would you describe Ms. McDermid's emotional  
21 condition when she came into the room?

22 A She was a wreck.

23 Q Did she suppress that?

24 A Yes.

25 Q Was she going someplace after the live lineup?

1           A     I think she had the wake that night after.

2           Q     All right. Now, is it correct you've got to  
3 kind of move fast, timing isn't always something that you  
4 can control with respect to these kinds of situations, is  
5 that right?

6           A     True.

7           Q     Were you trying to be respectful of her  
8 condition in terms of her having to go to her brother's  
9 wake that night?

10          A     Yes.

11          Q     But still had to do this as soon as possible?

12          A     Yes.

13          Q     All right. Now, did Ms. McDermid require any  
14 assistance when she came in or did she --

15          A     You know, she has, I want to say, I don't  
16 remember medically if it's a heart condition or something  
17 but, you know, she's little older and so we provided her a  
18 chair. I do think she was on some sort of medications for  
19 her heart or something.

20          Q     Where did you position yourself when the lineup  
21 was being shown to her?

22          A     Again I would have been slightly behind her, I  
23 think it was off to the right.

24          Q     Why were you in that position?

25          A     Well, again I don't want her to look at me and

1 take a cue off of me. I just want her reaction, not mine.

2 Q Did she ever do that?

3 A Pardon me?

4 Q Did she ever do that, look at you for a cue?

5 A No.

6 Q Did Ravi Seeley ever do that?

7 A No.

8 Q And likewise, was Marvin Haynes involved in this  
9 lineup as well?

10 A Yes.

11 Q The same persons in both lineups?

12 A Yes.

13 Q As a matter of fact, one of the -- these are all  
14 kids from the juvenile justice center or juvenile  
15 detention center, right?

16 A That's correct.

17 Q One kid had a noticeable limp, right?

18 A Yes.

19 Q Was that something that you had any control of  
20 in terms of putting together personnel or persons involved  
21 in the lineup?

22 A No.

23 Q All right. And the -- well, would you describe  
24 Cynthia McDermid's reaction when she saw the defendant  
25 come into the room?

1           A     Okay. When she came in, like I said she had  
2     been kind of sitting in a chair, and when Mr. Haynes  
3     entered the room she kind of sits bolt upright like you  
4     could tell there's a recognition of some sort there, and  
5     she leans forward and looks -- I don't remember if she  
6     stood up or what but, and she points at him and she says  
7     that looks like who I saw.

8           Q     Then did she say -- or what happened after that?

9           A     Well, we finished the rest of the lineup.

10          Q     Then what happened?

11          A     She was kind of, you know, traumatized. We  
12     repeated the lineup a second time.

13          Q     Why did you do that?

14          A     We wanted to verify if there was any doubt in  
15     her mind.

16          Q     Was she requesting that or is that something you  
17     did, do you recall?

18          A     I don't recall. I'm sorry.

19          Q     Then what happened when you got to the  
20     defendant?

21          A     She was really having a hard time focusing. She  
22     again focused on him. I don't think she said anything or  
23     at least I can't recall it at this time, and she didn't  
24     focus on the last two and she was kind of deteriorating so  
25     we stopped it.



1 Q Did she express that to you that she was  
2 deteriorating?

3 A Yes. I don't remember her exact words, but.

4 Q Can you tell us generally what she said? Would  
5 you like to look at your report?

6 A May I?

7 Q Do you have it with you?

8 A No.

9 Q Okay.

10 MR. FURNSTAHL: May I approach?

11 THE COURT: You may.

12 MR. FURNSTAHL: Supplement 34.

13 BY MR. FURNSTAHL:

14 Q Could you look at, read the bottom paragraph  
15 silently to yourself, please.

16 A (Complies.) Okay.

17 Q Okay. Does that refresh your recollection as to  
18 what, if anything, she said?

19 A Yes.

20 Q What did she say?

21 A She told me she was having trouble concentrating  
22 and focusing now and she was kind of blending people  
23 together.

24 Q Did she say anything about being traumatized?

25 A Yes, she did.

1 Q Was that obvious to you?

2 A Yes.

3 Q Before we show Exhibit 50, I want to ask you  
4 this. There was some questions yesterday put to Ravi  
5 Seeley about whether or not -- you and I met with Ravi  
6 Seeley last Friday, correct?

7 A Correct. Four, five days ago now.

8 Q And where did we go, where did we take him?

9 A Up to the scene to the church that he had been  
10 nearby and then up to the scene to see where he had seen  
11 people.

12 Q Did we talk about his recollection of the  
13 events?

14 A Yes.

15 Q Did he express whether or not he had problems  
16 recalling some of the details of the events?

17 A Yes.

18 Q And by events, I'm talking about what happened  
19 the week before the shooting on Mother's Day weekend and  
20 also the day of the shooting, okay?

21 A Okay.

22 Q So did he indicate that he had difficulty  
23 remembering some of the details of the events that week  
24 before and the day of the shooting?

25 A Yes, because it had been like a year prior that

1       this had happened.

2           Q       Did he say whether or not -- did he acknowledge  
3       that he had identified a person in a photo lineup and the  
4       live lineup?

5           A       Yes, he did.

6           Q       And did he indicate whether or not he was  
7       uncertain about those identifications?

8           A       He had said at the time that he made the  
9       identification that he was certain of that.

10          Q       Did he express that more than once in our  
11       conversation with him that afternoon?

12          A       He did.

13          Q       All right. Did he express any uncertainty at  
14       that time?

15          A       No.

16          Q       All right. Now, did you or I show him -- you  
17       are aware that Sergeants King and Wehr showed him a photo  
18       array, is that right?

19          A       Yes.

20          Q       That was done by your request and Sergeant  
21       Keefe's request?

22          A       Yes.

23          Q       And did you or I show him that photo array again  
24       when we met with him last week?

25          A       We didn't show him any photos.

1           Q     Now, you are familiar with what Rasmussen  
2     hearings are?

3           A     Yes, evidentiary type hearings.

4           Q     All right. Matter of fact we've had some in  
5     this case?

6           A     Yes.

7           Q     And when you show a photo array to a witness, is  
8     it the case that you might have to come in outside the  
9     presence of a jury to show a judge that the photo array  
10    that you showed to a witness was not unduly suggestive?

11          A     Yes.

12          Q     Is it problematic -- regarding the question as  
13    to whether or not the photo array was shown to Ravi Seeley  
14    whenever it was, was it a week ago Friday?

15          A     Yeah. Like I say four or five days ago.

16          Q     Okay. Regarding the question about whether or  
17    not we showed him the photo array again when we met with  
18    him a week ago Friday, is it problematic in regards to an  
19    in-person lineup to repeat that photo array just prior to  
20    a trial after 14, 15 months have passed?

21          A     Yes.

22          Q     In what way?

23          A     Well, for example if we were to show him this  
24    photo array and then he comes into the courtroom today,  
25    the only person's photo that he might see that he now

1 compares it to is the person sitting there and that could  
2 poison what he says in court because that's the only photo  
3 he sees so we didn't show it to him because we didn't want  
4 to poison any potential identification in court.

5 Q All right.

6 MR. FURNSTAHL: Now at this point I would  
7 ask to publish Exhibit 50.

8 THE COURT: Exhibit 50 hasn't been received  
9 yet. Do you intend to offer it?

10 MR. FURNSTAHL: We would offer it, Judge.

11 THE COURT: Any objection?

12 MR. BENSON: No, Your Honor.

13 THE COURT: Exhibit 50 is received and then  
14 you may publish it.

15 (Exhibit 50 is shown to the  
16 jury. There is no sound.)

17 BY MR. FURNSTAHL:

18 Q You mentioned that you could not hear the  
19 statements being made on the other side?

20 A That's correct.

21 Q Was Sergeant Keefe asking these individuals in  
22 the --

23 MR. BENSON: Objection, Your Honor. Can we  
24 approach?

25 MR. FURNSTAHL: I will just move on.

1 THE COURT: Okay.

2 BY MR. FURNSTAHL:

3 Q Who was that?

4 A That's Sergeant Mike Keefe.

5 Q Was the person that was videotaping it, was he  
6 or she in the room with you or outside the room?

7 A He would have been in this room so he would have  
8 been separate from us. We were on the other side of the  
9 glass looking in from here.

10 Q Could the persons that were involved in the  
11 lineup, could they see in to where you and the witnesses  
12 were?

13 A I don't think they could unless they, I don't  
14 know that it's straight two-way glass or one-way glass  
15 where you cannot see out. I think if you got really close  
16 you might be able to, but from where they were it was kind  
17 of mirrored so I don't think they should have been able to  
18 see us.

19 Q Was this room specifically designed for this  
20 kind of procedure?

21 A No.

22 Q Who is that that we are seeing right now?

23 A That's Marvin Haynes.

24 Q The defendant?

25 A Yes, sir.

1           Q     Is his hair the same or different from his hair  
2 as it appears in the photo arrays?

3           A     It's different.

4           Q     Would you describe for the record the  
5 difference?

6           A     His hair now is longer than it is in the photo  
7 lineup, the photo array.

8           Q     Would you call it a slight difference or an  
9 obvious difference?

10          A     An obvious difference.

11          Q     Was this lineup, was this conducted pursuant to  
12 a court order, a search warrant or something?

13          A     Yeah, a search warrant I believe it was.

14          Q     Do you recall what number Marvin Haynes was in  
15 the lineup?

16          A     I believe he's number four.

17          Q     And in the photo array that you showed to Ms.  
18 McDermid, what number was he?

19          A     He's number five in this particular one.

20          Q     So that was the photo array that was shown to  
21 Ravi Seeley that just completed, the live lineup?

22          A     Would you repeat the question?

23          Q     Yeah. You just completed the live lineup that  
24 was shown to Ravi Seeley?

25          A     Yes.

1 Q All right. And now we are going to make a  
2 change and Ms. McDermid is going to be watching the --

3 A Yes. It was done three times so the first one  
4 would be Ravi Seeley and the next two would be Ms.  
5 McDermid.

6 Q Same individuals in these two?

7 A Yes, sir.

8 Q Now we have Marvin Haynes coming in?

9 A Yes.

10 Q Being viewed by whom?

11 A Cynthia McDermid.

12 Q Is this when she has the reaction that you  
13 noted?

14 A Yes.

15 Q Does she have any reaction to any of the other  
16 five?

17 A No, not that I recall.

18 Q Would you have noted that if she had?

19 A Yes.

20 Q So that was the lineup that was shown to Ms.  
21 McDermid the first time?

22 A Yes.

23 Q Now we are seeing it the second time?

24 A I think we are just finishing up the first  
25 viewing.



1 Q Okay.

2 (Tape concludes.)

3 BY MR. FURNSTAHL:

4 Q Just a couple more questions, Sergeant. During  
5 the course of your investigation --

6 MR. FURNSTAHL: May I have a moment, Judge?

7 THE COURT: You may.

8 MR. FURNSTAHL: Thank you, sir. That's all  
9 I have.

10 THE COURT: Cross-examination, Mr. Benson.

11 MR. BENSON: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BENSON:

14 Q Sergeant, I want to talk to you about the  
15 beginning of your investigation. You and Sergeant Keefe  
16 were the lead investigators?

17 A Yes.

18 Q All right. And you talked about how initially  
19 you got a copy of the 911 call?

20 A Yes.

21 Q You retrieved the copy? I imagine you listened  
22 to that?

23 A Yes.

24 Q Right away?

25 A I don't remember exactly when or how long it

1       took us but as soon as we could.

2               Q     Okay. And you heard the description of the  
3       person who was the shooter?

4               A     Yes.

5               Q     Okay. And you knew early on that that person  
6       was described as being a black male?

7               A     Yes.

8               Q     Being five-ten to five-foot-eleven?

9               A     I guess I would have to listen to the tape for  
10      the exact description, but it was kind of a medium build  
11      description.

12              Q     Okay. But you recall the description being  
13      180 pounds?

14              A     Yes.

15              Q     Okay. And you do recall actually the  
16      description was a thin build, do you recall that?

17              A     Again I would have to listen to the tape for the  
18      exact but I believe it was a thinner build.

19              Q     Okay. You recall that the 911 description was  
20      that the person was in his early 20s?

21              A     Yes.

22              Q     Okay. And in any event we heard the 911 tape  
23      played a little while ago. You listened to that tape  
24      early on in the investigation?

25              A     Yes.

1 MR. FURNSTAHL: Objection, redundant.

2 THE COURT: Overruled. Wait a minute.

3 When he makes an objection you've got to let me rule

4 first. Okay. Go ahead.

5 BY MR. BENSON:

6 Q And after listening to that 911 tape, it was

7 after listening to that tape that you spoke to Cynthia

8 McDermid?

9 MR. FURNSTAHL: Vague as to point in time.

10 Objection, vague.

11 THE COURT: Overruled. If you remember.

12 THE WITNESS: Would you repeat what you are

13 asking, sir?

14 BY MR. BENSON:

15 Q Let me ask you this way, Sergeant. Early on in

16 the investigation, is it likely the first day you listened

17 to that 911 call?

18 A Probably not that first day actually because it

19 takes them awhile to make a copy of the tape and get it to

20 us. I don't remember exactly when we would have.

21 Q Second day?

22 A Again, I don't know exactly when it would have

23 been.

24 Q You would have listened to that 911 call before

25 you took a statement from Ms. McDermid, correct?

1 A Not necessarily.

2 Q You were the lead investigator --

3 MR. FURNSTAHL: May I have a moment?

4 (Off-the-record discussion  
5 between counsel.)

6 BY MR. BENSON:

7 Q You agree that the description of the shooter is  
8 important?

9 A Yes.

10 Q Okay. And oftentimes the description of a  
11 shooter would be in the 911 call?

12 A Yes.

13 Q And it would make sense that you would try to  
14 get that 911 call as soon as possible to get a description  
15 of the shooter for your investigation?

16 A Yes.

17 Q Okay. And we've heard the 911 call today, and  
18 it's fair to say that you would have had the same  
19 description that we all heard today early in this  
20 investigation?

21 A Yes.

22 Q And on May 17th you spoke to Ms. McDermid,  
23 correct?

24 A Yes.

25 Q And she provided you some additional descriptive

1 details of the shooter?

2 A Yes, I believe she did.

3 Q Okay. And Ms. McDermid, she told you that --  
4 she gave a little different age description, around age 19  
5 or 20?

6 A Yes. I think after she calmed down she changed  
7 it a little bit.

8 Q And she told you this person had a close-cropped  
9 natural hairstyle?

10 A I believe so but also in listening to the tape  
11 you'll note the initial portion of the description, he  
12 possibly had a hat on.

13 Q Okay. All right. And I'm asking -- so you  
14 recall that conversation, you recall the 911 tape now?

15 A Yes.

16 Q Okay. All right. But what I'm asking you is if  
17 on May 17, 2004, Ms. McDermid told you that this person  
18 had a short close-cut, I think the words -- had a  
19 close-cropped hairstyle?

20 A It should be in the statement how exactly she  
21 put it but that sounds familiar.

22 Q In fact she put it as it wouldn't be bald,  
23 natural?

24 THE COURT: Would you answer that question?

25 THE WITNESS: I thought he was just making

1 a statement.

2 BY MR. BENSON:

3 Q That's a question.

4 A If that's how she puts it in the statement,  
5 that's what she said.

6 MR. BENSON: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. BENSON: Supplement 17, page three.

9 I've got it marked for identification as Exhibit No.  
10 92.

11 BY MR. BENSON:

12 Q Sergeant, showing you the top of this exhibit  
13 number 92, at the top left corner it says statement of  
14 Cynthia McDermid, correct?

15 A Yes, sir.

16 Q And this is a Q and A statement that you took on  
17 as the date says 5/17 2004, correct?

18 A Yes.

19 Q All right. Directing your attention and  
20 counsel's attention to page three, you asked the question  
21 describe the suspect, correct?

22 A Yes.

23 Q And she gave you an answer, black male about 19  
24 to 20 years old, correct?

25 A Yes.

1 Q You asked what kind of hair style did he have.

2 Answer: I think he had a close-cropped, it wouldn't be  
3 bald, natural. Correct?

4 A Yes.

5 Q Then you asked the question did he have any  
6 facial hair. Answer, no. And then -- is that correct?

7 A Yes.

8 Q You asked the question, what color skin tone did  
9 he have. Answer, he would be like medium. Right?

10 A Yes.

11 Q You asked the question was he skinny, fat or  
12 other build. Answer, he seemed to be thin. Correct?

13 A Yes.

14 Q All right. Do you recall any other distinctive  
15 characteristics about him at this time? Answer no,  
16 correct?

17 A Yes.

18 Q Those were descriptive features that Cynthia  
19 McDermid gave you on May 17th, correct?

20 A Yes.

21 Q And that was, she was describing the person who  
22 had attempted to rob the store, correct?

23 A Yes.

24 Q All right. So it's fair to say on that day if  
25 nothing else you had a description from Ms. McDermid as

1 far as the height -- as of May 17th when you consider the  
2 911 call and the statement from Ms. McDermid. Are you  
3 following me?

4 MR. FURNSTAHL: Objection. Statements not  
5 in evidence. He hasn't indicated that he reviewed  
6 the 911 call at that time.

7 THE COURT: Overruled. You can finish the  
8 question.

9 BY MR. BENSON:

10 Q All right. After as of, let's say May 17th,  
11 okay? As of May 17th it's fair to say that you would have  
12 had a description of the shooter from both the 911 call  
13 and your conversation with Ms. McDermid?

14 A Yes.

15 Q Okay. And that description, as we've indicated,  
16 includes the description of the hairstyle of the shooter?

17 MR. FURNSTAHL: Objection, it's redundant.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Yes.

20 BY MR. BENSON:

21 Q Okay. A height and weight description of the  
22 shooter?

23 A Yes, in general.

24 Q Well, specifically it includes five-foot-ten to  
25 five-foot-eleven and 180 pounds, correct?



1           A     I would have to see that but that sounds about  
2 right.

3           Q     Okay. That was in the 911 call that you would  
4 have reviewed?

5           A     Yes.

6           Q     All right. Now, Ms. McDermid on the 17th gave  
7 you some additional information about the shooter as well.  
8 Do you recall Ms. McDermid telling you about the shooter's  
9 speech patterns, how the shooter spoke?

10          A     I think she said he was, he had spoken rather  
11 well.

12          Q     In fact she told you that he spoke with clarity?

13          A     That sounds right, yes.

14          Q     And she told you he spoke as if he had an  
15 education?

16          A     Yes.

17          Q     Now, on May 19th you put together a photographic  
18 lineup and showed that to Ms. McDermid, correct?

19          A     Yes.

20          Q     And in that lineup you included a picture of  
21 Marvin Haynes?

22          A     Yes.

23          Q     And either you or you and Sergeant Keefe put the  
24 pictures together for that lineup, correct?

25          A     I believe so, yes.

1           Q     You went into your computer and pulled up some  
2 photos and put those photos together to show Ms. McDermid,  
3 correct?

4           A     Yes.

5           Q     And it's fair to say that in that lineup that  
6 you showed Ms. McDermid, Marvin Haynes's hair was  
7 substantially shorter than his hair on May 19th that we  
8 saw in the lineup?

9           A     Is it okay if I review the lineup?

10          Q     Yes.

11          A     Yes. They all have shorter hair or short hair  
12 in this photo spread.

13          Q     Okay. And that as you've testified to already,  
14 that photograph you used of Marvin Haynes was from 2002?

15          A     Yes, sir.

16          Q     Okay. And you could have used a current, for  
17 example, a current booking photo of Marvin Haynes,  
18 correct?

19          A     I don't know what the most current one was. I  
20 don't know if we had one of him from that day.

21          Q     Marvin Haynes was -- you are familiar with  
22 booking photos, correct?

23          A     Yes.

24          Q     And Marvin Haynes was arrested on May 19th,  
25 correct?

1 A Yes.

2 Q All right.

3 MR. BENSON: May I approach, Your Honor?

4 THE COURT: Yes, you may.

5 BY MR. BENSON:

6 Q Sir, I'm showing you Exhibit No. 96 for  
7 identification, and this is -- take a look at that for a  
8 moment.

9 A Okay.

10 Q Exhibit 96, fair to say from your training and  
11 experience that's a booking photo of Marvin Haynes,  
12 correct?

13 A Yes.

14 Q And it's actually a booking photo that was  
15 submitted by the Hennepin County juvenile detention center  
16 on May 19, 2004?

17 A Yes.

18 Q That's a booking photo that when one is arrested  
19 they take their picture, get some identification  
20 information and that picture goes into a computer and it  
21 can be pulled at any time, correct?

22 A Yes.

23 Q And that, what you are looking at right now is  
24 the photo, is the booking photo of Marvin Haynes from the  
25 date of his arrest in relation to this offense?

1 A I'm sorry, would you repeat it?

2 Q The booking photo Exhibit No. 96 is a photograph  
3 of Marvin Haynes, which is a booking photograph, correct?

4 A Yes.

5 Q And it was the same day in which he was arrested  
6 on May 19th?

7 A Yes.

8 Q Okay.

9 MR. BENSON: Your Honor, I would offer  
10 Exhibit No. 96.

11 THE COURT: Any objection Mr. Furnstahl?

12 MR. FURNSTAHL: No objection.

13 THE COURT: Exhibit 96 will be received.

14 MR. BENSON: If I can just publish it  
15 briefly, Your Honor?

16 THE COURT: You may.

17 (Displays it to the jury.)

18 BY MR. BENSON:

19 Q Now Sergeant, on May 19th you had at least the  
20 current, the most current booking photo of Marvin Haynes,  
21 you could have pulled that?

22 A I don't know what time that picture was entered  
23 into the computer, whether we had access to it or not. I  
24 don't recall.

25 Q Okay. Well, you also, you interviewed other

1 witnesses related to this case, correct?

2 A Yes, sir.

3 Q All right. And let me -- Sergeant, when you  
4 pull the booking photos, you go into a computer and type  
5 in somebody's name, you get a booking photo from a prior  
6 arrest and you chose, in this case you chose the  
7 photograph which is I believe photograph number five that  
8 Ms. McDermid identified, is that correct?

9 A Yes, sir.

10 Q All right. And you have access to a number of  
11 photos within that, correct?

12 MR. FURNSTAHL: Objection, vague as to --  
13 question is vague.

14 MR. BENSON: May I approach?

15 THE COURT: Sustained as to that.

16 MR. BENSON: May I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 BY MR. BENSON:

20 Q I'm showing you, Sergeant, Exhibit No. 97 just  
21 for identification purposes, okay?

22 A Okay.

23 Q And that is, what I'm showing you there is a  
24 booking photo?

25 MR. FURNSTAHL: Objection. Counsel is

1           testifying.

2                   THE COURT: All right.

3                   MR. FURNSTAHL: Commenting on evidence not  
4           received.

5                   MR. BENSON: Okay.

6                   THE COURT: Go ahead and ask a question.

7                   MR. BENSON: Okay.

8       BY MR. BENSON:

9           Q       Generally this document, Exhibit No. 97, is it a  
10       booking photo?

11          A       Yes.

12          Q       Okay. And it's a booking photo of Marvin  
13       Haynes?

14                   MR. FURNSTAHL: Objection. Can we  
15       approach, Judge?

16                   THE COURT: What is the objection?

17                   MR. FURNSTAHL: He's commenting on  
18       something not in evidence.

19                   THE COURT: I think he's asking to  
20       identify, although he's trying to get to a question I  
21       believe.

22                   MR. BENSON: I am, Your Honor. I'm laying  
23       foundation for a question.

24                   THE COURT: Why don't you ask a question  
25       first before we have --

1 MR. BENSON: Can we approach?

2 THE COURT: All right.

3 (Off-the-record discussion at  
4 the bench out of hearing of the jurors.)

5 THE COURT: All right. Members of the  
6 jury, we're going to take our lunch recess at this  
7 time and we will resume testimony at 1:30. Please  
8 remember to leave your notebooks on your chair, and  
9 I'm going to remind you yesterday I read to you a  
10 lengthy instruction with regard to refraining from  
11 reading about the case in the newspaper or listening  
12 to TV reports. Please remember what I said about not  
13 watching the TV, and if you have other family members  
14 doing this to have it low and in another area and to  
15 not read a newspaper unless somebody has looked at it  
16 for you and cut out those portions that relate to  
17 this case, all right? You are excused.

18 (Noon recess.)

19 THE COURT: Mr. Benson, you may continue.

20 MR. BENSON: Thank you.

21 BY MR. BENSON:

22 Q Sergeant, before the break I was asking you some  
23 questions about Exhibit No. 97 which was a booking photo,  
24 correct?

25 A Yes.

1 Q And that was a booking photo of Marvin Haynes?

2 A Yes.

3 Q All right. And do you recall that booking photo  
4 indicated that the date of that arrest, or that booking  
5 photo was January 20, 2004?

6 A I think that's correct, yes.

7 Q Now, earlier you talked about the process you  
8 went through or one goes through in order to put a lineup  
9 together, right?

10 A Yes.

11 Q And in this case you went through the booking  
12 photo computer or the photo -- the computer that contained  
13 that information and you or Sergeant Keefe selected that  
14 photo, right?

15 A Yes.

16 Q You selected six photos and the photo that you  
17 selected of Marvin Haynes was from 2002?

18 A Yes, that's what it says on it.

19 Q That's the one that we saw earlier today,  
20 correct?

21 A I believe so.

22 Q And that is, that was for the photo lineup that  
23 you showed to Cynthia McDermid?

24 A Yes.

25 Q Before we get to that I want to focus your



1 attention on your policies, the policies as far as  
2 identification procedures that Minneapolis is now  
3 employing, okay?

4 A All right.

5 Q And the policy is, a part of the policy is you  
6 are showing photos in a sequential method, correct?

7 A Yes.

8 Q Okay. That's different than the old policy in  
9 which you chose six photos laid out at once?

10 A Yes. The old system you would show all the  
11 photos that were all on one sheet as opposed to now being  
12 individually cut out.

13 Q Okay. And also with the -- and the reason for  
14 that is because you want to have as reliable an  
15 identification as possible, correct?

16 A There's some speculation as to whether they are  
17 showing all six photographs at one time is the best way of  
18 doing it and so there's a project or a study as it were  
19 trying to determine if this way is better. I haven't seen  
20 the data so I don't know that a determination has been  
21 made.

22 Q Okay. So this was a, you all when dealing with  
23 the case of Marvin Haynes, you were employing a new  
24 method, right?

25 A Yes, the sequential lineup method.

1 Q As part of your test project or whatever?

2 A Yes.

3 Q Okay. But also as part of the procedures that  
4 you are doing, the new procedures that you are doing, the  
5 goal would be to have an officer not involved in the  
6 investigation conduct the identification procedure,  
7 correct?

8 A When that's possible.

9 Q When it's possible. Right. And in this case,  
10 and once again that's, the reason for that, the reason for  
11 having an officer that's not involved in the case is  
12 specifically to have as reliable an identification as  
13 possible?

14 A It's so that we don't taint, an officer that has  
15 knowledge of the case they want to make sure doesn't taint  
16 that identification.

17 Q And I think earlier today you said you don't  
18 want to poison the identification?

19 A Correct.

20 Q Those are your words?

21 A Yes.

22 Q Now, in this case you didn't do that, correct?

23 A When we went up to Ms. McDermid you mean?

24 Q Yes.

25 A That's correct.

1           Q     You and Sergeant Keefe were the lead  
2 investigators in this case, correct?

3           A     Yes.

4           Q     And you and Sergeant Keefe chose the 2002 photo  
5 of Marvin Haynes, correct?

6           A     I assume we did. I don't know that we knew the  
7 date on it at the time.

8           Q     Okay. Well, you and Sergeant Keefe at the time  
9 that you chose that photo, that 2002 photo, you obviously  
10 knew what Marvin Haynes looked like, correct, on May 19th?

11          A     Yeah.

12          Q     You knew he had been arrested, right?

13          A     Yes.

14          Q     You knew his hair was substantially longer?

15                   MR. FURNSTAHL: Objection. Vague as to  
16 point in time.

17                   MR. BENSON: On May 19th.

18                   THE COURT: All right.

19                   MR. FURNSTAHL: Vague as to time on May  
20 19th.

21 BY MR. BENSON:

22          Q     Marvin Haynes was arrested on May 19th?

23                   MR. FURNSTAHL: Objection. I have an  
24 objection.

25                   THE COURT: Let me hear -- the objection is

1           vague as to time on May 19th?

2                   MR. FURNSTAHL:   Correct.

3                   THE COURT:   I think if we are going to talk  
4           about the booking photo it would be better to have a  
5           time specified, so if you know the time.

6                   MR. FURNSTAHL:   Can we approach, Judge, on  
7           a point?

8                   THE COURT:   You may.

9                                   (Off-the-record discussion at  
10          the bench out of hearing of the jurors.)

11       BY MR. BENSON:

12               Q     You knew that Marvin Haynes was arrested on May  
13       19th?

14               A     Yes.

15               Q     As far as you know what time was Marvin Haynes  
16       arrested?

17               A     I'm not sure.

18               Q     Okay.  You knew when you -- well, you selected  
19       -- you did select the photos, correct?

20               A     Yes.

21               Q     All right.  And as we've seen it's a 2002 photo,  
22       right?

23               A     Yes, we know that now.

24               Q     And you agree that that photo, that 2002 photo  
25       is different than how Marvin Haynes appeared in that live

1 lineup?

2 A Yes. His hairstyle is different, I should say.

3 Q His hair style is different. And you agree that  
4 -- earlier we saw exhibit --

5 MR. BENSON: May I approach, Your Honor, to  
6 obtain an exhibit?

7 THE COURT: You may.

8 MR. BENSON: May I approach the witness?

9 THE COURT: You may.

10 BY MR. BENSON:

11 Q Exhibit 96, you know that's from May 19th,  
12 correct?

13 A Yes.

14 Q All right. And you know -- and you know that  
15 that Exhibit No. 96 is different, Mr. Haynes's hairstyle  
16 appears to be different than the photo, the 2002 photo,  
17 correct?

18 A Yes. It's longer.

19 Q All right. In any event, then you and Sergeant  
20 Keefe went to Ms. McDermid to do the identification,  
21 correct?

22 A Yes.

23 Q And once again you did that despite the policy  
24 or the desire to have someone not involved in the  
25 investigation do the procedure?

1           A     Well, that's not a policy, it's a guideline,  
2     because like I say they were doing an experimental thing  
3     at this time so this wasn't in policy as it were. It was  
4     just a preference.

5           Q     It was a -- all right, use your words, it was a  
6     guideline?

7           A     Yes, sir.

8           Q     But it was also a guideline that you had  
9     employed with the first two photo ID procedures?

10           MR. FURNSTAHL: Objection. This is  
11     redundant. We've been over this --

12           THE COURT: Overruled. You can answer with  
13     regard to the first two photo procedures.

14     BY MR. BENSON:

15           Q     Ms. McDermid was subjected to two other photo  
16     identification procedures, correct?

17           A     Yes.

18           Q     Okay. One was done by Sergeant Zimmerman,  
19     correct?

20           A     Yes.

21           Q     And Sergeant Zimmerman, other than that  
22     identification procedure, had no involvement in the  
23     investigation of this case, is that correct?

24           A     I don't think he did at that time.

25           Q     Okay. And he was brought in because he had no

1 involvement with the investigation, correct?

2 A Um, yeah, I believe so.

3 Q All right. In fact you or, either you or  
4 Sergeant Keefe asked him to go do that photo  
5 identification because he had no involvement in the case?

6 A Yes.

7 Q All right. And Ms. McDermid was shown a second  
8 photo lineup by Sergeant Folkens, correct?

9 A Yes, that's correct.

10 Q Once again Sergeant Folkens didn't have any  
11 connection to this case?

12 A That's correct.

13 Q And either yourself or Sergeant Keefe chose  
14 Sergeant Folkens to do that lineup because he didn't have  
15 any connection to this case?

16 A Yes.

17 Q All right. Now we get to the third one, you  
18 actually chose to go to Ms. McDermid and do it yourself.

19 A Actually we had discussed that with our  
20 lieutenant because we were going to be going up to  
21 wherever she lives and most of our office had heard about  
22 this case by this time. We asked them if we had to find a  
23 totally separate person and he was okay with us showing  
24 it. We still had to follow the guidelines that we weren't  
25 going to try to point out anybody, of course, you know, we

1 never try to point anyone out, we just let the chips fall  
2 where they may.

3 Q Your guidelines, your guidelines are that you  
4 get someone else if available?

5 MR. FURNSTAHL: Objection. It's redundant.

6 THE COURT: Sustained. You know, we've  
7 established what the guidelines are.

8 BY MR. BENSON:

9 Q And you just testified that you talked with your  
10 lieutenant?

11 A Yes.

12 Q And how many people are in the Minneapolis  
13 police force?

14 A I'm not sure.

15 Q Roughly. Give me an estimate.

16 A 700 and something.

17 Q 700 and something people? All right. And is it  
18 your position that of that 700 and something people, no  
19 one else was available to do the lineup procedure with Ms.  
20 McDermid?

21 MR. FURNSTAHL: Objection. That's  
22 argumentative.

23 THE COURT: Let him finish the question  
24 first before you object. It's overruled. You can  
25 answer.



1 THE WITNESS: Would you repeat the  
2 question?

3 BY MR. BENSON:

4 Q Is it your position that of those 700 some  
5 people that are in the Minneapolis police department, none  
6 of them were available to do the identification procedure  
7 with Ms. McDermid?

8 A I guess we hadn't thought about getting a  
9 patrolman from somewhere else. We usually have it done  
10 within our office and most of those people had already  
11 been exposed to the case because it was several days old  
12 by this time.

13 Q It was three days old at this time, right?

14 A I believe so.

15 Q Okay. All right. But that was a decision that  
16 you made?

17 A Yes.

18 Q Now, Ms. McDermid looked at that lineup, she  
19 picked out photo number five I believe, is that correct?

20 A Yes.

21 Q Which was Marvin Haynes?

22 A Yes.

23 Q She said that that person, once she saw that  
24 person, looked like or that person was the shooter?

25 MR. FURNSTAHL: Objection. Misstates the

1 testimony.

2 THE COURT: I couldn't actually hear the  
3 end of the question.

4 MR. BENSON: I said Ms. McDermid indicated  
5 to you that that person looked like or was the  
6 shooter.

7 MR. FURNSTAHL: Objection. Misstates the  
8 testimony.

9 THE COURT: Sustained.

10 BY MR. BENSON:

11 Q She gave you an indication that led you to  
12 believe that number five was the shooter?

13 MR. FURNSTAHL: Same objection.

14 THE COURT: No, that's general enough. I  
15 guess he can answer it. Overruled.

16 THE WITNESS: I believe she said that that  
17 was the person that came in and robbed her.

18 BY MR. BENSON:

19 Q Okay. And then the next day after -- she saw  
20 that on May 19th, correct?

21 A Yes.

22 Q Then the next day was when she observed the  
23 in-person lineup?

24 A Yes.

25 Q All right. And when she was observing this, I

1 believe as you indicated she was sitting down before the  
2 people started walking in?

3 A I believe so.

4 Q All right. And when Marvin Haynes came up I  
5 believe your testimony was that she said that looks like  
6 the person?

7 A Again, I don't remember exactly. I put it in my  
8 report so whatever that report says how she said it that  
9 would be the most accurate.

10 Q Okay. What you testified to today was that she  
11 said that looks like him. That's what you said earlier  
12 today?

13 A Okay.

14 Q That's what you said earlier today, right?

15 A Okay. I believe you.

16 Q I'm asking you, sir, that's what you said  
17 earlier today that Ms. McDermid said that looks like him?

18 MR. FURNSTAHL: Objection. The witness has  
19 answered.

20 THE COURT: Wait a minute. Wait a minute.

21 Well, as to those words, if you recall whether  
22 or not that's the words she used you can answer.  
23 He's asking you to answer without looking at your  
24 report apparently.

25 MR. BENSON: Your Honor --

1 THE COURT: Yes.

2 MR. BENSON: Actually what I'm asking him  
3 is the comment what he said earlier today when the  
4 prosecutor was asking him questions. That was my  
5 question.

6 THE COURT: Okay. Well, I have down in  
7 quotes what I thought he said and it's one or two  
8 words off of that. What I have is this, you know, I  
9 can tell you but, you know, if that's the question as  
10 to exact words he used when answering the  
11 prosecutor's question, I mean you can answer if you  
12 remember.

13 MR. BENSON: Can we approach, Your Honor?

14 THE COURT: You may.

15 (Off-the-record discussion at  
16 the bench out of hearing of the jurors.)

17 BY MR. BENSON:

18 Q Sergeant Mattson, earlier today you testified,  
19 right?

20 A Yes.

21 Q You were asked questions about what words were  
22 used by Ms. McDermid when she saw the live lineup?

23 A Yes.

24 Q And correct myself, did you testify earlier  
25 today that she said that looks like the guy I saw?

1           A     I think I did, and I think that that's probably  
2     not the exact words she used. The exact words are the  
3     best recollection that I would have would be what I put in  
4     the report as to what her words were.

5           Q     Okay. And as you sit here now, just what she  
6     says was that looks like the person?

7                     MR. FURNSTAHL: Objection. Assumes facts  
8     not in evidence.

9                     MR. BENSON: I'm asking the question.

10                    THE COURT: It doesn't assume facts not in  
11     evidence but it is redundant. I'll allow you to  
12     answer it one more time.

13                    THE WITNESS: Could you repeat it please?

14     BY MR. BENSON:

15           Q     As you sit here now, your best recollection is  
16     that Ms. McDermid said that looks like -- basically that  
17     looks like the person, not a quote, but that the person  
18     she was observing looked like the person that was in the  
19     store?

20           A     Yes.

21           Q     Okay. Thank you. And with respect to Ravi  
22     Seeley when he saw that live lineup, that was the same  
23     day, correct?

24           A     Yes.

25           Q     And on that date he gave -- he actually gave

1 words of the same nature, that looked -- of that looks  
2 like the guy I saw?

3 MR. FURNSTAHL: Objection. Misstates the  
4 testimony.

5 THE COURT: Overruled. The witness can  
6 answer if he agrees.

7 THE WITNESS: In general, yes.

8 BY MR. BENSON:

9 Q He didn't say that was the guy, correct?

10 A I would have to see how I wrote it to see  
11 exactly what he said.

12 Q Okay. Do you have that report in front of you,  
13 Officer? Feel free to look at it.

14 A I don't know.

15 Q Do you recall which report it was?

16 MR. FURNSTAHL: Supp. 34.

17 MR. BENSON: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. BENSON:

20 Q I'll direct you and counsel to the bottom of the  
21 page. Okay. Actually the middle of the page for Mr.  
22 Seeley, bottom of the page for Ms. McDermid.

23 A Which paragraph are you looking at, sir?

24 Q It would have been the third paragraph up, I  
25 think, two smaller paragraphs and then --

1 MR. BENSON: May I approach, Your Honor, so  
2 I can point the witness to the right paragraph?

3 THE COURT: You may.

4 BY MR. BENSON:

5 Q All right?

6 A All right.

7 Q Okay, Sergeant. Now you have your report in  
8 front of you, right?

9 A Yes, sir.

10 Q Just so we're totally clear, Ms. McDermid  
11 indicated or told you upon viewing Mr. Haynes, he looks  
12 like him?

13 A Yes.

14 Q Okay. She didn't say that is him, she said he  
15 looks like him, correct?

16 A I believe that's what she said but she  
17 emphasized he looks like him. Didn't leave any room for  
18 doubt in my mind that she was identifying him.

19 Q But since you want to focus on her words, he  
20 looks like him. Those were her words?

21 A Best I can recollect, yes.

22 Q That's why you write reports, right? You put  
23 down her words in your report?

24 A Yes.

25 Q All right. And with respect to Ravi Seeley, you

1 testified to this earlier, why don't you go ahead and tell  
2 what Ravi Seeley said upon seeing Mr. Haynes? You can  
3 review your report.

4 A Ravi Seeley said upon seeing Marvin Haynes,  
5 whoa, I recognize him, he looks like who I saw.

6 Q Okay. And once again with Ravi Seeley, he  
7 indicated that Marvin Haynes looked like the person?

8 MR. FURNSTAHL: Objection. He's already  
9 testified. It's redundant.

10 THE COURT: Sustained.

11 BY MR. BENSON:

12 Q I want to focus on, stay with Ravi Seeley.

13 MR. BENSON: May I approach, Your Honor?

14 THE COURT: Yeah, you may.

15 BY MR. BENSON:

16 Q I want to stay with Ravi Seeley for a moment.  
17 You were asked some questions on direct examination  
18 regarding what Ravi Seeley may have said to you during  
19 that lineup procedure, do you recall that?

20 A Yes.

21 Q Okay. Now, after Ravi Seeley says whoa, that  
22 looks like -- to paraphrase -- whoa, that looks like the  
23 guy?

24 MR. FURNSTAHL: Objection. Mistakes the --  
25 I'm sorry.



1 THE COURT: Since we have the exact  
2 language maybe it would be nice if we are going to  
3 use it if we use the exact language.

4 BY MR. BENSON:

5 Q Ravi Seeley says whoa, I recognize him, he looks  
6 like who I saw, correct?

7 A Yes.

8 Q All right. Now after that, you were asked the  
9 question earlier today whether Ravi Seeley whispered in  
10 your ear?

11 A Yes.

12 Q Whispered something else in your ear?

13 A That's correct.

14 Q You were the person who heard Ravi Seeley say  
15 whoa, whoa, I recognize him, he looks like who I saw; you  
16 are the person he said that to, right?

17 A Yes. He said it to myself and I think Officer  
18 Peterson was there to hear that. I heard it.

19 Q I'm sorry.

20 A But I heard it too.

21 Q And when Ravi Seeley said that he said it in  
22 your presence?

23 A Yes.

24 Q Did he lean towards you and say it?

25 A Not that I recall.

1 Q Okay. But there's an Officer Peterson there as  
2 well?

3 A Yes.

4 Q According to you Ravi Seeley didn't say, "but  
5 I'm not sure"?

6 A No.

7 Q So if Ravi Seeley said that to anybody it would  
8 have been Officer Peterson?

9 MR. FURNSTAHL: Objection. That assumes  
10 facts not in evidence.

11 THE COURT: Sustained.

12 MR. FURNSTAHL: Instruct the jury to  
13 disregard.

14 THE COURT: To the extent that -- there was  
15 no answer on that question, but the jury will  
16 disregard that question.

17 MR. BENSON: Nothing further at this time,  
18 Your Honor.

19 THE COURT: Redirect, Mr. Furnstahl?

20 MR. FURNSTAHL: Thank you.

21 REDIRECT EXAMINATION

22 BY MR. FURNSTAHL:

23 Q You have your report in front of you still?

24 A No.

25 Q All right. It was kind of confusing so I want

1 to go through this and make sure everybody has it.

2 MR. FURNSTAHL: May I approach?

3 THE COURT: You may.

4 BY MR. FURNSTAHL:

5 Q First of all regarding Ravi Seeley, is it  
6 correct in your report that you have quotes behind the  
7 statement, quote, whoa I recognize him, he looks like who  
8 I saw, closed quote?

9 A Yes, sir.

10 Q Does that mean that you quoted Ravi Seeley  
11 directly?

12 A As best I could.

13 Q Okay. Now, prior to that there was something  
14 else that you observed when Ravi Seeley saw the defendant  
15 enter the room, correct?

16 A Yes. That's correct.

17 Q Not something that counsel asked you on cross?

18 A That's correct.

19 Q What happened just -- what happened when the  
20 defendant came into the room and prior to Ravi Seeley  
21 saying whoa, I recognize him, he looks like who I saw,  
22 what did he do?

23 A He kind of gasped like, you know, when you  
24 suddenly see somebody that you recognize from someplace,  
25 he made this sudden gasp.

1           Q     And then how long after he made the sudden gasp  
2     did he say whoa, I recognize him, he looks like who I saw?

3           A     Probably right away.

4           Q     Okay. And then regarding Cynthia McDermid, she  
5     told you that -- what did she tell about whether or not  
6     she was, how she was feeling emotionally?

7                     MR. BENSON: Objection. Beyond the scope.

8                     THE COURT: Sustained.

9     BY MR. FURNSTAHL:

10          Q     Well, were you asking her questions as the  
11     persons in the lineup were coming in? Did you ask her a  
12     question?

13          A     About the only question we would ask somebody is  
14     do you recognize them.

15          Q     Okay. Did you do that with each person that was  
16     coming in?

17          A     I believe so.

18          Q     And in response to subjects one through three,  
19     after you asked her do you recognize him, what was her  
20     response to those questions?

21          A     She didn't recognize anybody.

22          Q     What was her response?

23          A     She replied no.

24          Q     All right. So to each question do you recognize  
25     him with respect to subjects one through three she said

1 no?

2 A Correct.

3 Q Then when Marvin Haynes, number four, was  
4 brought into the room, did you observe some behavior of  
5 hers that you thought was striking?

6 A Yes.

7 Q What is it that you saw?

8 A Okay. She had been sitting in a chair like we  
9 had described earlier and I noticed that she sat bolt  
10 upright in her chair and she also kind of gasped before  
11 she said anything as if she recognized him.

12 Q And was that something that was important when  
13 you were watching, when you were observing the lineup?

14 A I thought so.

15 Q In fact did you make a record of that?

16 A I did.

17 Q That's in your supplement 34?

18 A Yes, sir.

19 Q She gasped just like Ravi Seeley gasped?

20 A Yes.

21 Q Then what did she do after she sat bolt upright  
22 in her chair and gasped? What did she do next?

23 A She focussed on Mr. --

24 Q Before she did that?

25 A She stood up.

1 Q Before that was she standing?

2 A No.

3 Q She had asked for a chair?

4 A Yes.

5 Q All right. And then so the defendant comes in,  
6 she bolts upright in her chair, she gasps and she stands  
7 up?

8 A Yes.

9 Q That's something that was pretty obvious to you?

10 A Yes, sir.

11 Q Something that you thought was striking with  
12 respect to what was going on with the identification?

13 A Yes.

14 MR. BENSON: Objection. That's not  
15 relevant.

16 THE COURT: Overruled.

17 BY MR. FURNSTAHL:

18 Q And did you make note of it in your report?

19 A I did.

20 Q That's the same report that counsel had,  
21 correct?

22 A Supplement 34.

23 Q All right. When he brought up -- the supplement  
24 is the same exact one?

25 A Yes, sir.

1 Q So he's got the same exact report?

2 A Yes.

3 Q All right. And then she told you something,  
4 then what happened?

5 MR. BENSON: Objection, Your Honor. Vague.

6 THE COURT: Sustained.

7 BY MR. FURNSTAHL:

8 Q After she sat bolt upright in her chair, gasped,  
9 and then stood up, what does she do next? Can you see  
10 where I'm going here?

11 A No.

12 Q She sat bolt upright in her chair, gasped and  
13 stood up. What did she do next?

14 A Well, that's when she focused on him and she  
15 said he looks like him.

16 Q All right. And then was there any doubt about  
17 her meaning when she emphasized the word "he?"

18 A No.

19 MR. BENSON: Objection, Your Honor. Move  
20 to strike that response as a conclusion of this  
21 officer.

22 THE COURT: What was the actual question  
23 you asked?

24 MR. FURNSTAHL: Was there any doubt about  
25 what she meant by emphasizing the word "he."

1 MR. BENSON: My objection was to be  
2 speculation.

3 THE COURT: I'm going to sustain -- the  
4 officer has already demonstrated that for the benefit  
5 of the jury before.

6 BY MR. FURNSTAHL:

7 Q And then was subject number six shown to her?

8 A Yes.

9 Q And then you went through the subjects a second  
10 time, correct?

11 A Yes.

12 Q When, when number four, the defendant, came in  
13 what did she do then that -- did she do anything then that  
14 you saw was different from the previous three?

15 A Well, she focused on him, I don't remember that  
16 she stood up or gasped the second time around. But she  
17 was focussing on him again.

18 Q Did she describe having any problems at that  
19 point in time?

20 A Yes. She said she was being, she was  
21 traumatized, she very upset, she was emotional.

22 Q What, if any, difficulties did she describe with  
23 respect to her concentration?

24 A She said she was starting to blend everybody  
25 together.



1           Q     All right.  She having any problems  
2     concentrating?

3           A     Yes.

4           Q     All right.  And at the standup, at the in-person  
5     lineup, the defendant's hair was much different than his  
6     hair was in the photograph that, in the photo array that  
7     you showed Ms. Seeley -- I mean Ms. McDermid on May 19th,  
8     correct?

9           A     Yes.

10          Q     And it was obvious that he wasn't, that the  
11     defendant was not five-eleven?

12          A     Yes.

13          Q     Obviously wasn't six-foot?

14          A     Correct.

15          Q     Could you tell whether or not -- how much he  
16     weighed?

17          A     Not exactly.

18          Q     But in spite of the fact that it was obvious  
19     that his hair was different, that he was shorter than  
20     five-ten, five-eleven, six-foot and you couldn't tell his  
21     weight, that was still the person that Ms. McDermid  
22     reacted to?

23          A     Yes.

24          Q     Same with Ravi Seeley?

25          A     Yes.

1 Q And this was, this would be four days after the  
2 murder at the flower shop, the 20th?

3 A Yes.

4 Q Now, you didn't see -- did you see Marvin Haynes  
5 at about 11:30 on May -- May 16, 2004, the time of the  
6 flower shop --

7 A No.

8 Q So you don't know if he had his hair in braids,  
9 had it down or how it was?

10 A Correct. That's correct.

11 Q You don't know if he was taking his hair out,  
12 knowing that -- that he was taking his hair out to  
13 disguise his appearance after 11:30 on May 16, 2004?

14 MR. BENSON: Objection, Your Honor.

15 Improper question; two, it's leading; three, it's  
16 speculation.

17 THE COURT: Sustained as to three.

18 BY MR. FURNSTAHL:

19 Q And when you showed the photos to Cynthia  
20 McDermid on May 19th, you couldn't tell his height at that  
21 point from the photo?

22 A That's correct.

23 Q You couldn't tell his weight?

24 A That's correct.

25 Q Could you tell what he was wearing?

1 A Clothing, you mean?

2 Q Correct.

3 A I think you might see part of a shirt in that  
4 lineup. I'm not sure.

5 Q Obviously did he have any kind of a jacket or  
6 sweat shirt?

7 A That you don't see, no.

8 Q All right. Obviously his hair was different?

9 A Yes.

10 Q And yet that was the one that she identified as  
11 being the one who was in the flower shop?

12 A Yes. And in fact she even commented on that  
13 photo, that's the face --

14 MR. BENSON: Objection, Your Honor. Asked  
15 and answered.

16 THE COURT: Sustained.

17 BY MR. FURNSTAHL:

18 Q What other comments did she make about the  
19 photo?

20 A That that's the person, however this person is  
21 wearing his hair shorter in this photo than what she  
22 actually saw. I think I put that in, or that was asked of  
23 her when we took a taped statement.

24 MR. FURNSTAHL: If I can have a moment,  
25 Judge?

1 THE COURT: You may.

2 THE WITNESS: I think in her --

3 BY MR. FURNSTAHL:

4 Q Where do you think that is?

5 A In Ms. McDermid's taped statement where she is  
6 identifying this person. I think we asked her what  
7 differences she noted and she stated the person in this  
8 photo is wearing his hair longer now.

9 Q Do you remember exactly what it was that you  
10 asked her and that she answered?

11 A I would have to see the transcript of that, sir.

12 MR. FURNSTAHL: May I approach?

13 THE COURT: You may.

14 MR. FURNSTAHL: Supplement 24.

15 BY MR. FURNSTAHL:

16 Q Now, with respect to supplement 24, that's a  
17 taped statement that you took of Cynthia McDermid on  
18 5/19/04, correct?

19 A Yes, sir.

20 Q And you were the one that was asking the  
21 questions?

22 A I believe so.

23 Q And Sergeant Keefe was with you?

24 A Yes.

25 Q Was this -- where was this, when was this

1 statement taken in respect to when you showed her the  
2 photo array? Was it before or after?

3 A We showed her the photo array first and then  
4 took her statement.

5 Q Immediately after?

6 A Yes. Before we left.

7 Q All right. And it indicates that in supplement  
8 24, does it not, that you had already shown her the photo  
9 array?

10 A Yes.

11 Q And you asked her if she made an identification?

12 A Yes.

13 Q What did she say?

14 A She said "yes, I did."

15 Q Did you ask her how she was able to make the  
16 identification or how she knew the person?

17 A Yes.

18 Q What did she say?

19 A She said he is the one that came in my store and  
20 robbed me.

21 Q Did she tell you, give detail as to how she was  
22 able to make the identification?

23 A Yes. She said side view.

24 Q Where did she get the side view?

25 A At one point during the flower shop incident the

1 suspect had turned and she saw a profile view of him and  
2 that she kind of keyed in on when we showed the photo  
3 spread on the 19th.

4 Q And when you were questioning her about looking  
5 at the photo array, did you ask her if there was any  
6 distinctive things about the person she identified that  
7 helped her to recognize him?

8 A Yes.

9 Q What did she say?

10 A His eyes and the side view, she could tell.

11 Q And then you asked her about any, about the  
12 problems with the hair. What you asked her, and this is  
13 the left view that we are seeing of this individual just  
14 for the record, you also pointed out that this photo, the  
15 hairstyle is not the same as what he was wearing on that  
16 day, is that correct?

17 A Yes.

18 Q Did I read that correctly?

19 A Yes, you did.

20 Q What was her response?

21 A She said "that's correct."

22 Q Then you asked how is the hairstyle different on  
23 this day of the robbery. I'm sorry, "How is the hairstyle  
24 different on the day of the robbery?"

25 A Yes. That was my question and her response is,

1 "I believe it was a little bit longer."

2 Q And then you asked, "When you looked at this  
3 photo you had, you had told me that this photo gave you  
4 the willies, what was the statement you made to the  
5 investigators when you looked at this photo?"

6 A She said "that's him."

7 Q And then you had her look at the photos again?  
8 You had her sign it?

9 A Yes.

10 Q And then had her look at all six photos again?

11 A Yes.

12 Q Did you ask if there was anything that changed  
13 her mind since she viewed it the first time?

14 A She said no, it doesn't.

15 Q That was the second formal Q and A you took from  
16 Ms. McDermid, correct?

17 A Yes.

18 Q First one was on May 17, 2004?

19 A That's correct.

20 Q All right. And that's when she talked to you  
21 about what occurred at the flower shop, is that correct?

22 A Yes.

23 Q And the second conversation was more about the  
24 identification display, the photo display that you showed  
25 her?

1 A Yes.

2 Q With respect to the -- I'll leave this up here  
3 in case you need to use that to refresh your recollection,  
4 but with respect to the incident on the day of the flower  
5 shop did she describe for you the weapon that the  
6 assailant used?

7 MR. BENSON: Objection. Beyond the scope.

8 THE COURT: Sustained.

9 BY MR. FURNSTAHL:

10 Q Now, counsel asked -- now, you had said that the  
11 protocol, the protocol that was used to show the  
12 sequential lineups was something that was new and  
13 experimental?

14 A Yes.

15 Q Is it -- you said it was a guidelines?

16 A Yes.

17 Q So is it a hard and fast rule to use officers  
18 that are not connected to the case when showing a  
19 sequential lineup to a witness?

20 A No.

21 Q All right. Now, counsel had asked you about how  
22 many people are employed by the Minneapolis police  
23 department and you said about 700?

24 A Yes.

25 Q Now, are all of these 700 people that are



1 employed by the Minneapolis police department, are all 700  
2 people assigned to the homicide division of the  
3 Minneapolis police department?

4 A No.

5 Q About how many are assigned to the homicide  
6 division?

7 A I believe there is 12 right now.

8 Q And of the 12 that are assigned, do all of them,  
9 do they all work the same shift or work different shifts?

10 A Different shifts.

11 Q How many shifts are there for the homicide  
12 division?

13 A Um, I believe there's -- well, basically three  
14 shifts to cover the 24-hour day.

15 Q Okay. So eight-hour shifts basically?

16 A Yes.

17 Q Sometimes an officer has to stay over to finish  
18 up an investigation?

19 A Yes.

20 Q Eight-hour shifts?

21 A Correct.

22 Q So how is it divided? How many people are on  
23 the first shift, how many on the second, how many on the  
24 third, as best you can recall?

25 A On the afternoon and the night shift there is

1 usually two, one two-person team working, a set of  
2 partners, and on the day shift there's a two-person team  
3 assigned to be the initial response car, as it were, and  
4 whoever else is working in the office they are assigned  
5 just working day shift but they are not assigned  
6 necessarily to respond immediately to anything.

7 Q All right. Now, at the time that this happened,  
8 was the homicide division handling just homicides or were  
9 you handling other cases as well?

10 A No. They also handle shootings, stabbings,  
11 assaults, kidnappings.

12 Q Besides homicide there are assaults and  
13 kidnappings?

14 A Yes.

15 Q Do you know how many homicides have occurred in  
16 Minneapolis thus far this year?

17 MR. BENSON: Objection. Relevance.

18 THE COURT: Sustained.

19 BY MR. FURNSTAHL:

20 Q Do you recall how many homicides have occurred  
21 in the city of Minneapolis by May 16th of 2004?

22 MR. BENSON: Objection. Relevance.

23 MR. FURNSTAHL: If you know.

24 THE COURT: Overruled. You can answer  
25 that, if you know.

1 THE WITNESS: I don't know the exact  
2 number. Quite a few, though.

3 BY MR. FURNSTAHL:

4 Q When you were assigned this specific homicide  
5 with Detective Keefe, was this the only homicide you were  
6 working on?

7 A No.

8 Q Do you recall how many other homicides you were  
9 working on?

10 A No, I don't.

11 Q Okay. Aside from the homicide that you were  
12 assigned, were you also working on some pending assaults  
13 or kidnapping cases?

14 A Yes.

15 Q What do you get more of, assaults or homicides?

16 A Assaults.

17 Q Get a lot of assaults?

18 A Yeah. Not everyone that gets shot dies, so we  
19 get more assaults actually than we do homicides by far.

20 Q And when we talk about assaults, you just  
21 mentioned a shooting can be an assault, correct?

22 A Yes.

23 Q Stabbing can be an assault?

24 A Yes.

25 Q Beating can be an assault?

1 A Yes.

2 Q Beating with a club or different mechanisms to  
3 cause -- that could be an assault?

4 A Yes.

5 Q Those are the kinds of assaults that you folks  
6 in the homicide division handle?

7 A Yes.

8 Q Now, so in terms of the availability of these  
9 700 members of the Minneapolis police department to do  
10 photo arrays, of the 12 -- did you say 12 pairs, 12 teams  
11 in the homicide division?

12 A No, there's -- right now there's 12  
13 investigators and they are paired up in two-person teams.

14 Q Okay. And of the teams that were in the  
15 homicide division back in May of 2004, would it be correct  
16 that these other teams, other than Sergeant Keefe and  
17 yourself, would likewise have other homicides, other  
18 assaults, other kidnappings?

19 A Sure.

20 Q So of these seven -- and so those are the  
21 numbers of people that are assigned of the 700 people that  
22 are employed by the Minneapolis police department, those  
23 are approximately the number that were assigned to the  
24 homicide division in May of 2004, is that right?

25 A I think there was, I'm not sure when they kind

1 of downsized homicide so there might have been a few more  
2 in homicide at that time. I don't remember when that  
3 occurred.

4 Q Less than 20 or more than 20?

5 A Less than 20. The maximum we had was 18.

6 Q Let's say 20. So of the 700 people employed by  
7 the Minneapolis police department, 20 were assigned to the  
8 homicide division in May of 2004, approximately?

9 A Okay. Yes.

10 Q And of those 20, some of them were working  
11 different shifts?

12 A Yes.

13 Q And of those 20, of the other 18, you and  
14 Sergeant Keefe being two of the 20, all of them had other  
15 homicides, other assaults, other kidnappings?

16 A Yes.

17 Q Now, would it be -- now, there's other  
18 investigators at the Minneapolis police department,  
19 correct? For example there are investigators that  
20 investigate sexual assaults?

21 A Yes.

22 Q And are they always available to homicide or are  
23 they dealing with their own case load?

24 A Everybody has their own case loads so people are  
25 coming and going.

1 Q And you also have patrol officers that are a  
2 part of the 700 people that are employed?

3 A Yes.

4 Q You also have -- do you have crime lab personnel  
5 that are part of the 700 people employed?

6 A Yes.

7 Q Would it be correct that only investigators may  
8 have training in the proper use or techniques of showing a  
9 photo array to a witness?

10 A Yes. I don't think that training has been  
11 widespread.

12 Q So it wouldn't be appropriate to, for example,  
13 assign one of the patrol officers to show a photo array to  
14 a witness in a homicide case?

15 A Yes, I would agree with that.

16 Q You are limited by your manpower in the homicide  
17 division?

18 A Yes.

19 THE COURT: Counsel, deputy, that gentleman  
20 has to wake up or he has to leave.

21 Sir, you are going to have to wake up, sit up or  
22 you are going to have to get out, okay?

23 MR. FURNSTAHL: May I proceed?

24 THE COURT: You may.

25 BY MR. FURNSTAHL:

1 Q Now, you were shown what's been marked but not  
2 received into evidence as Exhibit 97. Do you recall that?

3 A Yes. I believe that was the photograph.

4 Q That was a booking photo of the defendant from  
5 January 20, 2004.

6 A Yes, I think that sounds right.

7 Q And I believe it was pointed out on  
8 cross-examination that the photo that was part of the  
9 photo array that was shown to Ms. McDermid in this case  
10 was a booking photo from August of 2002?

11 A Yes.

12 Q Now, so the booking, Exhibit 97 that he showed  
13 you from January 20, 2004, that showed the defendant with  
14 longer hair than the one that was shown to Ms. McDermid,  
15 is that right?

16 A Yes.

17 Q Do you know, do you have any personal knowledge  
18 that that was the length of the hair that the defendant  
19 had in the hairstyle that he had on May 16, 2004?

20 A No.

21 THE COURT: Just so the record is clear,  
22 counsel, you said Exhibit 97 and I think you meant  
23 Exhibit 96, is that correct?

24 MR. FURNSTAHL: I thought it was 97.

25 THE COURT: 97 was not received or offered.

1 MR. FURNSTAHL: Right. It was not received  
2 or offered.

3 THE COURT: 96 was and that's the booking  
4 photo from --

5 MR. BENSON: It was. 96 was received and  
6 offered, the booking photo from May 19th.

7 THE WITNESS: 97 was the one that counsel  
8 is referring to.

9 THE COURT: He was referring to 97?

10 MR. BENSON: Yes.

11 BY MR. FURNSTAHL:

12 Q You know the one I'm talking about from  
13 January 20, 2004?

14 A Yes.

15 Q That had longer hair?

16 A Yes.

17 Q Now, you had -- and you were shown Exhibit 96,  
18 the booking photo from his, from the defendant's arrest on  
19 May 19, 2004, correct?

20 A Yes.

21 Q You know that was the same day, that was the  
22 same day that you talked to Ms. McDermid?

23 A Yes.

24 Q Do you know if that booking photo was taken  
25 before or after you spoke to Cynthia McDermid on May 19th?



1 A No, I don't.

2 Q Do you know if it was -- how do you get booking  
3 photos to use for photo arrays?

4 A Um, we go to the computer, we query a name and  
5 it will pull up that photo.

6 Q All right. But how do you get other photos to  
7 match that, I mean to fill in the remaining numbers in the  
8 photo array?

9 A We go to a, kind of like a photo bank as it  
10 were, and the same thing in this case we would pull up a  
11 photo of Mr. Haynes, then we would try to find people with  
12 similar features in terms of hairstyle, things like that.

13 Q So counsel had asked you and I believe it was  
14 Exhibit 96 that was the booking photo of the defendant  
15 from his arrest on May 19, 2004, he asked you whether or  
16 not you could have used Exhibit 96. Do you know if it was  
17 even available to you?

18 A No.

19 Q Did you arrest the defendant on May 19, 2004?

20 A No.

21 Q Do you know who did?

22 A I'm not sure.

23 Q Now, is there a process that one goes through  
24 after the arrest before they are admitted into a facility?

25 A Um, yes. They are generally fingerprinted and

1       photographed.

2           Q     All right.

3           A     And I suppose there is some paperwork to fill  
4       out.

5           Q     And do you know how long that process takes?

6           A     That depends on how busy the system might be.

7           Q     So it could be that that photo wasn't in the  
8       system when you spoke to Ms. McDermid?

9           A     Yes.

10          Q     Do you remember what time it was that you spoke  
11       to Ms. McDermid?

12          A     It was like two in the afternoon or so.

13          Q     Take a look at the May 19th Q and A and see if  
14       it's on there so we have it.

15          A     What supplement was that?

16                   MR. FURNSTAHL: May I approach?

17                   THE COURT: You may.

18                   MR. FURNSTAHL: Supplement 32.

19       BY MR. FURNSTAHL:

20           Q     Just read the start of the second photograph  
21       silently to yourself, please. Just the first line.

22                   Does that refresh your recollection with respect to  
23       the time that you went to Ms. McDermid's residence on May  
24       19th?

25          A     Yes.

1 Q What time was it?

2 A About 2:10 in the afternoon.

3 Q Now --

4 MR. FURNSTAHL: I need to approach on a  
5 point.

6 THE COURT: Okay.

7 (Off-the-record discussion at  
8 the bench out of hearing of the jurors.)

9 THE COURT: All right. Members of the  
10 jury, I'm going to give you your afternoon recess a  
11 little early. Please leave your notebooks on your  
12 chair. You are excused. You can either go into the  
13 jury room or go this way, but don't come into the  
14 courtroom until the clerk comes out to get you, okay?

15 (Jurors exit the courtroom.)

16 THE COURT: All right. Counsel, why don't  
17 you approach to put the argument on up here.

18 MR. FURNSTAHL: This is the State's request  
19 outside the presence of the jury to authorize the  
20 introduction of the evidence that an unknown  
21 informant provided information to the Minneapolis  
22 police department that the defendant was in fact the  
23 shooter at the flower shop incident -- of the flower  
24 shop incident and that he had been bragging about  
25 shooting the person at the flower shop.

1           Counsel has been aware of this for months and  
2 months. We've had motions in limine on this. I  
3 indicated that following his opening statement I felt  
4 that he opened the door. I think I advised the Court  
5 that I was doing some research on this and I believe  
6 that this cross-examination has kicked the door open  
7 for this reason: We have been very careful to be  
8 antiseptic in terms of the kinds of evidence that  
9 comes in and doesn't come in, but part of the tenor  
10 of the defense case, and it's a valid thing, I'm not  
11 complaining about that, but he has suggested, for  
12 example in opening statement, he said that the police  
13 had other options but they focused on Marvin Haynes.  
14 And that they were, they wanted to close the case and  
15 had incentives to arrest the defendant.

16           And I recognize that his statements are not  
17 evidence, but clearly the tenor of the  
18 cross-examination of the lead investigator suggests  
19 that. He was cross-examined about other photographs,  
20 other options that he had, following through with the  
21 theory that the cops rushed to judgment in this case.

22           And I was careful to point out the sequence of  
23 the events and not to get into the date or time of  
24 the arrest of the defendant. That was brought in by  
25 the defense. And the reason for that is because what

1 initiated the arrest of the defendant was their  
2 receiving this information from this unnamed  
3 informant. They got that apparently on May 18th at  
4 around 12:30, and I don't know --

5 MR. BENSON: Right here.

6 MR. FURNSTAHL: And then they found out  
7 that the defendant had a scheduled appearance in  
8 juvenile court that was scheduled for 3:15. When he  
9 didn't appear they got, there was a warrant out for  
10 him and he was arrested on that warrant. This is a  
11 day before or -- then he's arrested on the warrant at  
12 12:40 p.m. on May 19th.

13 Ms. McDermid is not interviewed, and she's the  
14 first person that identifies him as having a  
15 connection to the case. This is the first  
16 opportunity, that third photo lineup shown to Cynthia  
17 McDermid May 19th at 2:10 p.m. She at that time  
18 identifies the defendant. I had Sergeant Wehr  
19 testify that Ravi Seeley identifies the defendant at  
20 four o'clock. Now this jury knows that the defendant  
21 was arrested before that time and there was  
22 absolutely no basis to arrest him.

23 And I bring this out because this is something  
24 that we had talked about, we had been focused on,  
25 defense counsel even made a motion in limine that I

1 keep it out and we had it worked out, and we  
2 conferred about it before opening statements and I  
3 told him that we were going to do the same thing,  
4 that I was going to ask a leading question of the  
5 sergeant who was just going to answer yes to that  
6 question and we were going to move on and that's what  
7 happened here. And it seems to me that given that  
8 kind of notice you cannot go that far when -- on this  
9 kind of evidence. It must be seen that he has opened  
10 the door to this.

11 MR. BENSON: Your Honor, can I respond?

12 THE COURT: Um-hum.

13 MR. BENSON: We haven't opened any door. I  
14 based my defense on the discovery and the evidence  
15 available to us. We litigated this matter before  
16 Judge Connolly before. I raised hearsay problems  
17 with an unnamed source which I haven't had any  
18 discovery from other than somebody told the church  
19 member that Marvin Haynes did this, and that's the  
20 extent of it.

21 The State didn't want to disclose, one, that  
22 church member and produce them with a statement. The  
23 State chose not to find out or give -- tell us who  
24 the unnamed source was because it's my understanding  
25 the church member may not want to give that

1 information or that it may cause a problem between  
2 the Minneapolis police department and the black  
3 church in north Minneapolis. Those are all things  
4 that the State chose to do.

5 Because of that and with the obvious  
6 confrontation concerns, because having an unnamed  
7 witness in a murder case saying Marvin Haynes did it,  
8 I can't challenge that. And we don't know, despite  
9 the State's representations, I mean somebody gave  
10 some information to somebody but we can't challenge  
11 that in court. The State, if they wanted to use this  
12 evidence, they could have gone ahead and divulged any  
13 kind of, you know, privilege or confidences they have  
14 with the black church, with north Minneapolis,  
15 divulge and give us the information about who that  
16 informant was, bring him into court so we can  
17 challenge and test whether that witness actually was  
18 able to say that Marvin Haynes was bragging about  
19 doing this offense. Those are the problems that the  
20 State has with asking to open this door.

21 It's my belief, and I respect Judge Connolly's  
22 decision, but it's my belief that they really  
23 shouldn't have been able to say we received  
24 information that led us to Marvin Haynes, and that  
25 was the gist of my initial motion was to prevent them

1 from making no mention at all and just going ahead  
2 with the case. So the compromise was to the benefit  
3 of the State because they didn't have to disclose  
4 information to us.

5 So first, I don't believe I opened the door.  
6 Secondly, even if the door was open, there's still  
7 the hearsay issue and the confrontation issue which  
8 at this point since the jury has been sworn in this  
9 case, we can't deal with. There is no way to deal  
10 with that even if they brought forward witnesses and  
11 things like that. We still have to deal with whether  
12 we could effectively cross-examine those witnesses or  
13 that witness.

14 MR. FURNSTAHL: Let me make a comment about  
15 the choices that the State had in this case.

16 Counsel is absolutely wrong and I think I've  
17 represented this to the Court and counsel in the past  
18 that we had absolutely no choice in this. I have  
19 been trying to get, to obtain the identity of this  
20 person and to gain some cooperation. I tried before  
21 the case was continued, I've been trying before this  
22 case, and I believe I've communicated that to  
23 counsel. I would agree that if we made the decision  
24 not to introduce that person, if it was our choice  
25 then he might have a better foundation to raise his



1 objection to the introduction of that, but the point  
2 is and counsel was aware that we were without any  
3 choice in this matter. The decision not to come  
4 forward was made by the person who provided the  
5 information to the Minneapolis police department  
6 through this intermediary.

7 And counsel is the one that had the choice. He  
8 knew that we had dealt with this issue, he knew that  
9 we had it handled, he knew that we were respecting  
10 the rules of evidence. I mean I agreed that the  
11 evidence was not admissible except to show what  
12 effect it would have on these officers. And we  
13 minimized the effect of that by making a very general  
14 statement in the manner that I've just described and  
15 in the manner that we did during the direct  
16 examination of Sergeant Mattson, but it was counsel  
17 that made the choice to go further. It was counsel  
18 that made the choice to claim that -- to make these  
19 other claims.

20 THE COURT: All right. Number one, clearly  
21 this has been argued before Judge Connolly. He made  
22 his ruling. You guys had kind of an understanding as  
23 to where we were going. I think two things have  
24 happened since then. Number one, we have had the  
25 discussion about the various photographs and when

1           they were shown to whom and what time and whether or  
2           not they were available to this detective to put  
3           together the lineup. It clearly implies that he  
4           was -- he could have used the one photograph with the  
5           longer hair of the defendant but he chose not to.

6           I don't think that that, that doesn't at this  
7           point in time open the door to bring in the  
8           information about the fact that they had an unnamed  
9           source, but I think what we will do is this. I will  
10          allow the prosecutor to ask this detective two  
11          questions, one to show that the defendant was  
12          arrested on a juvenile warrant that had nothing to do  
13          with this case, and that the time of the arrest was  
14          12:30 on the 18th.

15                 MR. FURNSTAHL: No. It was -- 12:30 is  
16                 when they got the anonymous tip.

17                 THE COURT: It was 3:15 on the 18th.

18                 MR. FURNSTAHL: No, it was 12:40 on the  
19                 19th.

20                 THE COURT: So you can indicate that he was  
21                 arrested for a juvenile warrant that had nothing to  
22                 do with this case on the 19th at 12:40 p.m., and that  
23                 in the meantime you may reassert that in the meantime  
24                 they had some information that, you know, we are not  
25                 going to say anything about unnamed source, nothing

1           like that. I don't think we have gotten that far but  
2           I think we can clarify the timing of these things.

3                     MR. BENSON: Just so I'm --

4                     THE COURT: But counsel does have to be  
5           very careful. If you go -- because you could open  
6           the door easily.

7                     MR. BENSON: My question is this. As far  
8           as what specifically, how specifically is the Court  
9           limiting the State with respect to this information?  
10          Is it the same manner in which the State has been  
11          doing it from the beginning?

12                    THE COURT: I couldn't hear what you said.

13                    MR. BENSON: Basically is the State going  
14          to be allowed to say, as they said at the beginning  
15          of this case or during their direct, that information  
16          led them to Marvin Haynes, period? And it should be  
17          done in a leading form with a limit to that extent  
18          because if there's an open-ended question then, you  
19          know, a lot of things are attached to it.

20                    THE COURT: That is my understanding that  
21          you guys told me at the beginning and that's what I  
22          thought you were going to stick with. So the  
23          question will be that you can clarify the time and  
24          date he was arrested in juvenile court and it had  
25          nothing to do with this case when he was arrested in

1 juvenile court, and then you can just indicate in a  
2 leading question that they had in the meantime  
3 received, you know, had developed him as a potential.

4 MR. FURNSTAHL: This is what I intend to  
5 do. I'll repeat the question I asked earlier in  
6 direct examination: Is it correct that -- and I'll  
7 indicate that it was on May 18th, sometime on May  
8 18th you received information that caused you to  
9 investigate Marvin Haynes. Answer, yes. Then is it  
10 correct that you then found out that he was scheduled  
11 to appear in juvenile court on 3:15 on May 18th.  
12 Answer, yes.

13 Are you listening, Dave?

14 THE WITNESS: (Nods head.)

15 MR. FURNSTAHL: And is it correct that you  
16 found out that he did not make that appearance.  
17 Answer yes. As a result you are aware that a warrant  
18 for this juvenile offense that has nothing to do with  
19 this case was issued and you had him arrested on that  
20 juvenile warrant and that arrest took place on May  
21 19th at 12:40 p.m.

22 THE COURT: Okay. I think that's what will  
23 stick with the ruling and we will not go beyond that  
24 then.

25 MR. FURNSTAHL: Okay.

1 THE COURT: All right. We'll recess.

2 MR. FURNSTAHL: Thank you.

3 THE COURT: 15 minutes, deputies.

4 (Short recess.)

5 THE COURT: Okay. Mr. Furnstahl.

6 MR. FURNSTAHL: Thank you, Judge.

7 BY MR. FURNSTAHL:

8 Q Sergeant, I have just a couple more questions  
9 for you. Is it correct that on May 18th, two days after  
10 the flower shop murder, the Minneapolis police department  
11 received information that caused you then to investigate  
12 Marvin Haynes?

13 A Yes.

14 Q And as a result of receiving that information,  
15 you did some checking on Marvin Haynes?

16 A Yes.

17 Q One of the things you found out was that he had  
18 an appearance scheduled for that day, May 18th on an  
19 unrelated juvenile matter?

20 A Yes.

21 Q And that was scheduled in juvenile court for  
22 3:15 that afternoon?

23 A Yes.

24 Q Later on you found out that he did not make that  
25 appearance?

1 A Yes.

2 Q And as a result a bench warrant was issued for  
3 his arrest?

4 A Yes.

5 Q And it was on that warrant that he was arrested  
6 the next day, May 19th?

7 A Yes.

8 Q And he was arrested at 12:40 in the afternoon?

9 A Yes.

10 Q Thank you, sir.

11 MR. FURNSTAHL: That's all I have.

12 THE COURT: Mr. Benson.

13 MR. BENSON: Briefly.

14 REXCROSS-EXAMINATION

15 BY MR. BENSON:

16 Q Sergeant, you were asked questions just recently  
17 by Mr. Furnstahl regarding once again the live lineup that  
18 Cynthia McDermid observed, right?

19 A Yes.

20 Q All right. And as you talked about before, you  
21 have a police report that you generated documenting what  
22 was said that day, correct?

23 A Yes.

24 Q And is that supplement 34 that you have looked  
25 at at least a couple times today, correct?

1 A I think that's the one, yes.

2 Q And the reason you wrote that as you've  
3 indicated already, the reason you wrote that is to, one,  
4 help your memory, but also document as well as possible  
5 what was said that day, right?

6 A Yes.

7 Q And what Ms. McDermid told you as far as the  
8 words was that he looks like him, correct?

9 A Without having that in front of me yes, sounds  
10 right.

11 MR. BENSON: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. BENSON:

14 Q I just want to get this clear, so why don't you  
15 take a look at that and tell me when you've read it.

16 A Okay. You are referring to Ms. McDermid?

17 Q Yes.

18 A Okay. Yes. That's what I wrote down. She said  
19 he looks like him.

20 Q Okay. And that was when she saw Marvin Haynes  
21 come forward, he looks like him?

22 A Yes.

23 MR. FURNSTAHL: Objection. Redundant.

24 THE COURT: Overruled. You can answer.

25 The answer will stand.

1 MR. BENSON: May I retrieve my document,  
2 Your Honor?

3 THE COURT: You may.

4 MR. BENSON: Nothing further.

5 THE COURT: Anything else?

6 MR. FURNSTAHL: Nothing further.

7 THE COURT: All right. You can step down,  
8 Officer.

9 (Witness excused.)

10 MR. FURNSTAHL: I'll then call Officer Andy  
11 Stender.

12 Whereupon,

13 ANDREW PAUL STENDER,  
14 after having been first duly sworn, was examined  
15 and testified as follows:

16 THE CLERK: Please state your full name and  
17 spell your last name for the record.

18 THE WITNESS: Andrew Paul Stender,  
19 S-T-E-N-D-E-R.

20 THE COURT: Okay. Mr. Furnstahl.

21 MR. FURNSTAHL: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. FURNSTAHL:

24 Q Mr. Stender, you are obviously an officer with  
25 the Minneapolis police department?



1 A Yes, sir.

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

4 A Yes.

5 Q How long have you been a police officer?

6 A 19 years.

7 Q How long with Minneapolis police department?

8 A 13.

9 Q So you were employed by them on May 16, 2004?

10 A That's correct.

11 Q Were you on duty that day?

12 A Yes, sir.

13 Q Did you go to the scene of the shooting at the  
14 flower shop on 33rd and Lyndale in north Minneapolis?

15 A Yes.

16 Q You also, are you a canine officer?

17 A That's correct.

18 Q Could you tell the jurors what a canine officer  
19 is?

20 A Basically my partner is my dog. I don't work  
21 with any other officers. My dog is with me, every time I  
22 go to work for the city my dog goes with me and we are a  
23 team.

24 Q All right. What is your assignment as a canine  
25 officer?

1           A     I patrol all of Minneapolis. We have citywide  
2 range. We go wherever we are needed.

3           Q     As a patrol officer, are you given training in  
4 the use of showing sequential photo lineups to witnesses  
5 in homicide cases?

6           A     Sir, can you repeat that?

7           Q     Yeah. You didn't understand my question, did  
8 you?

9           A     No, sir.

10          Q     Okay. Why don't I just move on. On May 16,  
11 2004 you were with your canine partner?

12          A     That's correct.

13          Q     What kind of dog is he?

14          A     My dog is Belgian Melena.

15          Q     What is that?

16          A     It's like a smaller German shepherd, it's kind  
17 of a reddish fox color.

18          Q     What's your partner's name?

19          A     My canine partner's name is Harley.

20          Q     How long have you two been partnered?

21          A     I got Harley in March of 2000, so a little over  
22 five years I've had him.

23          Q     Now, on May 16, 2004, did you use your dog to  
24 try to track the route of the assailant?

25          A     Yes, sir.

1 Q Did you receive some information -- well, first  
2 of all how do you do that?

3 A When I go to track a person with my dog, I put a  
4 special harness on him and that indicates to him and lets  
5 him know that it's time to shift gears and he's expected  
6 to track from scent, and that's the first thing I do is I  
7 put the tracking harness on him.

8 Q He's trained in doing that?

9 A Yes, sir.

10 Q And have you used him for that purpose on other  
11 occasions?

12 A Numerous times.

13 Q Do you have confidence in what he can do in  
14 terms of that?

15 A Yes.

16 Q All right. So you put the harness on him. Did  
17 you receive information -- well, do you need some kind of  
18 a scent then?

19 A I don't need a, I'm assuming that you are  
20 referring to a subsequent article. With my dog, no, I do  
21 not need a scent article with him. My dog goes on the  
22 most freshest scent that's available to him and looks for  
23 different types of scent.

24 Q In this case did you have a scent article?

25 A Not for my dog, no.

1 Q Was there some green wrapping paper?

2 A Yes, sir, there was.

3 Q Was that a scent article?

4 A That was used as a scent article for the  
5 bloodhound that arrived after I tracked with my canine  
6 partner Harley.

7 Q So you didn't use the scent article?

8 A That's correct.

9 Q Did you receive information as to the location  
10 of a potential scent article?

11 A Yes.

12 Q And from whom did you receive that information?

13 A I believe it was Ms. Dermis if I'm pronouncing  
14 it correctly.

15 Q McDermid?

16 A McDermid.

17 Q Cynthia McDermid?

18 A Yes, sir.

19 Q And what did she tell you in respect to a scent,  
20 the location of a potential scent article?

21 A She told me that the person that committed the  
22 crime was in the flower store and had leaned directly over  
23 the green paper on the counter.

24 Q Did you go inside the store?

25 A Yes.

1 Q Did you see the green paper?

2 A Yes.

3 Q Did you do anything to ensure that that scent  
4 would not be, I don't know what the word is, would stay  
5 fresh?

6 A Contaminated.

7 Q Yes. Thank you.

8 A Yes, sir. Yes, I did.

9 Q Those four syllable words are hard for lawyers  
10 this time of day, you know.

11 A Yes. Later on after I had arrived I took that  
12 piece of green paper and I put it in a paper sack to  
13 preserve the scent that was on the paper for the  
14 bloodhound to use for categorizing scent.

15 Q All right. Were you trying to obtain the  
16 services of a bloodhound in addition to your car? Your  
17 dog?

18 A Yes, sir.

19 Q And did you obtain the services of a bloodhound?

20 A That's correct.

21 Q Where did the bloodhound come from?

22 A There was some canine officers that were doing  
23 training that Sunday, I believe they were down by  
24 Faribault and I was aware that this was happening so at  
25 the request of Sergeant Keefe who was the homicide

1 sergeant at the scene he asked me to contact the  
2 bloodhound officer to come up and also perform a track at  
3 the scene.

4 Q Okay. And did the bloodhound then use the scent  
5 article that you were referring to earlier?

6 A Yes, sir.

7 Q But your dog did not?

8 A That's correct.

9 MR. FURNSTAHL: May I approach?

10 THE COURT: You may.

11 BY MR. FURNSTAHL:

12 Q I want to show you what's been received in  
13 evidence as Exhibit 14. Do you recognize Exhibit 14?

14 A Yes, sir.

15 Q What is that?

16 A That is a picture of the counter that had the  
17 green tissue or wrapping paper on it where Ms. McDermid,  
18 Cynthia McDermid --

19 Q McDermid.

20 A McDermid, told me that the suspect had leaned  
21 directly over.

22 MR. FURNSTAHL: Can I publish it?

23 THE COURT: You may.

24 (Displays exhibit on overhead  
25 projector.)

1 BY MR. FURNSTAHL:

2 Q This is the green wrapping paper?

3 A Yes, sir.

4 Q It was on the counter?

5 A Yes.

6 Q And you ultimately took that and put that in the  
7 bag so the scent would not be contaminated?

8 A That's correct.

9 Q And you said that your dog didn't use a scent  
10 article, correct?

11 A That's correct.

12 Q Did you ask your dog then to track the freshest  
13 scent?

14 A I brought my dog, the way that we performed it  
15 is I brought my dog to the last known location where the  
16 suspect was seen which was right outside the edge of the  
17 building and I put, when we go into a track position like  
18 I said I have the tracking harness on him and I put him  
19 into what we call a down position. That is another  
20 position that indicates to him it's time to track. So  
21 when he was laying down right in that area I gave him the  
22 track command and I wave my hand out like this and he  
23 stood up and he got a scent and that's how the track was  
24 started.

25 Q Now, were steps in place either before or

1       shortly after you arrived to make sure that other officers  
2       arriving would not contaminate the scent trail?

3             A     That's correct.

4             Q     And what things were in place to accomplish  
5       that?

6             A     I believe there was an officer that was posted  
7       on 33rd Avenue right outside the store keeping anybody  
8       from walking in this direct area where the suspect was  
9       last seen.

10            Q     How soon did you arrive?

11            A     I was on 41st Avenue when the call came out and  
12       the call was on 33rd so I was there two minutes maximum.

13            Q     And did you assist in freezing the scene so the  
14       scent trail would not be contaminated?

15            A     No, I did not.

16            Q     Did you need to?

17            A     No, I did not.

18            Q     It was already done?

19            A     Yes, sir.

20            Q     Would you describe the route that your dog  
21       Harley took in following the scent?

22            A     Yes, sir. Like I said we started right outside  
23       the business door. I started the track position there and  
24       we went on the north side of 33rd which is where the  
25       flower shop was and went on the sidewalk towards the east,



1       then when we got to the alley, I believe it was between  
2       612 and 614 33rd the alley goes back up to the north and  
3       Harley took me to the alley, up north through the alley  
4       and we went approximately three-quarters of the way up the  
5       alley, a little bit farther, and he took me to the rear --  
6       there was a cement parking pad in the rear of 3343 Sixth  
7       Street North and that's where he stopped.

8               Q     All right.

9                       MR. FURNSTAHL: Your Honor, may I approach?

10                      THE COURT: You may.

11       BY MR. FURNSTAHL:

12               Q     I want to show you an aerial photograph of the  
13       area, what's been received in evidence as Exhibit No. 1.  
14       Do you see that?

15               A     Yes, sir.

16               Q     Do you have a pointer in front of you?  
17       Everybody see this? You can see right here is 3300  
18       Lyndale Avenue North, the location of the flower shop?

19               A     Yes, sir.

20               Q     You are familiar with this area?

21               A     Yes.

22               Q     You patrol this area?

23               A     Yes.

24               Q     All right. And to the top of the exhibit is  
25       north?

1           A     Yes.

2           Q     With the pointer, starting from the flower shop,  
3 would you indicate the route that your dog Harley tracked  
4 the scent?

5           A     Yes, sir. Like I said we started right at the  
6 main front door of the business which was on the southwest  
7 corner of the business, the front door. That's where I  
8 gave my canine partner Harley the track command, and he  
9 came across east on the sidewalk along the south side of  
10 the building and continued east until the alleyway here.  
11 At the alley he turned left, which would have been north,  
12 and we continued north in the alley and we went up to  
13 right about here (points) I believe, this is 3343 right  
14 here.

15                So again we start in front of the building, went to  
16 the east, went through the alley, went all the way north,  
17 up to -- there's a cement parking pad right here behind  
18 3343 Sixth Street North. This is Sixth Street right here.

19           Q     Why did Harley stop then at that location? What  
20 did that indicate?

21           A     What Harley does is when he loses the scent he  
22 stops and he throws his head up in the air and that tells  
23 me he no longer has the scent. The scent that he was  
24 tracking is gone and so that's an indication to me that  
25 that's where it ended.

1           Q     Okay. The conduct that you observed your dog to  
2 exhibit there, the way he threw up his head indicating  
3 that the scent was gone, would that be consistent with  
4 someone walking eastbound on 33rd, then northbound in the  
5 alley and then getting into a car and taking off?

6           MR. BENSON: Objection. That's speculation  
7 as far as the last part of that.

8           THE COURT: Overruled. I think that's  
9 within common knowledge. He can answer.

10          THE WITNESS: Yes, sir, it would be.

11 BY MR. FURNSTAHL:

12          Q     Now, did you have your dog Harley repeat that or  
13 did you just do it the one time?

14          A     After we got up to that parking pad area, I  
15 guess I wanted to be a hundred percent sure so what I did  
16 is I started him, I went to the north, to the east, to the  
17 west, to see if he picked up that same scent again, and  
18 what I did is I walked him in a circular motion and he  
19 gave me nothing, no indication whatsoever. So then what I  
20 did is I came back down probably about halfway in the  
21 block here and I took him to the alley, and once again I  
22 put him into the track position, put him into a down with  
23 his harness on and I told him find a track and he went  
24 right straight up the alley to the same spot and we went  
25 to the same spot on the parking pad and once again when he

1 got there he was sniffing and looked and all of a sudden  
2 he lifted his head up and that tells me once again that  
3 the track, that there was no more scent there, that that's  
4 where it had ended

5 Q Same spot?

6 A Yes, sir.

7 Q Now, were you present when the bloodhound then  
8 arrived?

9 A Yes.

10 Q Did you know the officer that was handling the  
11 bloodhound?

12 A Yes, sir, I do.

13 Q Is he someone that you worked with on canine  
14 duties or are you familiar with from training and so  
15 forth?

16 A I'm familiar with Steve from past training, yes.

17 Q What's his full name?

18 A I believe it's Steven Wald.

19 Q And what department is he with?

20 A He works for the Austin police department.

21 Q Do you know about what time it was that Officer  
22 Wald arrived with his bloodhound?

23 A Maybe around 1:30 in the afternoon.

24 Q So about a little bit less than two hours later?

25 A Correct.

1 Q And what did you ask Officer Wald to do?

2 A I asked him to perform an independent track all  
3 on his own using the scent article to see where it ended  
4 up.

5 Q He knows that you have a canine, correct?

6 A That's correct.

7 Q Did you tell him where your canine went?

8 A Absolutely not.

9 Q Why not?

10 A That would be tainting him and he wouldn't do it  
11 on his own.

12 Q So you gave him a scent article you said?

13 A Yes.

14 Q Is that the green wrapping paper that you  
15 described?

16 A That was in the paper bag, yes.

17 Q Where did you keep that paper bag so as to  
18 ensure that the scent would not be contaminated?

19 A I put that bag in my trunk.

20 Q Did it stay there until Officer Wald appeared  
21 with his bloodhound?

22 A Yes, sir.

23 Q Did you see him give the scent, or the scent  
24 article to his bloodhound?

25 A I saw Officer Wald open up the bag and place it

1 on the ground and then he took his bloodhound up to it and  
2 let the bloodhound get a sniff of the article.

3 Q Then what happened?

4 A Then he performed his own track and he went the  
5 same route that my canine partner Harley went.

6 Q Did he stop where Harley stopped?

7 A In just about the same area, yes.

8 Q Did he do it more than once or just the one  
9 time?

10 A I believe he just did it the one time, sir. I'm  
11 not sure.

12 Q Okay. And at no time prior to Officer Wald  
13 releasing his bloodhound did you ever tell him the route  
14 that your dog Harley took?

15 A No, sir.

16 MR. FURNSTAHL: May I approach?

17 THE COURT: You may.

18 BY MR. FURNSTAHL:

19 Q Directing your attention to Exhibit 38, this has  
20 been testified to as a photograph of the area behind 3343  
21 Sixth Street. Do you recognize that?

22 A Yes, sir.

23 Q Is that the approximate location where your dog  
24 Harley and Officer Wald's dog stopped or lost the scent?

25 A That's correct.

1 MR. FURNSTAHL: Ask to publish it?

2 THE COURT: Go ahead.

3 (Displays exhibit on overhead  
4 projector to the jury.)

5 BY MR. FURNSTAHL:

6 Q That is the area, is that correct, Officer?

7 A Yes, sir.

8 Q Thank you, sir.

9 MR. FURNSTAHL: That is all I have.

10 THE COURT: Cross-examination, Mr. Benson?

11 MR. BENSON: No questions, Your Honor.

12 THE COURT: All right. You can step down,  
13 Officer.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 MR. FURNSTAHL: Can we approach?

17 THE COURT: You may.

18 (Off-the-record discussion at  
19 the bench out of hearing of the jurors.)

20 THE COURT: Members of the jury, I'm going  
21 to need to excuse you for a little while. It  
22 shouldn't be too long, but please leave your note  
23 books on your chair and we'll get you out as soon as  
24 we are ready to go again, okay?

25 (Jurors exit the courtroom.)

1 The following is outside the presence of the jury.)

2 THE COURT: Mr. Harper, step right up here  
3 and raise your right hand to be sworn.

4 Whereupon,

5 ISIAH HARPER,  
6 after having been first duly sworn, was examined  
7 and testified as follows:

8 THE COURT: Before you get up in the  
9 witness stand I want to ask you, number one, do you  
10 have an attorney that's representing you on something  
11 right now?

12 THE WITNESS: No.

13 THE COURT: You consulted with an attorney  
14 one other time on this case and before I ask you if  
15 you are in a position to testify and regard -- and if  
16 you have thought about whether or not there's  
17 anything you feel, you know, you may say that might  
18 be incriminating to yourself, do you want to talk to  
19 an attorney?

20 THE WITNESS: No.

21 THE COURT: No?

22 THE WITNESS: (Shakes head.)

23 THE COURT: I know you have your mom with  
24 you, right?

25 THE WITNESS: Yeah.



1 THE COURT: Okay. If you had any concerns  
2 at all about whether or not what you said on the  
3 stand would or might even lead to a trial, something  
4 that might incriminate you, I would make sure you  
5 have a right to have an attorney first and to talk to  
6 him first before you make that decision. How old are  
7 you?

8 THE WITNESS: 16.

9 THE COURT: Okay.

10 MR. FURNSTAHL: Judge, can I --

11 THE COURT: Yes.

12 MR. FURNSTAHL: Cynthia Harper, we've  
13 subpoenaed her and I advised her that she should  
14 probably step outside before he testifies but I  
15 wonder if it might not be a good idea to have her  
16 here and let him consult with his mother.

17 THE COURT: You want to talk to your mother  
18 about these questions I just asked you before we ask  
19 you to take the stand?

20 THE WITNESS: Yeah.

21 THE COURT: Why don't we ask Ms. Harper to  
22 come on in.

23 (Ms. Harper enters.)

24 THE COURT: Ms. Harper, come on up here.  
25 Your son is only 16 and I'm asking him at this point

1 in time some questions and I want him to be able to  
2 talk to you about it too before he makes an ultimate  
3 decision, and that is he's been subpoenaed here to  
4 testify obviously like yourself and before he gets on  
5 the stand I want to make sure that if he, if there is  
6 anything he thinks that he might say or anything that  
7 he could say that might tend to incriminate him, that  
8 he has a right to consult with an attorney before he  
9 makes a decision as to whether he wants to testify or  
10 not testify. Do you understand what I'm saying?

11 MS. HARPER: Yup.

12 THE COURT: So we could get him an attorney  
13 that he could talk to before he makes that decision.  
14 So my first question to him is if he would like to  
15 get an attorney he can consult with to talk about  
16 this case and his being subpoenaed here before he  
17 decides if he wants to testify.

18 MS. HARPER: He don't need no attorney.

19 THE COURT: Really?

20 MS. HARPER: Right.

21 THE COURT: Do you feel comfortable in  
22 that? Obviously -- because he's already been in  
23 court one time before, right?

24 MS. HARPER: Yup.

25 THE COURT: And I'm not in a position to

1 really give you legal advice either which is what an  
2 attorney would do, and so there are issues with  
3 regard to if he were to say something different than  
4 he said in prior testimony, obviously that would be  
5 an issue that, you know, not in this case but it  
6 could be something that he would have to be concerned  
7 about. And if he thought there was anything he could  
8 say that might tend to give the police something that  
9 might tend to incriminate him he would have a right  
10 to look at whether he could claim the fifth amendment  
11 on answering that, you know, privilege against self  
12 incrimination.

13 So are you sure that you don't want to discuss  
14 that?

15 MS. HARPER: Okay. We'll apply for an  
16 attorney then, yeah.

17 THE COURT: We're going to get an attorney  
18 to come up here and talk to you. And what I'm going  
19 to do is I think I'll have you both wait in the  
20 hallway until I get somebody up here to talk to you  
21 and then the attorney will talk to you first and then  
22 he'll talk to the prosecutor after he talks to you  
23 about what the situation is, okay?

24 MS. HARPER: Okay.

25 THE COURT: Counsel, remember that he had

1 an attorney, that he had an attorney before?

2 MR. FURNSTAHL: Yeah. It was Monte.

3 MR. BENSON: Monte Miller.

4 MR. FURNSTAHL: Monte Miller, yeah. That  
5 was when he didn't appear at the last trial there was  
6 a bench warrant out.

7 Can we approach, Judge? Go back and talk about  
8 this?

9 (Off-the-record discussion.

10 Thereafter the proceedings conclude for this day.)

11 \* \* \*

12 STATE OF MINNESOTA)

13 ) ss.


COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

14 I, Jolyn R. Lund, Official Court Reporter, do  
15 hereby certify that the above and foregoing is a true and  
16 accurate transcription of my original stenographic notes  
17 in said matter.

18 Date:

3-3-06

  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

21

22

23

24

25

**911 CALL**

DISPATCH: Minneapolis Police and Fire. Minneapolis Police may I help you? McCabe residence, 3310 Lyndale Avenue North?

Caller hangs up.

DISPATCH: Minneapolis Police and Fire.

CALLER 1: Yes this is a, a, somebody just robbed the flower shop on Lyndale and 33<sup>rd</sup> and the owner's right here.

DISPATCH: Uh, speak to the owner?

CALLER 1: And she said somebody got shot too. The owner, here, here, here's the telephone. And the police want to talk to you. The police want to talk to you.

CALLER 2: Hello.

DISPATCH: What's happening?

CALLER 2: Uh, listen, get an ambulance right away. I ran out the back door.

DISPATCH: Okay, who got shot?

CALLER 2: My brother is in there.

DISPATCH: Okay, what's your name please?

CALLER 2: Jerry's Flower Shop.

DISPATCH: Jerry?

CALLER 2: On yeah 33<sup>rd</sup> and Lyndale North.

DISPATCH: J-E-R-R-Y-S?

CALLER 2: Help me, help me. Oh.

DISPATCH: I've already started the police out there.

CALLER 2: Hurry up. Huh?

DISPATCH: I've already (inaudible)

CALLER 2: Okay have them come right away. I don't know what happened. He (inaudible) oh.

DISPATCH: Ma'am calm down. Jerry's Flower Shop?

CALLER 2: Right on 33<sup>rd</sup> and Lyndale North. Hurry up. Hurry up. My brother's in there. Oh.

DISPATCH: Uh -

CALLER 2: Oh. Are you there?

DISPATCH: Yes who robbed him do you know?

CALLER 2: I -

CALLER 1: Do you know, did you see who robbed you?

CALLER 2: I (inaudible)

CALLER 1: You're not, you don't need to go back down there. Just wait until the police come.

CALLER 2: Oh please (inaudible)

DISPATCH: Has he been shot do you know?

CALLER 1: She said she did see, see the police, she didn't see him.

CALLER 2 screaming in background

DISPATCH: Okay. Does she know who the suspect is?

CALLER 1: Did you see who it, what, what did they look like? Here. What, who were they?

CALLER 1: Here, here, here.

CALLER 2: One guy he, he is an African American, about 22 and he's real dark. He had a hat, he had a hood, hooded sweatshirt and he ran down the alley behind the shop. Oh please hurry up.

DISPATCH: Okay, police already have the call.

CALLER 2: Okay.

DISPATCH: They're on the way.

CALLER 2: Alright.

DISPATCH: You remember it was a black male?

CALLER 2: Yeah. Hurry up. Oh man.

DISPATCH: They're driving there. And he's wearing what?

CALLER 2: Uh, he had a, like a hooded sweatshirt.

DISPATCH: What color?

CALLER 2: I don't know. You'll just have to wait until I calm down. I don't know. Oh please. Okay I gotta go.

DISPATCH: He ran down the alley? Did he have a gun?

CALLER 2: Yeah a big gun. He shot my brother. He -

DISPATCH: He shot your brother?

CALLER 2: He shot my brother. I can't go back in there until I know he's okay. Oh please. He, I don't, yeah I ran out that back door so fast that I'm lucky I didn't get shot in the head. Oh.

DISPATCH: What direction in the alley did he run?

CALLER 2: He went towards 34<sup>th</sup>.

DISPATCH: Okay, could you give me age, weight, height of the suspect?

CALLER 2: Oh ma'am. He's about 5'10' or 11'. He was thin.

DISPATCH: (inaudible)?

CALLER 2: He was thin about 180 pounds.

DISPATCH: Okay .

CALLER 2: (inaudible) pounds

DISPATCH: How old?

CALLER 2: I'd say in his early 20's.

Someone in the background – Are they on their way?

CALLER 1: I hope.

DISPATCH: Yes they're on the way.

CALLER 2: Oh hurry up.

DISPATCH: They're on the way ma'am.

CALLER 2: Hurry up. Oh hurry up.

DISPATCH: Okay, and do you know where on the body he got shot?

CALLER 2: I, ma'am I ran so fast I don't know, but I want to (inaudible).

DISPATCH: Okay they're on the way ma'am. (inaudible) ambulance are on their way. Ma'am stay with me on the phone okay?

CALLER 2: I (inaudible) nothing.

DISPATCH: What kind of gun was it? A handgun or a big shotgun?

CALLER 2: It was a big, well kind of silver plated. Oh please hurry up. Oh my brother. Oh no, no.

DISPATCH: Do you know what the loss was?

CALLER 2: Huh?

DISPATCH: Was there anybody else involved?

CALLER 2: No it just that guy.

DISPATCH: Only one, one more thing.

CALLER 2: Yeah. Oh.

DISPATCH: How old is your brother?

CALLER 2: My brother's fifty something. Oh, please. Oh hurry up. Oh no. I want to, oh (inaudible) I'm gonna go in there.

DISPATCH: Do you know where on the body he got shot?

CALLER 2: Ma'am I have no idea. I have no idea. Here I'm gonna give you this phone to her.

Someone in background – The police didn't come yet?

DISPATCH: They are driving there as fast as they can.

CALLER 2: Here I want you to talk to her.

CALLER 1: Yeah, but lady just don't go back down there. Just wait.

DISPATCH: Now ma'am, ma'am.

CALLER 1: Yeah.

DISPATCH: Do you know the address of the (inaudible)? I've got you at 33rd -

CALLER 1: What's your address?

DISPATCH: And Lyndale North.

CALLER 1: What is your address?

CALLER 2: 3300 Lyndale. I told her (inaudible).

CALLER 1: 3300 Lyndale North. She's on her way walking back down to the corner.

DISPATCH: A police car and ambulance are on the way ma'am.

CALLER 1: Oh my god.

DISPATCH: Okay, what's the name of the shop?

CALLER 1: It's uh, Jerry's Flower Shop.

DISPATCH: J-E-R-R-Y-S?

Someone screaming in background.

CALLER 1: J-E-R-R-Y.

DISPATCH: Okay, do you hear them coming?

CALLER 1: I hear them coming.

DISPATCH: Yeah.

CALLER 1: Just wait a minute here they come.

DISPATCH: Okay do you, did you see the suspect at all?

CALLER 1: No she just came to my house from two doors down. I was in getting ready to do, dye my hair.



DISPATCH: Okay.

CALLER 1: Here she is now.

DISPATCH: Okay, what is her name? Do you know?

CALLER 1: Uh, what is your name?

Someone calls in the background (inaudible)

CALLER 1: Cindy. I'm going down there too.

DISPATCH: And your Etta McCabe.

CALLER 1: I'm Etta McCabe.

DISPATCH: Okay thank you McCabe for (inaudible) assistance.

CALLER 1: Okay.

DISPATCH: Bye.

CALLER 1: Bye.

FIRST CALL ENDS

CALL 2 STARTS:

DISPATCH: Minneapolis Police and Fire.

CALLER: Hi yeah. Um, I have a lady outside screaming. She said someone shot her brother in the flower shop. I think she's on the phone (inaudible).

DISPATCH: What address?

CALLER: It's 33<sup>rd</sup> and Lyndale. It's Jerry's Flowers.

DISPATCH: Ah yeah we got another call on that. Um, do you know anything about what's going on?

CALLER: No I'm, I was outside playing with my dog and heard help, help. And I went across the street and she said someone shot her brother and she wanted me to go in the flower shop.

DISPATCH: Was it being robbed? Is he, was he working there?

CALLER: I don't know. She wanted me to go inside and check on him and I didn't know if the person that shot him was still in there so -

DISPATCH: Right.

CALLER: I ran back to my house and called you guys.

DISPATCH: Okay, so she, did she come to your house?

CALLER: No she lives across the street and I just heard someone yelling help. And so I went and checked to see what was going on.

DISPATCH: Oh he was shot inside the flower shop? He didn't work there, he was just inside there?

CALLER: I have no clue. I was just outside with my animal and I heard help and she asked me to go inside. She said she was, it was her brother, but I didn't know -

DISPATCH: That's at 33<sup>rd</sup> and Lyndale right?

CALLER: Yeah.

DISPATCH: Okay, like I said police are on their way out there. Sounds like it maybe got robbed or something.

CALLER: Yeah okay.

DISPATCH: Did you see anyone leave from there or anything?

CALLER: No I was in my back yard.

DISPATCH: Okay. What's your name?

CALLER: Aaron Stark.

DISPATCH: Then your phone number?

CALLER: 612-588-3832.

DISPATCH: Okay thanks.

CALLER: Thank you.

DISPATCH: Bye.

CALLER: Bye.

END OF CALL 2

04035635

1121

A052444

8

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

FILED

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

06 MAR -3 PM 12:41

3 -----  
4 State of Minnesota, COURT ADMINISTRATOR DEPT. File No. 04035635  
S.Ct. File A05-2444

5 Respondent/Plaintiff,

6 vs.

**TRIAL TRANSCRIPT**

7 MARVIN HAYNES, JR.,

VOL. VII, pp. 1121-1311

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, and a jury, at 659-C  
13 Hennepin County Government Center, Minneapolis,  
14 Minnesota, on the **31st day of August, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.  
22  
23

24 CLERKS: Toni Rahn, Andrea Martin

25 REPORTER: Jolyn R. Lund

04035635

## I N D E X

PLAINTIFF'S WITNESSES:

Isiah Harper

Direct by Mr. Furnstahl. . . . . 1134  
 Cross by Mr. Benson. . . . . 1175  
 Redirect by Mr. Furnstahl. . . . . 1193, 1205  
 Recross by Mr. Benson. . . . . 1204

Jennifer Coleman

Direct by Mr. Furnstahl. . . . . 1214  
 Cross by Mr. Benson. . . . . 1226  
 Redirect by Mr. Furnstahl. . . . . 1230

Sergeant David Mattson

Direct by Mr. Furnstahl. . . . . 1232  
 Cross by Mr. Benson. . . . . 1257  
 Redirect by Mr. Furnstahl. . . . . 1279, 1287  
 Recross by Mr. Benson. . . . . 1284

Anthony Todd

Direct by Mr. Furnstahl. . . . . 1288  
 Cross by Mr. Benson. . . . . 1294  
 Redirect by Mr. Furnstahl. . . . . 1297  
 Recross by Mr. Benson. . . . . 1300

## E X H I B I T S

	<u>Ident.</u>	<u>Offered</u>	<u>Rec'd</u>
No. 70 - 5/28/04 Harper stmt	1242	1242	1242
No. 71 - Grand jury transcript	1244		

1 (Whereupon, the following  
2 proceedings occur outside the presence of jury.)

3 THE COURT: All right. The record will  
4 reflect that we're here this morning outside the  
5 presence of the jury and outside the presence of all  
6 counsel except for Lisa McNaughton who is here on  
7 behalf of Isiah Harper and we are having a brief  
8 hearing just to determine whether or not Mr. Harper  
9 has a fifth amendment right in this case.

10 Is that where we are, Ms. McNaughton?

11 MS. MCNAUGHTON: Yes, Your Honor. It's my  
12 understanding that Mr. Harper was called to testify  
13 yesterday and it was determined that it was essential  
14 that Mr. Harper have counsel. They appointed me to  
15 come in and speak with him. We are here again this  
16 morning. Isiah Harper has been asked to testify. At  
17 this point he wishes to assert his fifth amendment  
18 rights.

19 THE COURT: And before we get to whether or  
20 not he has a fifth amendment right, ma'am, I don't  
21 have your correct name. What is your name?

22 MS. BAKARE: It's Cynthia Bakare.

23 THE COURT: Will you spell your last name?

24 MS. BAKARE: B-A-K-A-R-E.

25 THE COURT: And you are Isiah's mother,

1           isn't that right?

2 MS. BAKARE: Yes, sir.

3 THE COURT: And you have also been  
4 subpoenaed as a witness in this case, is that  
5 correct?

6 MS. BAKARE: Just yesterday, yes.

7 THE COURT: Isiah, would you like your  
8 mother to be present during this? Or are you okay  
9 with just having your attorney here, because she's  
10 also a witness in this case.

11 THE WITNESS: Yes, I would like her to be  
12 present.

13 MS. MCNAUGHTON: For the record, Your  
14 Honor, I spoke with mother about the issue about  
15 whether she was here or not. I know she would also  
16 like to be present.

17 THE COURT: Okay. All right. I'll let you  
18 be present just for this portion with regard to the  
19 fifth amendment. I was thinking I wouldn't let you  
20 be present but I'm going to let you do that. You  
21 can't comment. We are just going to ask some  
22 questions of Isiah so I can determine whether he has  
23 a fifth amendment right in this case, okay?

24 MS. BAKARE: Okay.

25 THE COURT: Isiah, raise your right hand.

1 Whereupon,

2 ISIAH HARPER,

3 after having been first duly sworn, was examined  
4 and testified as follows:

5 THE COURT: All right. Why don't I let you  
6 go ahead, Ms. McNaughton, first.

7 BY MS. MCNAUGHTON:

8 Q Isiah, my understanding is you were called to  
9 testify before the grand jury some months ago, is that  
10 correct?

11 A Yes.

12 Q At that time do you recall meeting either me or  
13 one of my colleagues from the public defender's office?

14 A I can't remember.

15 Q You can't remember?

16 MS. MCNAUGHTON: It's my understanding, and  
17 correct me if I'm wrong, Your Honor, that Mr. Harper  
18 was in fact given fifth amendment rights at that  
19 point regarding testimony at that hearing.

20 THE COURT: And that's what I was informed  
21 by the attorneys both for the defendant and for the  
22 prosecutor. They recalled that two attorneys from  
23 the public defender's office came to consult, one  
24 with Mr. Harper and one with another witness  
25 regarding their fifth amendment rights.

1 MS. MCNAUGHTON: And I'm not sure if it  
2 would be of assistance, Your Honor, part of the  
3 problem we are having today is Isiah indicates he  
4 doesn't remember much of what he's been telling  
5 people and that in fact he's been giving information  
6 to me about how he was asked to testify or pressured  
7 into testifying.

8 Your Honor, I believe that he does have a fifth  
9 amendment right because he is in fact a relative of  
10 the young man who is charged and there was apparently  
11 a statement given by one of the other young people  
12 alleged to be at the scene earlier in the morning  
13 that in fact Isiah may even have been somehow  
14 involved in the incident itself.

15 THE COURT: And I have read one statement  
16 of one witness who says that yeah, the defendant did  
17 it but I think he did it with his cousins Poopey and  
18 Six.

19 Now, just for the record, Isiah, your nickname  
20 is Poopey, is that right?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And I think, you know,  
23 for purposes of a fifth amendment right, the fact  
24 that there's any evidence linking this young man to  
25 this crime is enough for him to be able to assert a



1 fifth amendment privilege so I will find that you  
2 have a right to assert a fifth amendment privilege  
3 simply because there's some people, at least one  
4 witness who says you were involved, okay? Do you  
5 understand that?

6 THE WITNESS: Yes.

7 THE COURT: Now, it's my understanding that  
8 the prosecutor intends to give you immunity, all  
9 right? Which means I'll let you -- did you talk to  
10 Ms. McNaughton about what immunity means?

11 MS. MCNAUGHTON: We briefly spoke about  
12 that, Your Honor, but perhaps you would like to put  
13 it on the record for him so he understands.

14 THE COURT: Why don't you go ahead with  
15 that so if he has any questions because there's going  
16 to be a next step after that.

17 BY MS. MCNAUGHTON:

18 Q If during the course of the trial you are now  
19 testifying and the prosecutor gives you immunity, that  
20 means anything that you say in the courtroom can't be used  
21 against you to prosecute you for the same offense. Do you  
22 understand that?

23 A Yes.

24 Q Did we talk about this yesterday, too?

25 A Yes.

1 Q Okay. And this morning we talked about it  
2 again?

3 A Yes.

4 Q So do you understand what immunity means? I  
5 know that's making it very simple but that's what it  
6 means.

7 A Yes.

8 THE COURT: Do you have any questions about  
9 that?

10 THE WITNESS: No.

11 THE COURT: You have to answer out loud.

12 THE WITNESS: No.

13 THE COURT: Now, if the prosecutor gives  
14 you immunity I'm going to order you to testify. You  
15 understand that?

16 THE WITNESS: Yes.

17 THE COURT: Now, we need to talk about a  
18 couple other things because obviously if you testify  
19 you have to be given an oath like you are right now,  
20 and if you don't tell the truth that's an issue. So  
21 you would be ordered to testify truthfully and take  
22 an oath and do that so you would have to tell what  
23 you know and anything you say couldn't be used  
24 against you to prosecute you because the prosecutor  
25 has already given you immunity, do you understand?

1 THE WITNESS: Yes.

2 THE COURT: And in addition to that, Ms.  
3 McNaughton has already talked to you about the  
4 statements you gave both to the police, the recorded  
5 statement and the grand jury testimony, correct?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Do you have questions  
8 for Ms. McNaughton on what's going to happen if I  
9 ordered you to testify? Have you had all your  
10 questions answered?

11 THE WITNESS: No, I don't have any more  
12 questions.

13 THE COURT: Okay.

14 MS. MCNAUGHTON: Your Honor, I think this  
15 is difficult in terms of memory. Mom indicates  
16 there's been some issues for him both learning  
17 disability, depression and he has difficulty reading.  
18 In fact he may not know how to read so I think this  
19 is extra stressful for him.

20 THE COURT: Mr. Harper, all I can tell you  
21 is this. Nobody expects you to remember everything  
22 you said 16 months ago or 14 months ago. And all we  
23 can do is make -- all you can do is tell the truth to  
24 the best of your recollection. If you don't remember  
25 something you can say yeah, I don't remember that,

1 and if they ask you if you said it, you can answer  
2 whether you said it or you didn't say it, but if you  
3 don't specifically remember you can answer that. We  
4 don't want you to guess but you do have to tell the  
5 truth, okay?

6 THE WITNESS: Yes.

7 THE COURT: Any questions?

8 THE WITNESS: No, Your Honor.

9 THE COURT: All right. Anything else we  
10 should put on the record, Ms. McNaughton, with regard  
11 to this before I invite the other parties in?

12 MS. MCNAUGHTON: At this point I don't  
13 believe there is anything else.

14 THE COURT: Will you remain while Mr.  
15 Harper testifies?

16 MS. MCNAUGHTON: Yes.

17 MS. BAKARE: I want to know why was I  
18 subpoenaed at the last minute of the case?

19 THE COURT: Pardon me?

20 MS. BAKARE: Why was I subpoenaed at the  
21 last minute of the case?

22 THE COURT: I'm not going to answer your  
23 question. We are not here to do that. The  
24 prosecutor has a right to call whatever witnesses  
25 they want and they can subpoena them if they don't

1 think they are going to come. So can the defense  
2 attorney. That's the rights of the attorneys and  
3 you'll have to talk to them about it.

4 So why don't you have a chair in the back of the  
5 courtroom right now and we'll bring the rest of the  
6 people in.

7 THE WITNESS: Who, me?

8 THE COURT: Yeah.

9 (The following is still  
10 outside the presence of the jury but all other  
11 parties are present.)

12 THE COURT: For the record we are back on  
13 the record outside the presence of the jury. The  
14 Court has just conducted a hearing with Mr. Isiah  
15 Harper with regard to whether or not he has a fifth  
16 amendment right. Having heard the information -- and  
17 Mr. Harper is represented by Lisa McNaughton of the  
18 public defender's office -- and having heard that  
19 information, the Court's conclusion is that Mr.  
20 Harper does in fact have a right, fifth amendment  
21 right and he intends to assert it today.

22 MR. FURNSTAHL: Judge, I will be making a  
23 motion under Rule 609.09 I believe it is to compel  
24 Mr. Harper's testimony. And I have a copy of my  
25 motion for counsel and a proposed order for the

1 Court. I file a motion and proposed order with the  
2 Court at this time.

3 Do you have the right order, Judge? Do you have  
4 both? Be the Clifton or Isiah Harper order.

5 THE COURT: All right. Mr. Benson, do you  
6 wish to be heard at all on this issue?

7 MR. FURNSTAHL: Judge, I don't believe Mr.  
8 Benson --

9 THE COURT: I don't think you have standing  
10 to be heard, I should say.

11 MR. BENSON: Your Honor, no, I do not have  
12 standing, Your Honor, to be heard on this issue.

13 I would ask, however, when the Court signs the  
14 order I would expect that this may possibly be an  
15 exhibit in this case so however the Court needs to  
16 sign the order and have it filed or whatever I may  
17 want to use it as an exhibit.

18 THE COURT: I'm signing the order right  
19 now, and that will be compelling the testimony of Mr.  
20 Harper. And the clerk will receive it, file stamp it  
21 today's date.

22 All right. Are we ready for the jury to come  
23 in?

24 MS. MCNAUGHTON: Your Honor, if I may be  
25 heard for just a moment on that?

1 THE COURT: You may.

2 MS. MCNAUGHTON: Nothing, Your Honor.

3 THE COURT: Okay. Are we ready for the  
4 jury then, counsel?

5 MR. FURNSTAHL: We are, Judge.

6 THE COURT: All right. Bring the jury in.

7 (The following is in the  
8 presence of the jury.)

9 THE COURT: Counsel.

10 (Off-the-record discussion at  
11 the bench out of hearing of the jurors.)

12 THE COURT: Ms. McNaughton, as it's Mr.  
13 Furnstahl who calls the next witness, the other  
14 person who is also a witness will have to step out.

15 Go ahead, Mr. Furnstahl. Call your next  
16 witness.

17 MR. FURNSTAHL: We'll call Isiah Harper.  
18 Whereupon,

19 ISIAH HARPER,  
20 after having been first duly sworn, was examined  
21 and testified as follows:

22 THE CLERK: Please state your full name and  
23 spell your last name for the record.

24 THE WITNESS: Isiah, H-A-R-P-E-R, Harper.

25 THE COURT: Okay, Mr. Furnstahl.

DIRECT EXAMINATION

1

2

BY MR. FURNSTAHL:

3

Q Mr. Harper, how old are you?

4

A 16.

5

Q And you are a relative to the defendant,

6

correct?

7

A Yes.

8

Q You are a blood relative?

9

A Yes.

10

Q How are you related to him?

11

A My mom and his mom are sisters.

12

Q You are his cousin?

13

A Yes.

14

Q First cousin?

15

A Yes.

16

Q And you've been subpoenaed to be here?

17

A Yes.

18

Q And you don't want to be here, is that right?

19

A Right.

20

Q You've been subpoenaed, you were subpoenaed to

21

testify at the grand jury?

22

A Yes.

23

Q You didn't show up the first time?

24

A No.

25

Q Is that correct?



1 A Yes.

2 Q And you had to be arrested, correct?

3 A Yes.

4 Q And you showed up the second time?

5 A Um-hum.

6 Q Is that right?

7 A Yes.

8 Q Fair to say that you are hostile to the State?

9 MR. BENSON: Objection. Leading, Your  
10 Honor. That has been established.

11 THE COURT: Overruled. You can answer the  
12 question if you understand it.

13 BY MR. FURNSTAHL:

14 Q Do you understand my question?

15 A No.

16 Q Do you know what I mean by hostile?

17 A No.

18 Q You don't want to do anything to help the State  
19 in this case, help the police or the prosecution in this  
20 case, you don't want to testify against your cousin,  
21 correct?

22 A Correct.

23 Q Pardon me?

24 A Correct.

25 Q All right. Now, on May 16, 2004, you were at

1 Muffy's house, correct?

2 MR. BENSON: Objection. Leading.

3 THE WITNESS: No. I was at home.

4 THE COURT: Well, I'm going to allow it.

5 It is leading but I will allow it.

6 BY MR. FURNSTAHL:

7 Q You were at Muffy's house, correct?

8 A Yes.

9 Q On May 16, 2004, you were at Muffy's house?

10 A Yes.

11 Q That was in the morning, right?

12 A Yes.

13 Q About ten o'clock?

14 A I don't remember.

15 Q But it was in the morning, right?

16 A Yes.

17 MR. BENSON: Objection. Leading.

18 THE COURT: Hold it. Just a minute. What  
19 was the objection?

20 MR. BENSON: Leading.

21 THE COURT: All right. Sustained as to  
22 leading.

23 Mr. Harper, I'm going to ask you, you have a  
24 very soft voice. I want people to hear what you have  
25 to say. I understand you are not feeling the most

1 comfortable but I want you to speak up a little bit,  
2 okay.

3 THE WITNESS: Yes.

4 THE COURT: Okay. Go ahead, Mr. Furnstahl.

5 BY MR. FURNSTAHL:

6 Q What time was it as best you can recall that you  
7 were at Muffy's house on May 16, 2004?

8 A I don't know. I didn't have no watch or no  
9 clock, so.

10 Q Was it in the morning?

11 A Yes.

12 Q And who is Muffy?

13 A A home girl. A friend.

14 Q All right. Where does she live?

15 A I don't know where she living now.

16 Q When you say you don't know where she lives,  
17 where was she living back on May 16, 2004?

18 A Around the corner from my house.

19 Q Do you know the address?

20 A No.

21 Q Where were you living at the time?

22 A 30th and Oliver.

23 Q 30th and Oliver?

24 A Yes.

25 Q And do you know where the -- you know the flower

1 shop?

2 A Right.

3 Q Do you know where that is?

4 A Lyndale, ain't it?

5 Q Pardon me?

6 A Lyndale, ain't it?

7 Q Lyndale what?

8 A I don't know.

9 Q You said it's on Lyndale?

10 THE COURT: He said "Lyndale, ain't it," as  
11 a question.

12 BY MR. FURNSTAHL:

13 Q All right. It's your understanding it's on  
14 Lyndale?

15 A Yes.

16 Q When I say the flower shop, you know what flower  
17 shop I'm talking about?

18 A Yes.

19 Q Who else was at Muffy's that morning?

20 A I don't remember.

21 Q You don't remember?

22 A No.

23 Q You testified about this at the grand jury, did  
24 you not?

25 A Yeah.

1           Q     You gave a statement to the police about this,  
2 did you not?

3           A     Yes.

4           Q     And this -- what you saw and heard at Muffy's is  
5 the whole reason why you are being brought in here, is  
6 that not correct?

7           A     Say that again.

8           Q     What you saw and heard at Muffy's that morning  
9 is the whole reason why you are being brought in here to  
10 testify, isn't that correct?

11          A     Yes.

12          Q     And you are telling this jury honestly that you  
13 don't remember who else was at Muffy's that morning?

14          A     I don't.

15          Q     Is that what you are telling them?

16          A     Yes.

17          Q     You understand that you came up here and you  
18 raised your right hand, you took an oath to swear before  
19 god to tell the truth, right?

20          A     Yes.

21          Q     And are you telling this jury that it is the  
22 truth that you don't remember who else was at Muffy's that  
23 morning?

24          A     Yes.

25          Q     Was your cousin Little Marvin at Muffy's that

1 morning?

2 A I told you I don't remember.

3 Q Is it because you really don't remember or you  
4 don't want to testify about it?

5 A I don't remember.

6 Q You don't remember?

7 A No.

8 Q Who told you to say that you don't remember?

9 A Didn't nobody tell me to say that.

10 Q Did your mother tell you to do that?

11 A No.

12 Q Your mother was pressuring you before the grand  
13 jury, wasn't she, before you testified at the grand jury,  
14 wasn't she?

15 A No. You thought she was.

16 Q Pardon me?

17 A You thought she was. She wasn't.

18 Q Wasn't she telling you to say that you didn't  
19 know anything?

20 A I don't.

21 Q Wasn't she telling you to say that you were at  
22 home?

23 A Yes.

24 Q But you just told us that you were at Muffy's?

25 A She ain't know that I snuck out of the house.

1           Q     You just told us that you were at Muffy's,  
2     right?

3           A     Right.

4           Q     But your mother before the grand jury was  
5     telling you to say that you were at home, right?

6           A     Right.

7           Q     So you are telling us that you don't remember  
8     who was at Muffy's?

9           A     No.

10          Q     Do you remember anybody being at Muffy's besides  
11     yourself?

12          A     I really -- Daquan.

13          Q     Only Daquan?

14          A     Yeah.

15          Q     Not your cousin?

16          A     No.

17          Q     Your cousin is known as Little Marvin, right?

18          A     Right.

19          Q     And, I'm sorry? Did you say something else?

20          A     No.

21          Q     Anybody else at Muffy's?

22          A     No.

23          Q     So it was just you, Daquan, that were at Muffy's  
24     so far as you can recall today?

25          A     Right.

1 Q You didn't, you don't recall Little Marvin being  
2 there?

3 A No.

4 Q Do you recall Anthony being there? Ant?

5 A Ant? No.

6 Q Do you recall Little John being there, Jeremy  
7 Davenport?

8 A I told you I don't remember.

9 Q I'm asking if you recall specifically about --

10 A No.

11 Q -- Jeremy Davenport?

12 A No.

13 Q You don't recall that?

14 A No.

15 Q Has something happened to you that has erased  
16 all your memory of that day? I'm sorry?

17 THE COURT: Was that an answer? You've got  
18 to answer out loud.

19 THE WITNESS: No.

20 BY MR. FURNSTAHL:

21 Q Was Muffy there?

22 A Yes.

23 Q So you do have some memory as to some of the  
24 people that were at Muffy's house that morning?

25 A No, but of course she there if I was there.



1 Q Well, you have a memory that Muffy was there,  
2 you have a memory that Daquan was there, right?

3 A Correct.

4 Q I'm sorry?

5 A Correct.

6 Q How about Charles, was he there?

7 A Charles?

8 Q Didn't you just meet a Charles?

9 A No.

10 Q Didn't you just describe him as a real, real  
11 tall, dark skinned dude with -- real, real tall dark  
12 skinned dude?

13 A No.

14 Q How about Justin, wasn't he there?

15 A I don't know no Justin.

16 Q Pardon me?

17 A I don't know Justin or Charles.

18 Q Now, what were you doing -- well, do you  
19 remember what you were doing at Muffy's that morning?

20 A Sitting around in the house.

21 Q Sitting around in the house?

22 A Watching TV.

23 Q You have some relatives here this morning too,  
24 don't you?

25 A Right.

1 Q I mean, your mom is outside, right?

2 A Right.

3 Q And Marvin's mother, your aunt, is sitting in  
4 the front row or on the left side of the courtroom, is  
5 that right?

6 A Yes.

7 Q And are those other relatives of yours sitting  
8 over there, too?

9 A No.

10 Q Friends?

11 A The girl and the boy right there are my cousins.

12 Q They are cousins to Marvin too?

13 A No.

14 Q What are they to Marvin?

15 A His sister and his nephew.

16 Q All right. So do you remember anything that  
17 happened at Muffy's that morning?

18 A Yeah, sitting around watching TV.

19 Q And that's it?

20 A That's it.

21 Q So nothing, nothing big happened that day,  
22 nothing memorable happened that morning?

23 A No.

24 Q And this happened what, about 15 months ago?

25 A I guess.

1           Q     So you can remember being at Muffy's house  
2 sitting around watching TV when nothing memorable happened  
3 about 15 months ago, is that right?

4           A     I don't understand how you --

5           Q     Well, this was the morning of May 16, 2004,  
6 right?

7           A     Right.

8           Q     And you know that's the day of the murder at the  
9 flower shop, you know that, don't you? Do you understand  
10 my question? Do you want to tell the truth, Mr. Harper?

11          A     I'm telling the truth.

12                THE COURT: Wait a minute. Hold it. Give  
13 him a chance to answer that question. Do you  
14 remember if that was the day of the flower shop  
15 murder?

16                THE WITNESS: No.

17                THE COURT: You don't remember that? You  
18 need to answer out loud.

19                THE WITNESS: No.

20 BY MR. FURNSTAHL:

21          Q     So this was just an ordinary day in your life?

22          A     Right.

23          Q     I'm sorry?

24          A     Right.

25          Q     And you can remember being at Muffy's house

1 sitting around watching TV with Daquan and nothing else.

2 A Nothing else.

3 Q What did you, what did you do the day before?

4 A The day before?

5 Q Yeah. On May 15th, what did you do on May 15th?

6 A Nothing.

7 Q What did you do, do you remember?

8 A No.

9 Q What did you do the day after, do you remember?

10 A No.

11 Q So you don't remember what you did on May 14th,  
12 or rather on May 15th or on May 17th, but you remember  
13 where you were and what you were doing the morning of May  
14 16th, is that right?

15 A Correct.

16 Q How is it that you are able to remember that and  
17 nothing else?

18 A Because I wasn't doing nothing but probably  
19 walking the neighborhood the other day, the other two  
20 days.

21 Q So when you were at Muffy's, you said Daquan is  
22 there?

23 A Yes.

24 Q Do you remember anything else that was going on  
25 at Muffy's that morning?

1 A Not at this time I don't remember.

2 Q So at some time in the past you did remember?

3 A Yeah.

4 Q Was your memory better back shortly, in say two  
5 weeks after May 16th than it is today?

6 A Yes.

7 Q Was your memory better on May 28, 2004 than it  
8 is today about what happened on May 16th?

9 A Yes.

10 THE COURT: Is that a yes?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 BY MR. FURNSTAHL:

14 Q So what you might have told somebody on May 28,  
15 2004 about what happened on May 16th, that would be an  
16 accurate reflection of your memory as to what occurred  
17 that day, is that right?

18 A I didn't understand what you said.

19 Q If you talked to someone on May 28th about what  
20 happened on May 16th, your memory would be fresher about  
21 what happened on May 16th, right?

22 A Right.

23 Q So what you told them on May 28th about what  
24 happened on May 16th, that would be an accurate reflection  
25 of what occurred on May 16th, right?

1           A     I don't understand.

2           Q     Well, you talked to the police on May 28, 2004,  
3 isn't that correct?

4           A     Yes.

5           Q     You gave a statement to the police, right?

6           A     As I recall, yes.

7           Q     And they were asking you questions about May  
8 16th, right? About the morning of May 16th?

9           A     Right.

10          Q     And you told them what you remembered about the  
11 morning of May 16th, right?

12          A     I guess, yeah.

13          Q     And your memory was fresher back then than it is  
14 today, right?

15          A     Right.

16          Q     So what you told them back then is an accurate  
17 reflection of your memory, right?

18          A     Right.

19          Q     So what you told them on May 28th was the truth,  
20 is that right?

21          A     No.

22          Q     What are you saying then? You understand, Mr.  
23 Harper, you are required to tell the truth here, you  
24 understand that, right? I understand this is hard for you  
25 but you are going to have to tell the truth, you

1 understand that, don't you?

2 A Yeah.

3 Q Do you want to tell the truth?

4 A I'm telling the truth. Telling you all I  
5 remember.

6 Q You don't remember?

7 A I said I'm telling you all I remember.

8 Q And all you remember is being at -- do you  
9 remember anything else about that day other than being at  
10 Muffy's with Daquan watching TV?

11 A And regular things I do any other day, just  
12 walking around the neighborhood.

13 Q So that's all you remember about that day?

14 A Yes.

15 Q Were you driving a car that day?

16 A No.

17 Q Didn't you have a brown car?

18 A It was the day before.

19 Q You had a brown car that ran out of gas like on  
20 Olson Memorial?

21 A Yeah. The day before.

22 Q Didn't you have it that day?

23 A No. The day before.

24 Q You remember that?

25 A Yeah.

1 Q Do you remember having a conversation with, a  
2 telephone conversation with your cousin Little Marvin  
3 after the murder at the flower shop?

4 A No.

5 Q You don't remember that?

6 A No.

7 Q You don't remember Marvin telling you that he  
8 shot a white guy at the flower shop because he didn't give  
9 up the money?

10 A No.

11 Q Is this the first time you are hearing that?

12 A No.

13 Q So you've heard that before?

14 A Yes.

15 Q You know that you said that before, right?

16 A Yes.

17 Q And now you are telling us that you don't  
18 remember saying it? Is that right?

19 Do you remember telling the police in this May 28th  
20 conversation that Daquan had a silver revolver?

21 A No.

22 Q You don't remember that?

23 A No.

24 Q But you know that that's something that you did  
25 tell them, right?



25 THE COURT: Members of the jury, you are

2 (Recess.)

4 Ready to go?

6 THE COURT: Go ahead, Mr. Furnstahl.

8 Q Mr. Harper, I know this is hard for you. It's  
9 pretty obvious to everybody but you know that someone was  
10 murdered; you know that?

12 Q And he didn't deserve to die, you know that?

14 Q You didn't know the man, did you?

16 Q But you knew where the flower shop was?

18           Q     And you know that you have some information  
19     about that, right? And you know you have to tell the  
20     truth about that, right?

22 Q All right. Are you ready to tell the truth now?

24 Q All right. Is what you told the police on May  
25 28th, is that the truth?

1 A No.

2 Q So what is the truth today then?

3 A Truth, I don't know the truth. I just made up  
4 that because they threatened me with 15 years and you know  
5 that.

6 Q I know that?

7 A Yeah. In the hallway there.

8 Q So you are telling us now --

9 A I been saying that.

10 THE COURT: Wait for the question.

11 BY MR. FURNSTAHL:

12 Q Earlier you said you didn't recall anything,  
13 right?

14 A Right.

15 Q Now you are saying that, that you made  
16 everything up that you put in this May 28th statement?

17 A I been saying that.

18 Q Excuse me?

19 A I been saying that because they threatened me  
20 with 15 years.

21 Q You didn't say that at the grand jury, did you?

22 A Yes.

23 Q You didn't say that in this statement, did you?

24 A You all wouldn't let me because I couldn't say  
25 nothing unless I been spoken to.

1 Q Question is did you say that in this statement?

2 A No.

3 Q In this statement you were asked if everything  
4 you told the police that day was true to the best of your  
5 ability and you said yes, correct?

6 A Correct.

7 Q And you go -- your nickname is Poopey, correct?

8 A Yes.

9 Q Do you remember -- and as I understand your  
10 testimony today, you are denying that everything that you  
11 told the police in that May 28th statement is the truth?  
12 You are saying that everything that you told -- that you  
13 gave to the police in that May 28th statement is not the  
14 truth?

15 A Yes.

16 Q And you are denying that your testimony at the  
17 grand jury, you are saying that that was not the truth?

18 A Yes.

19 Q I'm sorry?

20 A Yes.

21 Q So you are saying that you committed perjury at  
22 the grand jury?

23 A What -- I committed perjury, what that mean?

24 Q That means that you lied under oath. Is that  
25 right?

1 A Yes.

2 Q Now, you have an attorney, we got you an  
3 attorney yesterday, correct?

4 A Yes.

5 Q Didn't your attorney -- has it been explained to  
6 you what perjury is?

7 A Yeah, but like I told you I only got a short  
8 memory. Some things just slip my mind.

9 Q Well, but you remember testifying at the grand  
10 jury, right?

11 A Yes.

12 Q And I need to be clear on this. Are you telling  
13 us today that your testimony at the grand jury was a lie?

14 MS. MCNAUGHTON: Your Honor, may we have a  
15 moment?

16 THE COURT: You may.

17 MS. MCNAUGHTON: May we approach?

18 THE COURT: You may. Counsel.

19 (Off-the-record discussion at  
20 the bench out of hearing of the jurors.)

21 THE COURT: You can step down for a minute.

22 (Witness leaves courtroom  
23 with his attorney.)

24 MS. MCNAUGHTON: Your Honor, may we  
25 approach and make a brief record?

1 THE COURT: You may.

2 MS. MCNAUGHTON: Or just off the record is  
3 fine.

4 (Off-the-record discussion at  
5 the bench out of hearing of the jury.)

6 THE COURT: Members of the jury, I'm going  
7 to excuse you again right now for awhile. It  
8 shouldn't be too long, okay? You are excused.  
9 Please leave your notebooks on your chair.

10 (Jurors leave the courtroom.  
11 Off the record discussion first.)

12 THE COURT: First of all, the record will  
13 reflect that in Mr. Harper's testimony, Mr. Harper  
14 first had a little bit of a breakdown, we took a  
15 recess, excused Mr. Harper, then when Mr. Harper came  
16 back he was testifying and Ms. McNaughton indicated  
17 that she really needed to talk to the Court about his  
18 testimony and we approached the bench, talked about  
19 that. Then Ms. McNaughton and Mr. Furnstahl had a  
20 brief conversation about Mr. Harper's testimony, then  
21 Mr. Harper joined them and had a brief conversation  
22 about his testimony.

23 We're now back at the bench and Ms. McNaughton  
24 and Mr. Furnstahl have reached an agreement regarding  
25 Mr. Harper's testimony. And that is?

1 MR. FURNSTAHL: We had some conversation.  
2 Mr. Harper indicated that he suffers from ADHD and he  
3 takes medication for it and this is very overwhelming  
4 for him. He says that -- the impression I got, and  
5 Lisa feel free to step in, is that some of the things  
6 he was testifying to this morning when he was  
7 professing not to remember is the truth and he said  
8 that as I would read things about the statement it  
9 was bringing back his memory. But to the extent that  
10 I've reached an agreement with Ms. McNaughton that we  
11 can wipe the slate clean of anything that he said up  
12 to this point, that if it constitutes perjury we  
13 agreed he will not be prosecuted for that.

14 I also should inform the Court that he has a  
15 great difficulty in reading so in terms of the  
16 logistics for refreshing his recollection, I would  
17 ask the Court to allow me to read it out loud to him,  
18 or words to that effect. Because he, you know,  
19 normally the process of having them read it silently  
20 to themselves he apparently can't do it.

21 MS. MCNAUGHTON: That is correct, what we  
22 discussed. I would also like to supplement the  
23 record a bit that when the Court indicated that Mr.  
24 Harper lost it, he lost his composure a little bit.  
25 When he was out in the hall he was literally on the

1 floor pounding his legs on the floor, so this is  
2 extremely, extremely difficult.

3 THE COURT: And it's true that he has some  
4 difficulty reading and has ADHD?

5 MS. MCNAUGHTON: Your Honor, I don't know  
6 the extent of his reading disability but I understand  
7 he does not read well, if at all.

8 MR. FURNSTAHL: He indicated that at the  
9 grand jury as well that he couldn't read.

10 If I could supplement the record a little bit  
11 more, when Isiah would go outside Marvin's mother  
12 would go outside and he and Marvin's sister were in  
13 close proximity and I know that Isiah's mother is  
14 putting a lot of pressure on him as well.

15 THE COURT: Mr. Benson.

16 MR. BENSON: Your Honor, I want to be clear  
17 on this agreement. Mr. Furnstahl has indicated that  
18 anything that Mr. Harper said to this point he  
19 wouldn't be charged with perjury.

20 THE COURT: Provided he comes back and  
21 tells the truth as to what he knows as opposed to --  
22 that's my understanding. Is that right?

23 MR. BENSON: Yes. That's the way it was  
24 phrased.

25 MR. FURNSTAHL: Let's say --



1                   MR. BENSON: Let me ask this. Does the  
2 agreement also include the fact that Mr. Harper  
3 admitted lying to the grand jury? Does your  
4 agreement include that he won't be prosecuted for  
5 that?

6                   MR. FURNSTAHL: Anything that he said this  
7 morning that could constitute a crime, we are  
8 agreeing that we will not prosecute him for that,  
9 provided that he tells the truth from now on.

10                  MR. BENSON: All right. So your agreement  
11 is you are not going to prosecute him for lying to  
12 the grand jury as long as, as long as he tells the  
13 truth as far as whatever.

14                  MR. FURNSTAHL: I don't know what you are  
15 getting at, counsel, but he hasn't indicated to us  
16 when we were talking back there, he didn't indicate  
17 that he lied to the grand jury. He said he told the  
18 truth to the grand jury.

19                  MR. BENSON: I'll tell you what I'm getting  
20 at. What I'm getting at is he sat in court and  
21 testified that he lied to the grand jury. He didn't  
22 tell the truth at the grand jury, he committed  
23 perjury at the grand jury on your questions. I'm  
24 asking is he going to be prosecuted for that? Is  
25 that part of your agreement?

1 MR. FURNSTAHL: For committing perjury at  
2 the grand jury?

3 MR. BENSON: Yes.

4 MR. FURNSTAHL: We have no agreement about  
5 any of the grand jury testimony. It's about the  
6 testimony this morning. I think I made that clear.

7 MR. BENSON: Okay.

8 THE COURT: And you certainly can  
9 cross-examine him.

10 MS. MCNAUGHTON: Your Honor, Mr. Benson,  
11 I'm concerned about this young man's recall ability,  
12 frankly. Given everything today I was wondering if I  
13 could just have another five minutes just to go talk  
14 with him very briefly to discuss with him the  
15 situation.

16 THE COURT: Okay. Five more minutes.

17 MS. MCNAUGHTON: Thank you.

18 (Short recess.)

19 THE COURT: Okay. Ms. McNaughton, we are  
20 ready to proceed, right?

21 MS. MCNAUGHTON: Yes, Your Honor. We are  
22 ready to proceed.

23 MR. BENSON: One moment, Your Honor. Can  
24 we -- at this point I have a standing objection, I've  
25 been objecting as leading. I think given the

1           circumstances now, Mr. Furnstahl should go back to  
2           asking open-ended questions as what the State is  
3           supposed to do given the nature of the proceedings at  
4           this point.

5                       MR. FURNSTAHL: That's fine.

6                       THE COURT: All right. Let's bring the  
7           jury in then.

8                                       (The following is in the  
9           presence of the jury.)

10                      THE COURT: All right. Mr. Furnstahl, you  
11           may proceed.

12                      MR. FURNSTAHL: Thank you.

13 BY MR. FURNSTAHL:

14           Q       Mr. Harper, you had a break and you and I and  
15           your attorney talked, right?

16           A       Yes.

17           Q       And I understand that you are now willing to  
18           tell the truth to the jurors?

19           A       Yes.

20           Q       Do you remember everything that happened that  
21           day, May 16, 2004?

22           A       Yes.

23           Q       Do you remember everything?

24           A       Yeah.

25           Q       Okay. And you and your attorney were concerned

1       that something that you said earlier today might not be  
2       the truth, is that right?

3             A       Yes.

4                     MR. BENSON:  Objection.  Leading.

5                     THE COURT:  Sustained.

6       BY MR. FURNSTAHL:

7             Q       Were you concerned about that?

8             A       I didn't really get the question.  How you --

9             Q       Your attorney and I and you reached an agreement  
10       about your testimony earlier today?

11            A       Right.

12            Q       What was that agreement?  Explain that to the  
13       jurors.

14            A       That agreement was to tell truth.

15            Q       In exchange for what?  Were you concerned about  
16       some things that you said to them, to the jurors this  
17       morning might not have been the whole truth?

18                    THE COURT:  Hold it one second.  I'm going  
19       to have counsel approach a minute, including --

20                               (Off-the-record discussion at  
21       the bench out of hearing of the jurors.)

22                    THE COURT:  Go ahead, Mr. Furnstahl.

23       BY MR. FURNSTAHL:

24            Q       I understand, Mr. Harper, this is not your  
25       favorite day, is that right?

1 A Correct.

2 Q Now, you -- your attorney, you and I had talked  
3 outside in the hallway before, right?

4 A Yes.

5 Q And we talked about whether or not you could be  
6 charged with a crime because some things that you said to  
7 this jury earlier today might not have been the truth. Do  
8 you remember our conversation?

9 A Yes.

10 Q And we agreed that you, if you told the truth as  
11 best you can recall from now on, you would not be  
12 prosecuted for anything that you said earlier today that  
13 might not be the truth, is that right?

14 A Right.

15 Q Okay. Now, and during the break your attorney  
16 read to you your statement, right?

17 A Correct.

18 Q And did that help to refresh your recollection  
19 as to the, as to the things that happened?

20 A Most of it, yeah.

21 Q Do you have trouble recalling things at times?

22 A Yes.

23 Q You have a condition?

24 A I'm ADHD.

25 Q ADHD?

1 A Yeah.

2 Q Are you taking medication for that?

3 A Yes.

4 Q And is this coming in here and testifying, is  
5 this stressful for you?

6 A Yeah.

7 Q Is that causing your problems with your memory?

8 A Well, kind of, but.

9 Q Pardon me?

10 A Yeah.

11 Q Okay. So what I want to do is I want you to  
12 tell us as best you can recall what happened at Muffy's  
13 house the morning of May 16, 2004.

14 A Tell what happened?

15 Q Yeah.

16 A We was all over there sitting outside and --

17 THE COURT: Okay. You are going to have to  
18 speak up a little bit. I want the jury to be able to  
19 hear what you say.

20 THE WITNESS: And Little Ant tell me that  
21 my cousin was --

22 BY MR. FURNSTAHL:

23 Q Hold it. I don't want you to say what Little  
24 Ant said. I just want you to say what Marvin said, okay?

25 A Marvin ain't say nothing.

1 Q Well, don't you remember giving the statement to  
2 the police on May 28th?

3 A Yeah.

4 Q And what you told the police was the truth?

5 A Yes.

6 Q All right. Do you remember what you, do you  
7 remember what you told the police as far as what Marvin  
8 said? Do you remember what Marvin said?

9 A About the lick?

10 Q Right.

11 A Right.

12 Q What did Marvin say?

13 A That he was going to hit a lick.

14 Q What does -- Little Marvin said that?

15 A No, Daquan said that.

16 Q Okay. Marvin said -- did Marvin, your cousin,  
17 say that as well?

18 A Yes. I think so, that's -- yes.

19 Q All right. You remember you told the police  
20 that when you talked to them on May 28th?

21 A Yeah.

22 Q You said Marvin was talking about going to hit a  
23 lick?

24 A Yeah.

25 Q And what does it mean to hit a lick?

1 A A robbery.

2 Q A robbery?

3 A Yeah.

4 Q All right. What else do you remember happened  
5 at Muffy's that morning?

6 A What else? We was just sitting around.

7 Q Okay. Who was there?

8 A My cousin, Marvin; Daquan.

9 Q Was Ant there?

10 A Yeah, Little Ant and Johnny and I forgot the  
11 other.

12 Q Is that Little John?

13 A Little John?

14 Q When you say Johnny, is that Little John?

15 A Yes.

16 Q Is that Jeremy Davenport?

17 A Yes.

18 Q So you remember you, your cousin Little Marvin,  
19 Daquan, Ant, and Jeremy were there?

20 A Yes.

21 Q Was there another Marvin there?

22 A No. I seen him when I was leaving.

23 Q What is his last name?

24 A Miller.

25 Q Marvin Miller. That's different from your



1 cousin Little Marvin?

2 A Yes.

3 Q So you guys were over there at Muffy's and you  
4 said Marvin was talking about hitting a lick?

5 A Correct.

6 Q Who was he going to do that with?

7 A Daquan.

8 Q Was Daquan talking about that too?

9 A Correct.

10 Q Did you see a gun? Did either of those two guys  
11 have a gun?

12 A Daquan.

13 Q Would you describe the gun?

14 A Chrome revolver.

15 Q Chrome revolver?

16 A (Nods head.)

17 Q You have to answer out loud.

18 A Yes.

19 Q Do you know what caliber it was?

20 A No.

21 Q Did your cousin Little Marvin act like he had a  
22 gun?

23 MR. BENSON: Objection. Leading, Your  
24 Honor.

25 THE COURT: Sustained.

1 BY MR. FURNSTAHL:

2 Q How was your cousin Marvin acting?

3 A Regular. Like he acts.

4 Q Like what?

5 A Like he act any other time.

6 Q All right. Did he act like he had a gun?

7 MR. BENSON: Objection, leading, Your  
8 Honor.

9 THE COURT: That calls for a yes or no  
10 answer. I'll allow it. You can answer if you know.

11 THE WITNESS: Yes.

12 BY MR. FURNSTAHL:

13 Q Would you describe how he was acting that led  
14 you to believe that he had a gun?

15 A Grabbed his pocket.

16 Q Grabbed his pocket?

17 A Yes.

18 Q Okay. And did you see anybody leave Muffy's  
19 house then?

20 A We all did.

21 Q All right. Who did you leave with?

22 A Left by myself.

23 Q What were you driving?

24 A A brown Buick.

25 Q Is that a brown car?

1 A Yes.

2 Q All right. That's the one that stalled on -- is  
3 that the one that stalled?

4 A Huh?

5 Q Is that the one that ran out of gas?

6 A Yes.

7 Q Where did it run out of gas?

8 A Olson Highway.

9 Q Olson Highway?

10 A Yes.

11 Q And did you see Marvin leave, your cousin  
12 Marvin?

13 A Yeah.

14 Q Who did he leave with?

15 A Daquan.

16 Q What were they -- how did they leave, were they  
17 walking or driving?

18 A Driving.

19 Q What kind of car?

20 A A white box Chevy.

21 Q Who was driving?

22 A Daquan.

23 Q Where was Marvin? Where in the car was Marvin?

24 A I think the passenger side.

25 Q Was anybody else in the car with them?

1 A No.

2 Q And then when is the next time you hear from  
3 Marvin, your cousin Marvin?

4 A Earlier that day.

5 Q No, when's the next time, when is the next time  
6 that you hear from your cousin Little Marvin?

7 A When's the next time I heard from him?

8 Q Yeah.

9 A Over the phone.

10 Q That was on the -- I'm sorry?

11 A Over the phone. He called me.

12 Q Where were you when he called you?

13 A Home.

14 Q And so he called you on the telephone at your  
15 home?

16 A Yes.

17 Q Could you tell it was him on the other line?

18 A Huh?

19 Q Could you tell it was him? You recognized his  
20 voice?

21 A It sounded like.

22 Q What did he say?

23 A That he had shot a man on the corner.

24 Q Did you know what corner he was talking about?

25 A No.

1 Q So he said he shot a man on the corner?

2 A Yes.

3 Q Did he say what the race of the man was?

4 A A white man.

5 Q Did he say whether or not he was younger or  
6 older?

7 A No, he didn't say.

8 Q Did he say how many times he shot him?

9 A I think twice.

10 Q And did he say why he shot him?

11 A Because he wouldn't give up the money.

12 Q Because he wouldn't give up the money?

13 A Yeah.

14 Q Is that part of hitting the lick?

15 A Yes.

16 Q I know this is hard, we're just about done,  
17 okay? And did he ask you to look for someone?

18 A Yes.

19 Q We're almost done, okay? Who did he ask you to  
20 look for?

21 A Daquan.

22 Q All right. And did you try to find Daquan?

23 A No.

24 Q Did he tell you what gun he used to shoot the  
25 white man that wouldn't give up the money?

1 A No.

2 Q Do you remember telling the police that?

3 A Yes.

4 Q What do you recall telling the police as to what  
5 gun he used?

6 A I told him I didn't know what gun he used.

7 Q Do you have a, do you not remember what you told  
8 the police? Or do you remember what you told the police?

9 A I don't remember that.

10 Q Now, you can't read very well, is that right?

11 A Correct.

12 Q Do you recall telling the police that, that  
13 Marvin told you he used the chrome revolver that Daquan  
14 had?

15 A Yeah.

16 Q Is that what he told you?

17 A Yes.

18 Q Is my saying that, does that help you to  
19 remember?

20 A Kind of.

21 Q And your attorney had read you your statement  
22 before you came back on the stand?

23 A Correct.

24 Q Did that help you to remember?

25 A Correct.

1           Q     And it's not any fun testifying about it, right?  
2     You are not having any fun testifying about this, this is  
3     not easy for you, is it?

4           A     No, it's not.

5           Q     All right. Do you remember seeing Marvin with a  
6     gun prior to seeing him -- let me ask it this way. Do you  
7     remember seeing Marvin on Saturday night -- May 16th was a  
8     Sunday, okay? Do you remember seeing Marvin at a party on  
9     Saturday night?

10          A     No.

11          Q     Do you remember talking, telling the police  
12     that?

13          A     I remember telling them that but I don't --

14          Q     Pardon me?

15          A     Yeah, I remember telling them that.

16          Q     All right. Was that the truth when you told  
17     them that?

18          A     Yes.

19          Q     Everything that you told the police in this May  
20     28th statement is the truth?

21          A     Yes.

22          Q     All right. And do you today have a memory as to  
23     what Marvin was doing at that party? Remember him -- do  
24     you remember seeing him having something at that party?

25          A     No.

1 Q Do you remember telling the police that you --

2 MR. BENSON: Objection, Your Honor.

3 Leading.

4 THE COURT: Sustained.

5 BY MR. FURNSTAHL:

6 Q Would looking at the statement refresh your  
7 recollection as to what it was you told the police?

8 A If I can read it, yeah.

9 Q If I read it to you?

10 A Yeah.

11 MR. BENSON: Objection, Your Honor. That's  
12 still leading and our prior discussions. Can we  
13 approach?

14 THE COURT: You may.

15 (Off-the-record discussion at  
16 the bench out of hearing of the jurors.)

17 MR. FURNSTAHL: I'm just about done, Isiah.  
18 If I can have a moment, Judge.

19 BY MR. FURNSTAHL:

20 Q Did Marvin tell you if anybody else went into  
21 the flower shop with him?

22 A No.

23 Q Just who all went into the flower shop?

24 A Him.

25 Q By himself?



1 A Yes.

2 Q Where was Daquan?

3 A I guess in the back.

4 Q In the back where?

5 A In the car.

6 Q Where was the car parked?

7 A Behind the flower shop, I guess.

8 Q Was it in the alley?

9 A I guess. I wasn't with them.

10 Q I know that but do you remember what you told  
11 the police? Do you remember that part, Isiah?

12 A Yes.

13 Q Was it in, was Daquan parked in the car behind  
14 the alley behind the flower shop?

15 A Yes.

16 Q Did he say whether or not he got any money from  
17 the man that he shot?

18 A No.

19 Q Did he get any money?

20 A No.

21 THE COURT: Are you all right, Mr. Harper?

22 THE WITNESS: No.

23 THE COURT: Do you need a break?

24 MR. FURNSTAHL: That's all I have, Isiah.

25 THE COURT: Do you want to take a break

1 before Mr. Benson asks you questions?

2 THE WITNESS: (Nods head.)

3 THE COURT: Okay. Go ahead and step down.

4 (Witness leaves courtroom  
5 with his attorney. Short recess.)

6 THE COURT: Mr. Benson, you may proceed.

7 MR. BENSON: Thank you.

8 CROSS-EXAMINATION

9 BY MR. BENSON:

10 Q Isiah -- can I call you Isiah?

11 A Yes.

12 Q Isiah, I want to take you to the point this  
13 morning when your attorney jumped up, okay?

14 THE COURT: Counsel, will you stay back?

15 MR. BENSON: Sorry. I apologize. Is this  
16 fine?

17 THE COURT: That's fine.

18 BY MR. BENSON:

19 Q When your attorney jumped up in court. Do you  
20 recall that time?

21 A Yeah.

22 Q Okay. And at that point you had just testified  
23 that you had committed perjury at the grand jury. Do you  
24 recall that?

25 A Yes.

1 Q And that was a concern obviously for you, right?

2 A Yes.

3 Q That you had admitted in open court that you had  
4 committed perjury at the grand jury, right?

5 A No.

6 Q You didn't, you weren't exactly sure what  
7 perjury was, right?

8 A Right.

9 Q But the prosecutor had also asked you whether  
10 you had told the truth at the grand jury, right?

11 A Yeah.

12 Q Right?

13 A Correct.

14 Q And you had said that no, you had not told the  
15 truth at that grand jury. Right?

16 A Correct.

17 Q And that was -- and we'll get to that in a  
18 moment -- but that was because the police had threatened  
19 you.

20 THE COURT: Do you understand the question?

21 THE WITNESS: Yes.

22 THE COURT: Go ahead and answer. We'll  
23 wait for an answer.

24 THE WITNESS: No. Say the question again.

25 THE COURT: Go ahead, Mr. Benson.

1 BY MR. BENSON:

2 Q Okay. Earlier today you told this prosecutor,  
3 you told the jury that the police had threatened you?

4 A Correct.

5 Q With 15 years?

6 A Correct.

7 Q You also told the jury after the prosecutor's  
8 questioning that you had lied at the grand jury?

9 A Correct.

10 Q Okay. Now, at that grand jury you also told --  
11 you said in the grand jury that the police, you said what  
12 they told me to say, right?

13 A Correct.

14 Q And you said that at the very beginning of that  
15 grand jury?

16 A Correct.

17 Q Right? Then the prosecutor asked you some more  
18 questions, right?

19 A Right.

20 Q And then you started to repeat the May 28th  
21 statement, right?

22 A Right.

23 Q Okay. But today when your attorney jumped up  
24 you were given a break, right?

25 A Correct.

1 Q And then you and your attorney who is sitting  
2 right there and Mr. Furnstahl went in the back, correct?

3 A Yes.

4 Q Yes?

5 A Correct.

6 Q And during that discussion in the back your  
7 attorney let Mr. Furnstahl know that you guys were  
8 concerned about being charged with perjury?

9 A Correct.

10 Q Because you admitted that you committed perjury  
11 in the grand jury, right?

12 A Right.

13 Q When you were talking about the May 28th  
14 statement, right?

15 A Right.

16 Q Right?

17 A Right.

18 Q Okay. And when you say you committed perjury at  
19 the grand jury you were referring to all the details you  
20 gave about being at Muffy's house, right?

21 A Right.

22 Q And that's what you had said today you were  
23 lying about at that grand jury, correct?

24 A Correct.

25 Q Okay. And that once you admitted that you had

1       lied at the grand jury, that's when you had the concern  
2       about being charged with perjury, right?

3           A       Right.

4           Q       And that is what you all talked about when you  
5       went into that room or you went into the hallway back  
6       there, correct?

7           A       Correct.

8           Q       All right. And after having that break and that  
9       discussion you all talked about, for about ten or  
10      15 minutes, right?

11          A       Right.

12          Q       Ten or 15 minutes?

13          A       Yeah.

14          Q       And during that discussion that's when the  
15      prosecutor said they weren't going to charge you with  
16      perjury for anything up until this point?

17                   MR. FURNSTAHL: Objection, that misstates.

18                   MR. BENSON: I'm asking the witness.

19                   THE COURT: Overruled. You can answer if  
20      you understand.

21                   THE WITNESS: Correct.

22      BY MR. BENSON:

23          Q       Is it your understanding from that agreement  
24      with the prosecutor -- well, they told you that if you  
25      tell the truth you won't be charged with perjury, right?

1 A Correct.

2 Q And is it your understanding that if you tell  
3 the truth you are not going to be charged with perjury for  
4 today or for that grand jury?

5 A Correct.

6 Q That's your understanding, right?

7 A Correct.

8 Q And it's also your understanding that the truth  
9 is what the State wants you to say about this case?

10 MR. FURNSTAHL: Objection. That's  
11 argumentative.

12 THE COURT: Sustained.

13 MR. FURNSTAHL: Judge, I would ask you to  
14 direct the jurors to disregard that.

15 THE COURT: Yeah. The jury will disregard  
16 the last question.

17 BY MR. BENSON:

18 Q It's your understanding that the State wants you  
19 to testify consistent with what you testified to in the  
20 grand jury?

21 MR. FURNSTAHL: Objection. Same objection.  
22 Can we approach?

23 THE WITNESS: Yes.

24 THE COURT: You may approach.

25 (Off-the-record discussion at

1 the bench out of hearing of the jurors.)

2 THE COURT: Go ahead, Mr. Benson.

3 MR. BENSON: Thank you.

4 BY MR. BENSON:

5 Q In any event, after that discussion with the  
6 State and you came back in here, you had some  
7 understanding about what your testimony should be?

8 MR. FURNSTAHL: Object to that as being  
9 argumentative.

10 THE COURT: Sustained.

11 BY MR. BENSON:

12 Q You had an understanding at least that if you  
13 told the truth you wouldn't be prosecuted for perjury,  
14 right?

15 A Right.

16 Q Okay. Now, before that all happened, Mr.  
17 Furnstahl asked you a couple questions and you had  
18 responded by saying the police threatened you?

19 A Correct.

20 Q Right? In fact, there was a bit of an exchange,  
21 he asked you another question and you said you know that  
22 they threatened me, right?

23 A Right.

24 Q And in fact you said that you, that you, the  
25 State, should know because you've said that before?



1 A Correct.

2 Q Right? And I also believe you said you were  
3 threatened with 15 years?

4 A Correct.

5 Q And when you were threatened with that, was that  
6 by the detectives in this case?

7 A Yes.

8 Q And would that be your -- you know who the  
9 detectives are, right?

10 A Right. One of them in the hallway.

11 Q Is he the stockier guy?

12 A Yeah.

13 Q Okay. Kind of a square haircut, square head  
14 and --

15 A Yeah.

16 Q Detective Mattson, do you know his name?

17 A No.

18 Q But he's an older guy?

19 A (Nods head.)

20 Q All right. Okay. Anyway, that person, he's the  
21 one that threatened you?

22 A Right.

23 Q Was he with his partner at the time?

24 A Yes. When he threatened me that was at my  
25 school.

1 Q Okay. And that was -- tell us when that was.

2 A I can't remember. It was that day or whatever,  
3 but.

4 Q You remember on May 28th you gave a statement to  
5 the police that Mr. Furnstahl has talked about, right?

6 A Right.

7 Q The conversation where you were threatened, that  
8 was before that date, right?

9 A Before?

10 Q It was before the May 28th statement?

11 A Right.

12 Q Okay. And that was, you said that was at the  
13 school, right?

14 A Right.

15 Q Just for clarity, the May 28th statement you  
16 were taken down to the homicide office, correct?

17 A Correct.

18 Q And you were put in a room and you were asked  
19 some questions right?

20 A Right.

21 Q And at some point they turned on the tape  
22 recorder -- this is May 28th, right?

23 A Right.

24 Q After they turned on the tape recorder they  
25 generated this statement that Mr. Furnstahl has been

1 referring to?

2 A Right.

3 Q And that statement on May 28th, did you have  
4 discussions with them before they turned on the tape  
5 recorder?

6 A Yeah.

7 Q Okay. They didn't just put you in the room  
8 right away and turn on the tape recorder, right?

9 A Right.

10 Q They talked to you first, right?

11 A Yeah.

12 Q They talked to you about the situation you were  
13 in, right?

14 A Um-hum.

15 Q Then they turned on the tape recorder and you  
16 gave them a statement?

17 A Yup.

18 Q Now, before that date of May 28th, is when they  
19 talked to you at your school?

20 A Correct.

21 Q Was that the first time they talked to you?

22 A No.

23 Q How many times did they talk to you before May  
24 28th?

25 A Like four or five times.

1 Q Okay. Four or five times before May 28th?

2 A Yeah.

3 Q Okay. I want to take you to the first time that  
4 they talked to you, okay? Can you think about that? Do  
5 you remember that?

6 A First time they talked to me?

7 Q Um-hum. If you can remember that that's where I  
8 want to direct your attention.

9 A They came and got me from my house.

10 Q Came and got you from your house?

11 A Yeah.

12 Q Where did they take you?

13 A Down to the station.

14 Q Okay. And they took you to the homicide unit  
15 again, or office?

16 A Yeah.

17 Q And they sat and they talked to you that day,  
18 right?

19 A Right.

20 Q And on that day, that first day they talked to  
21 you, they told you that somebody had said you might be  
22 involved, right?

23 A Right.

24 Q Right?

25 A Correct.

1           Q     And it was that day that they decided that, the  
2     day they threatened you with being charged in this case?

3           A     Correct.

4           Q     Right?

5           A     Yup.

6           Q     And so I'm not -- you've already said that they  
7     threatened you with 15 years, correct?

8           A     Correct.

9           Q     What did they -- tell me exactly what they said  
10    as far as their threat.

11          A     Basically said I can get half of Marvin's time  
12    and that's 15 years. That's what they said.

13          Q     That's what they talked to you about on that  
14    first occasion, right?

15          A     Correct.

16          Q     So at that point you are sitting in the homicide  
17    office and they are saying that they may charge you with  
18    this case?

19          A     Yes.

20          Q     And they may send you to prison for 15 years?

21          A     Yes.

22          Q     All right. And they didn't record that  
23    conversation, right?

24          A     Right.

25          Q     They let you, they sent you back home or took

1       you back home?

2           A     Yup.

3           Q     Then they went and got you again?

4           A     Yes.

5           Q     And you don't recall how many times but it was  
6 somewhere between two or three other times?

7           A     Right.

8                       MR. FURNSTAHL:  Misstates his testimony.  
9       He said four or five times.

10                  MR. BENSON:  Four or five.

11                  THE COURT:  Two or three is correct if he  
12       went there once and two or three more would be four  
13       more, so.

14       BY MR. BENSON:

15           Q     I believe my math was correct.  So two or three  
16       more times, correct?

17           A     Correct.

18           Q     And each time did they talk to you about the  
19       possibility of you being charged?

20           A     Yes.

21           Q     They talked to you about the possibility that  
22       you could go to prison?

23           A     Yes.

24           Q     And they were also questioning you and asking  
25       you things about that date?

1 A Yes.

2 Q Okay. And you were telling them at that time  
3 you didn't know anything, right?

4 A Correct.

5 Q You were telling them that -- in fact you were  
6 telling them that you weren't even there, correct?

7 A Correct.

8 Q But after threatening you with going to prison  
9 for 15 years on three or four occasions, they brought you  
10 in again to the homicide office, right?

11 MR. FURNSTAHL: Objection. That's  
12 argumentative.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: Correct.

15 BY MR. BENSON:

16 Q Okay. And then at that time on May 28th when  
17 you were at the homicide office, it was at that point that  
18 you give them the statement?

19 A Correct.

20 Q Right? And they were asking you during those  
21 other three or four conversations that were unrecorded,  
22 they were asking you or telling you details about this  
23 case, right?

24 MR. FURNSTAHL: Objection. That assumes  
25 facts not in evidence.

1 MR. BENSON: I'm asking a question.

2 MR. FURNSTAHL: Argument in front of the  
3 jury.

4 THE COURT: Overruled. You can answer the  
5 question but I didn't hear an answer. If he asks  
6 another question and there is an objection I want you  
7 to wait until I say you can answer.

8 Now, the question was leading, but was it, but  
9 do you have the question in mind? Do you remember  
10 the question Mr. Benson just asked?

11 THE WITNESS: No.

12 THE COURT: Ask it as a question.

13 MR. BENSON: Your Honor, this is  
14 cross-examination.

15 THE COURT: I understand but it still has  
16 to be a question.

17 BY MR. BENSON:

18 Q During the three or four conversations that you  
19 had, three or four interviews that you had that were  
20 unrecorded, the police were telling you details of this  
21 case?

22 A Correct.

23 Q They were telling you, they were providing you  
24 information that they believed about this case?

25 A Right.



1 Q They were telling you that they already knew  
2 things, right?

3 A Right.

4 Q And they were telling you that they, that  
5 basically you could be a witness or you could be a  
6 defendant?

7 A A witness.

8 Q Well --

9 A What?

10 Q They were telling you you could be a -- they  
11 wanted information from you, right?

12 A Right.

13 Q And they were, they already talked to you at  
14 least at one or two points and they kept talking to you,  
15 correct?

16 A Correct.

17 Q Because they wanted information that they  
18 thought you had?

19 A Yes.

20 Q You were telling them that you didn't have that  
21 information?

22 A Yes.

23 Q And then finally they brought you down to the  
24 homicide unit again and you gave that May 28th statement?

25 A Correct.

1           Q     Now, all of this, you've been testifying some  
2     time today and I'm not going to keep you too long, too  
3     much longer, but what you are telling us right now and  
4     what you are telling the jury right now about these  
5     threats and everything else, that's the truth, correct?

6           A     Correct.

7           Q     That's the concern, you expressed some obvious  
8     concern, right, today?

9           A     Right.

10          Q     You started crying and you got out and left,  
11     right?

12          A     Correct.

13          Q     Okay. And you obviously expressed that concern  
14     about the threats when Mr. Furnstahl was asking you  
15     questions, right?

16          A     Yes.

17          Q     Okay. So it's the truth that they were  
18     threatening you?

19          A     Yes.

20          Q     It's the truth that they put words in your  
21     mouth?

22          A     Yes.

23          Q     It's the truth that they told you what to say?

24          A     Yes.

25          Q     As far as that May 28th statement, those

1 details, those events, that's not true, is that right?

2 A Right.

3 Q I'll just ask you point blank, were you  
4 threatened by the police?

5 A Correct. Yes.

6 Q That's the truth?

7 A Yes.

8 Q You are going to look at these people and that's  
9 the truth?

10 A Yes.

11 Q And I haven't put any pressure on you, is that  
12 right?

13 A Right.

14 Q Marvin hasn't put any pressure on you, is that  
15 right?

16 A Right.

17 MR. BENSON: No further questions, Your  
18 Honor.

19 THE COURT: Redirect, Mr. Furnstahl.

20 REDIRECT EXAMINATION

21 BY MR. FURNSTAHL:

22 Q Isiah, you have me confused. Are you saying  
23 that the testimony about what happened at Muffy's, about  
24 how you saw Daquan there, how you saw Marvin there, and  
25 how Daquan and Marvin were talking about hitting a lick,

1       how Daquan had a silver revolver, how you had the  
2       telephone conversation with Marvin after that, are you  
3       saying, are you telling this jury that that's all a lie?

4             A       Correct.

5             Q       Earlier you testified that that was the truth,  
6       did you not?

7             A       Yes.

8             Q       So what is it, Isiah? What is the truth and  
9       what's the lie?

10            A       The truth is they made up something and they  
11       made me try to lie and pin my cousin away.

12            Q       Let's talk about that then. Counsel has asked  
13       you questions about when I was asking you questions the  
14       first time, that you had indicated that you had a  
15       different story from what you told the grand jury way back  
16       in 2004, do you remember that?

17            A       Yes.

18            Q       And you said that you didn't -- you didn't  
19       recall some things, right?

20            A       Right.

21            Q       And you said then, I asked you then if you  
22       committed perjury to the grand jury when you testified to  
23       the grand jury, right?

24            A       Right.

25                    MS. MCNAUGHTON: Your Honor, may we

1 approach?

2 MR. FURNSTAHL: I guess I would object to  
3 that.

4 THE COURT: I think we've had enough,  
5 counsel. I'm going to make him answer questions now  
6 and we'll be done. He's had an opportunity to  
7 consult with his attorney, so go ahead.

8 BY MR. FURNSTAHL:

9 Q I'm going to talk about -- I'm talking about the  
10 questioning before you, your attorney and I met back in  
11 the hallway now, all right? And the questioning before  
12 that you testified to this jury that you committed perjury  
13 to the grand jury, right? Before I met with you and your  
14 attorney, right?

15 A Right.

16 Q And then when, after you and your attorney and I  
17 met and we agreed that you wouldn't have to be worried  
18 about being prosecuted provided you told the truth from  
19 then on, you said that you told a different story, right?

20 A Right.

21 Q You said that what you said to the police on May  
22 28th was the truth, right?

23 A Right.

24 Q And then in response to Marvin's attorney's  
25 questions, you said that what you told the police on May

1 28th is a lie, right?

2 A Right.

3 Q So you violated your agreement to tell the  
4 truth, that you, your attorney, and I had, right?

5 A Right.

6 Q Now, you said the cops threatened you, right?

7 A Right.

8 Q You said that they talked to you four or five  
9 times before you gave that statement on May 28th? Is that  
10 right?

11 A Yes.

12 Q That's not the truth, is it? Is it, Isiah? You  
13 talked to the police one time before giving that statement  
14 on May 28th, right?

15 A No.

16 Q How many times did you talk to the police before  
17 you gave that statement on May 28th?

18 A I told you.

19 Q Four or five times?

20 A Yeah.

21 Q That's your testimony today, is that right? You  
22 have to answer out loud.

23 A Correct.

24 Q You talked to the police prior to the May 28th  
25 statement and you told them what you told -- the same

1 thing that you said on May 28th, right?

2 A Right.

3 Q You told the police -- you had a conversation or  
4 some conversations with the police before May 28th, right?

5 A (Unintelligible.)

6 Q May 28th was when you gave the statement, right?

7 A Right.

8 Q And in these conversations before the May 28th  
9 statement, you told them the same things that you said to  
10 them in the May 28th statement, right?

11 A Right.

12 Q You told them that you had information, right?

13 A Right.

14 Q They said that they, that they thought you had  
15 information, right?

16 A Right.

17 Q They told you that, that if you lied to them  
18 that you can be charged with aiding an offender after the  
19 fact, right?

20 A Right.

21 Q And that if you do that, you could get half the  
22 time that Marvin might get if he were to be convicted,  
23 right?

24 A Right.

25 Q That's where the 15 years comes in, right?

1 A Correct.

2 Q And that's the conversation we had in the  
3 hallway too, wasn't it?

4 A No.

5 Q I told you that you needed to be concerned about  
6 being charged with aiding an offender after the fact,  
7 didn't I?

8 A Yes.

9 Q I told that you that you needed -- and your  
10 attorney told you that you needed to be concerned about  
11 yourself, about telling the truth, right?

12 A Right.

13 Q We were informing you about -- your attorney  
14 was, I mean your attorney told you the same thing, right?

15 A Right.

16 Q Are you telling us that your attorney threatened  
17 you?

18 A No.

19 Q She informed you about your criminal liability  
20 if you were to come in here and lie, right?

21 A Right.

22 Q Just like the cops did when they talked to you  
23 before May 28th, right?

24 A Right.

25 Q So you are saying that was a threat? Are you



1 saying that was a threat, Isiah? Or are you saying that  
2 was a threat because you know that that's what Marvin's  
3 attorney wanted you to say?

4 MR. BENSON: Objection.

5 THE COURT: He hasn't answered the question  
6 but that's enough.

7 BY MR. FURNSTAHL:

8 Q When the police talked to you --

9 THE COURT: Wait a minute. Wait a minute.  
10 Counsel approach one minute.

11 (Off-the-record discussion at  
12 the bench out of hearing of the jurors.)

13 BY MR. FURNSTAHL:

14 Q Now, when you talked to the police before May  
15 28th, before you gave the May 28th statement, you didn't  
16 want to provide information that could hurt your cousin,  
17 correct?

18 A Correct.

19 Q And that's why they told you that if you lied to  
20 them you could be facing a charge of aiding an offender  
21 after the fact, right?

22 A Right.

23 Q So that wasn't a threat, that was just informing  
24 you about what -- it's the same thing that your attorney  
25 was doing, informing you about what your criminal

1 liability was, right?

2 A Right.

3 Q And then when you talked to them before May  
4 28th, you talked to them with your mother's permission,  
5 right?

6 A Right.

7 Q And your mother gave the police permission to  
8 take you down to the homicide office to give that  
9 statement on May 28th, right?

10 A Right.

11 Q Your mother knew where you were, right? I mean,  
12 they wouldn't take you down there unless they had your  
13 mother's permission, right?

14 A Right.

15 Q And they got your mother's permission, right?

16 A Right.

17 Q So they weren't forcing you to go down there,  
18 right?

19 A Correct.

20 Q You went down there willingly with your mom's  
21 permission, right?

22 A Right.

23 Q And then once they told you -- and then they  
24 told you when they brought you down there on May 28th that  
25 they needed to get your statement on tape, right?

1 A Right.

2 Q And that was the conversation before, before the  
3 tape recorder was turned on, right?

4 A Right.

5 Q It wasn't any, were they threatening you at that  
6 point in time if you didn't give a taped statement?

7 A No.

8 Q Telling you about what you can face if you  
9 didn't tell the truth.

10 A Yes.

11 Q That's a big difference, isn't it, Isiah?

12 A Yes.

13 Q You were just saying that it was a threat  
14 because you knew that's what Marvin's attorney wanted you  
15 to say, right?

16 MR. BENSON: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. FURNSTAHL:

19 Q After they talked to you and told you that --  
20 and you didn't want to give a statement on tape, did you?

21 A (Shakes head.)

22 Q You have to answer out loud.

23 A No.

24 Q Because you didn't want to say anything that  
25 could harm your cousin, right?

1 A Right.

2 Q And part of the reason you are having so much  
3 trouble here is because you know some of the things you  
4 have to say could harm your cousin, right?

5 A Right.

6 Q That's the reason why you are crying, right?

7 MR. BENSON: Objection. Leading.

8 THE COURT: Sustained.

9 Sir, don't shake your head in the back of the  
10 courtroom or I'll have to have you removed. No  
11 facial expressions, no shaking of the heads.

12 BY MR. FURNSTAHL:

13 Q Well, you said that you were crying because of  
14 the threats but that's not what you were crying about, is  
15 it?

16 MR. BENSON: Objection. Asked and  
17 answered.

18 THE COURT: Sustained.

19 BY MR. FURNSTAHL:

20 Q Were you crying because you were concerned that  
21 what you have to say could hurt Marvin in his case?

22 MR. BENSON: Objection, asked and answered.

23 THE COURT: Sustained. He's answered it  
24 already.

25 BY MR. FURNSTAHL:

1 Q And you were -- when you were telling the police  
2 that you didn't know anything before you gave the  
3 statement on May 28th, that was because you didn't want to  
4 do anything to hurt your cousin, right?

5 A Right.

6 Q You in fact did know something, right? Right,  
7 Isiah? And that's when the police told you about lying to  
8 the police and what that could do to you, right?

9 A Right.

10 Q And in spite of the fact that you did lie to  
11 them by saying that you didn't know anything when in fact  
12 you did know something, you were never charged, right?

13 A Right.

14 Q So the questions asked by Marvin's attorney that  
15 the police put words in your mouth and so forth, they  
16 didn't put any words in your mouth, did they?

17 A No.

18 Q What you told them on May 28th was the truth?  
19 Was it? Was it?

20 A Yes.

21 Q And you just don't want to tell the truth today  
22 because you are afraid that it could hurt Marvin's case,  
23 right?

24 MR. BENSON: Objection. Asked and  
25 answered.

1 THE COURT: Sustained.

2 MR. FURNSTAHL: Nothing further.

3 MR. BENSON: Just briefly, couple  
4 questions.

5 THE COURT: All right.

6 RE CROSS-EXAMINATION

7 BY MR. BENSON:

8 Q Isiah, earlier today when you talked about the  
9 threats that were made to you, you did that in response to  
10 the State's questions, right?

11 A Yes.

12 Q I mean, I hadn't even stood up yet, right?

13 A Right.

14 Q You told the prosecutor in answer to his  
15 questions that you had been threatened with 15 years,  
16 right?

17 A Yes.

18 Q And you don't, obviously you don't want to go to  
19 prison, right?

20 A Right.

21 Q Don't want to go for 15 years?

22 A Right.

23 Q You don't want to get convicted or go to prison  
24 for perjury either, right?

25 A Right.

1 Q And as far as when you started crying just most  
2 recently, that was when Mr. Furnstahl was asking you  
3 questions, right?

4 A Right.

5 Q And it's fair to say as you sit here you are  
6 concerned about whether you've testified as the State  
7 would want and whether they will prosecute you for that?

8 MR. FURNSTAHL: Objection. Object to that  
9 comment and ask that the jury disregard that.

10 THE COURT: As to the comment about how the  
11 State would want, the jury will disregard that  
12 comment.

13 BY MR. BENSON:

14 Q You have a concern, at least you have a concern  
15 about how your testimony is going to be viewed, right?

16 MR. FURNSTAHL: Same objection, Judge.

17 MR. BENSON: I'm asking for his concern.

18 MR. FURNSTAHL: Object to argument in front  
19 of the jury.

20 THE COURT: Sustained as to argumentative.

21 MR. BENSON: Nothing further. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. FURNSTAHL:

24 Q If you didn't want to be prosecuted and face a  
25 sentence for aiding an offender after the fact, Isiah, why

1 did you lie to these jurors today after we had an  
2 agreement?

3 MR. BENSON: Objection, Your Honor. That's  
4 assuming -- can we approach?

5 THE COURT: Sustained as to argumentative.

6 MR. FURNSTAHL: I'll rephrase it.

7 BY MR. FURNSTAHL:

8 Q After you, myself, and your attorney went into  
9 the back and we talked about wiping the slate clean --

10 MS. MCNAUGHTON: Your Honor, may we  
11 approach?

12 MR. FURNSTAHL: I would object to that.

13 MR. BENSON: Your Honor, he has rights.

14 THE COURT: All right. Counsel may  
15 approach.

16 (Off-the-record discussion at  
17 the bench out of hearing of the jurors.)

18 BY MR. FURNSTAHL:

19 Q You were asked on recross-examination that you  
20 didn't want to have to worry about going to prison for  
21 15 years, remember that?

22 A Um-hum.

23 Q And you and I and your attorney met in back and  
24 we reached an agreement that you would not be prosecuted  
25 provided you tell the truth?



1           A     Right.

2           Q     Right? But when you came back out here then you  
3     didn't tell the whole truth, isn't that right? You,  
4     earlier you said you violated that agreement, right?

5                     MR. BENSON: Objection, Your Honor. Beyond  
6     the scope.

7                     MS. MCNAUGHTON: Your Honor, I have an  
8     objection.

9                     THE COURT: Sustained.

10     BY MR. FURNSTAHL:

11           Q     Well, if you didn't want to have to worry about  
12     being prosecuted, why did you lie to these jurors after we  
13     had an agreement?

14                     MR. BENSON: Objection. Assuming he's  
15     lying.

16                     THE COURT: Sustained.

17     BY MR. FURNSTAHL:

18           Q     Well, isn't it a fact that you are torn because  
19     on the one hand you are concerned about your criminal  
20     liability, on the other hand you are worried about how  
21     your words affect your cousin, and you have family members  
22     here that are going to go back to your house --

23                     MR. BENSON: Objection, Your Honor.  
24     Speculation. Asked and answered and it's improper.

25                     THE COURT: And beyond the scope of

1 redirect.

2 MR. FURNSTAHL: Nothing further.

3 THE COURT: Jury will disregard the last  
4 question.

5 Witness is excused. You can step down.

6 (Witness excused.)

7 THE COURT: All right.

8 MR. FURNSTAHL: Can we approach on --

9 THE COURT: Members of the jury, we're  
10 going to take our noon recess at this time. Please  
11 remember to leave your notebooks on your chair. You  
12 are excused until 1:30.

13 Now you may approach, Counsel.

14 MR. FURNSTAHL: I want to put something on  
15 the record so wait for the jury to leave.

16 (Jurors exit courtroom.)

17 THE COURT: Okay. Ms. McNaughton.

18 MS. MCNAUGHTON: Your Honor, I wanted to  
19 know if the parties were finished with Mr. Harper.  
20 He's quite upset and I would like him to be able to  
21 go.

22 THE COURT: The parties are finished with  
23 Mr. Harper. He's excused.

24 MS. MCNAUGHTON: His mother is also present  
25 who was also under subpoena and was wondering --

1 MR. FURNSTAHL: She can go.

2 THE COURT: All right. She can go then.

3 MS. MCNAUGHTON: Thank you.

4 (Ms. McNaughton exits  
5 courtroom.)

6 THE COURT: Now, what do you want to put on  
7 the record, Mr. Furnstahl?

8 MR. FURNSTAHL: There was a point during  
9 cross-examination where we had a side bar where  
10 counsel was asking questions suggesting that the  
11 State was suborning perjury and we had some arguments  
12 about that and the Court said it would hear argument  
13 later as to whether or not you wanted to give a  
14 curative instruction.

15 We went back, counsel asked almost the same  
16 question, there was an objection, it was sustained.  
17 So I want the Court to instruct the jurors that any  
18 suggestion or reference to the effect that the State  
19 by reaching an agreement with the witness Isiah  
20 Harper, that the State was acting in bad faith or  
21 suborning perjury or doing anything other than  
22 requiring the witness to tell the truth is false,  
23 they should disregard it, and strike it from the  
24 record.

25 MR. BENSON: Your Honor, I would object to

1       that. I have every right to cross-examine a witness  
2       as far as that witness's belief and what his deal is.  
3       I have every right under the confrontation clause and  
4       under bias theory and everything of the like to  
5       cross-examine that witness based upon his belief as  
6       to what that deal is. It doesn't really matter what  
7       the deal was, particularly in this case when the  
8       State in its own questioning that he established what  
9       they believed the deal was.

10             The reality is this, there is something that the  
11       State believes is the truth, there's something that I  
12       believe is the truth, there's something that Isiah  
13       Harper may believe is the truth. The point is it  
14       doesn't matter what Isiah Harper believes and what  
15       motivates him, what could potentially bias his  
16       testimony, and those are the questions I was asking.  
17       That is the implication that was made and I would ask  
18       the Court not to do any instruction or curative  
19       instruction because that's going to affect this case.  
20       I believe it's definitely going to affect the way the  
21       jury views the testimony.

22             The purpose of the witness coming in here is to  
23       be cross-examined, and I don't care what the State --  
24       or doesn't matter what I care. It doesn't matter  
25       what the State believes this to be. Obviously the

1 State believes the truth is what he said on May 28th.  
2 The truth could have been that he wasn't there, he  
3 was in his house. The State doesn't make that  
4 decision, the jury does, and when I cross-examined  
5 Isiah Harper, it's his motivation for why he's going  
6 to say what the truth is what happened on May 28th.  
7 Obviously we dispute that that's the truth, and  
8 that's the basis and the purpose of  
9 cross-examination.

10 MR. FURNSTAHL: Well, that's all well and  
11 good, but that's not the question here. The question  
12 here is whether or not the questioning requires a  
13 curative instruction, and I believe that counsel  
14 believes that he had a basis to do that. But what's  
15 salient here is not what I believe or what counsel  
16 believes he can do but what the Court believes, and  
17 the Court had indicated that that was an improper  
18 area of cross-examination. It sustained I think  
19 three objections or four objections to it. It  
20 instructed and ordered the jury to disregard a couple  
21 of the questions. And then it was instructed, when  
22 we had the side bar conference indicated you were  
23 going to defer whether or not you were going to make  
24 an instruction and right after that there was another  
25 improper question which I believe the Court believes

1 was an improper question. That necessitates an  
2 instruction by the Court to disregard that, what was  
3 being implied by the question.

4 MR. BENSON: Your Honor --

5 THE COURT: Just so the record is clear,  
6 the argument counsel made at the bench was that the  
7 implication was that Mr. Harper was -- wasn't that he  
8 was to tell the truth but that he was to say what the  
9 State wanted. That's the objection I sustained and  
10 the question was whether I should instruct the jury  
11 to disregard that question by Mr. Benson.

12 MR. BENSON: And that -- yes, Your Honor,  
13 and that was where we were at and it's full and it's  
14 proper argument. Doesn't necessitate an instruction  
15 for me to explore what that witness believes and what  
16 my position is, and what I should have every right to  
17 argue in closing argument is that Isiah Harper is up  
18 there testifying to what the State wants him to  
19 testify to in order to avoid consequences for  
20 himself. And I have a basis for that because in his  
21 own direct testimony he says one thing about being  
22 threatened before I ask any questions, then he admits  
23 to perjury, they go have a meeting and then they come  
24 back out and he all of a sudden remembers everything  
25 and comes forwards and makes a, you know, verbatim

1 almost adoption of May 28th to the prosecutor's  
2 questions.

3 That is, and I think everybody in this courtroom  
4 knows that it's proper argument for me to talk about  
5 this witness's motivations and why he changed his  
6 story, and my question was getting at what he  
7 believed the State wanted him to say. That is not  
8 saying that the State went back there and told him to  
9 commit perjury. Those are two different things, and  
10 I never in any of the questions or anything else said  
11 did Mr. Furnstahl tell you to get up here and lie to  
12 this jury. I didn't say that. That would have been  
13 improper, that would warrant an instruction and a  
14 sanction and that's my concern with the Court giving  
15 an instruction when the defense has done nothing  
16 wrong with its cross-examination.

17 THE COURT: I will take the matter under  
18 advisement with regard to instructing the jury again  
19 more than the two times I've already told them with  
20 regard to both counsels' questions on this issue.  
21 And we're in recess until 1:30.

22 (Noon recess.)

23 THE COURT: Okay, Mr. Furnstahl. You may  
24 call your next witness.

25 MR. FURNSTAHL: We call Jennifer Coleman.

1 Whereupon,

2 JENNIFER COLEMAN,

3 after having been first duly sworn, was examined  
4 and testified as follows:

5 THE CLERK: Please state your name and  
6 spell your last for the record.

7 THE WITNESS: Jennifer Coleman,  
8 C-O-L-E-M-A-N.

9 THE COURT: Okay, Mr. Furnstahl.

10 MR. FURNSTAHL: Thank you.

11 DIRECT EXAMINATION

12 BY MR. FURNSTAHL:

13 Q Jennifer, how old are you?

14 A Excuse me?

15 Q How old are you?

16 A 17.

17 Q Do you recognize the defendant?

18 A Yeah.

19 Q You have to speak out loud.

20 A Marvin?

21 Q Yeah. Do you recognize the defendant?

22 A Not really.

23 THE COURT: What did you say?

24 THE WITNESS: No.

25 BY MR. FURNSTAHL:



1 Q Jennifer?

2 A Yes.

3 Q You know you gave a statement.

4 A Excuse me?

5 Q Remember giving a statement?

6 A Yes.

7 Q Are you backing off that statement now?

8 A No, I just, I don't recognize him.

9 Q Are you saying that that's not Little Marvin?

10 A It's been so long I really, I can't, I don't  
11 remember.

12 Q Is the person that you picked out of the photo  
13 lineup, is that Little Marvin?

14 A Yes.

15 Q Okay.

16 MR. FURNSTAHL: If I can have a moment,  
17 Judge?

18 THE COURT: You may.

19 BY MR. FURNSTAHL:

20 Q Do that later. But you know a Little Marvin?

21 A Yes.

22 Q Did you know him back in May of 2004?

23 A Yes.

24 Q And are you saying because of the passage of  
25 time you don't recognize the defendant here?

1 A Yes.

2 Q So you are not saying that he's -- you are not  
3 saying that he's not Little Marvin, are you?

4 A No.

5 Q Okay. Now, you are on juvenile probation,  
6 correct?

7 A Yes.

8 Q For what?

9 A Auto theft.

10 Q All right. And you had been on runaway status  
11 for some time, right?

12 A Yes.

13 Q And there was a warrant out for you because you  
14 jumped your probation?

15 A I don't know.

16 Q Okay. Would you assume that there was?

17 A Yes.

18 Q All right. And I've been trying to get you to  
19 come in to testify about what you know about the flower  
20 shop murder?

21 A Yes.

22 Q And we had a conversation?

23 A Yes.

24 Q You wanted to make sure that you, that you  
25 wouldn't be arrested for not showing up on your probation

1 if you came in and testified?

2 A Yes.

3 Q And we did that?

4 A Yes.

5 Q You know that you have to meet with your  
6 probation officer?

7 A Yes.

8 Q Next Tuesday at two o'clock?

9 A Yes.

10 Q And provided you do that, they won't execute any  
11 arrest warrant for your failure to appear in your  
12 probation, you know that?

13 A Yes.

14 Q All right. And are you willing to come in here  
15 and tell this jury the truth about what you know about the  
16 flower shop?

17 A Yes.

18 Q The truth is you know a few things, is that  
19 right?

20 A Yes.

21 MR. BENSON: Objection. Leading.

22 THE COURT: Sustained. Just for the future  
23 if one of the attorneys objects don't answer the  
24 question until I tell you to go ahead, okay?

25 THE WITNESS: Yes.

1 BY MR. FURNSTAHL:

2 Q Okay. Now, in May of 2004, where were you  
3 living?

4 A In north Minneapolis behind the liquor store.

5 Q In north Minneapolis behind the Broadway Liquor  
6 Store?

7 A Broadway Liquor Store. Yes.

8 Q Is that where your mother lives?

9 A No.

10 Q Were you living with your mother at that time or  
11 were you on runaway status at that time?

12 A I wasn't living with my mother but I don't  
13 believe I was a runaway at that point.

14 Q Do you remember meeting some people while you  
15 were living at that store behind Broadway Liquor?

16 A Yes.

17 Q Did you know Ant?

18 A Yes. I know of him and I've talked to him a few  
19 times.

20 Q All right. How about Poopey?

21 A Heard of him.

22 Q Have you ever met Poopey? If you recall.

23 A I was introduced to him, I think.

24 Q Now, you are aware of the flower shop murder?

25 A Yes.

1 Q Were you aware of the flower shop murder?

2 A Yes.

3 Q Do you remember today -- do you remember  
4 specifically the date that it occurred?

5 A No.

6 Q Did you -- you know, when I refer to the flower  
7 shop murder do you know what I'm talking about?

8 A Yes.

9 Q And back then when it happened, do you know the  
10 day or date that it happened?

11 A Excuse me?

12 Q Back then when it happened, do you know shortly  
13 after it happened?

14 A Yes.

15 Q All right. Did you have a conversation with  
16 Marvin Haynes about the flower shop murder, with Little  
17 Marvin, I should say?

18 A Yes.

19 Q When was that in relationship to when the flower  
20 shop murder occurred, was it before or after?

21 A It was after. I believe it was the morning  
22 after.

23 Q All right. Where did this conversation take  
24 place?

25 A Outside the house where I was staying.

1 Q Who if anyone was present?

2 A My friend Jessica, me, Marvin and a few of his  
3 friends.

4 Q Okay. And what did Marvin tell you about the  
5 flower shop murder during that conversation?

6 A That he had shot some old white man.

7 Q Did he say why?

8 A No.

9 Q Did he say that clearly to you? Were you able  
10 to understand that?

11 A Yes.

12 Q No doubt about -- do you have any doubts about  
13 what he said?

14 A No.

15 Q All right. Now, when he said that to you, could  
16 you describe for the jurors how he said it? What I'm  
17 asking is was it that he was, felt bad about it or was he  
18 bragging about it, laughing about it, or something in  
19 between? How was it that he said that?

20 A Um, him and his friends were bragging about it.

21 Q All right. Now, at some point later on you had  
22 another conversation with Little Marvin?

23 A Excuse me?

24 Q You had another conversation with Little Marvin  
25 about -- you know what I'm talking about seeing him at his

1 house?

2 A Yes.

3 Q I want to talk about that conversation, okay?

4 A Yes.

5 Q When did that happen?

6 A I can't really give you -- it was a little bit  
7 after he had came to me and told me that he had just shot  
8 someone.

9 Q Okay. So it was -- but it was after that  
10 conversation where he told you he shot the old white guy?

11 A Yes.

12 Q And where did that conversation take place?

13 A Outside of his house.

14 Q Was anybody with you at that time?

15 A Jessica.

16 Q Your friend Jessica?

17 A Yes.

18 Q And do you know where Little Marvin lived at the  
19 time?

20 A Yes.

21 Q Do you remember what street it was on?

22 A I don't remember what the street name was but it  
23 was, the street behind Broadway Liquor Store is Ferrant  
24 Place and if you go straight, I believe it's Russell. And  
25 instead of taking a right or a left you go straight and I

1 think he stayed on the second block.

2 Q Okay. On Russell?

3 A I believe it was Russell.

4 Q All right. Would you recognize the house again  
5 if you saw it?

6 A Yes.

7 Q All right. Now, so you and Jessica have a  
8 conversation with Little Marvin at his house on Russell,  
9 right?

10 A Yes.

11 Q And that sometime after the conversation where  
12 he says he shot the old white guy or he was bragging about  
13 that?

14 A Yes.

15 Q What does he tell you in the other, second  
16 conversation?

17 A That he couldn't come out because the police  
18 were looking for him.

19 Q He said he what?

20 A He couldn't come out because the police were  
21 looking for him.

22 Q He couldn't come out?

23 A He could not come out because the police were  
24 looking for him.

25 Q Were you there asking him to come out?



1 A Yes.

2 Q And he wouldn't come out of the house?

3 A He came out the back but he couldn't come out as  
4 far as to hang out with us.

5 Q Did he say what the police were looking for him  
6 for?

7 A No. I just assumed that that --

8 Q You knew what he was talking about?

9 A Yes.

10 Q Now, when you had the conversation with him by  
11 your house behind the Broadway Liquor Store, do you recall  
12 how he had his hair?

13 A Excuse me?

14 Q Do you recall how he had his hair? How his hair  
15 was fixed?

16 A It was long, braided.

17 Q It was braided?

18 A Yes.

19 Q All right.

20 MR. FURNSTAHL: If I can have a moment,

21 Your Honor?

22 THE COURT: You may.

23 BY MR. FURNSTAHL:

24 Q Now, the fact that we gave you assurances that  
25 if you came in and you testified truthfully and you showed

1 up to talk to your probation officer next Tuesday, the  
2 fact that we did that for you, is everything that you told  
3 this jury the truth?

4 A Yes.

5 Q Does the fact that we did that for you, does  
6 that cause you to lie to this jury? Are you doing that  
7 just so you got us to --

8 A No.

9 Q Are you getting tired of that kind of  
10 life-style?

11 A Yes, absolutely. Yes.

12 Q You want to get, put that life-style past you?

13 A Yes.

14 Q Do you want to put this thing past you?

15 A Yes.

16 Q Do you remember talking to a police officer or a  
17 Sergeant Keefe on October 19, 2004?

18 A Yes. I remember speaking to him, but the  
19 date --

20 Q You don't remember the date?

21 A Right. Yes.

22 Q And is everything that you told Sergeant Keefe  
23 the truth? Everything you told him then the truth?

24 A Yes.

25 Q As best you can recall it?

1 A Yes.

2 MR. FURNSTAHL: If I can have a moment,  
3 Judge.

4 THE COURT: You may.

5 BY MR. FURNSTAHL:

6 Q Going back to that second conversation that  
7 we've been talking about with Little Marvin where he said  
8 he couldn't come out, did he use specific words regarding  
9 about how he couldn't come out?

10 A Excuse me?

11 Q Do you know what I'm asking you?

12 A No.

13 Q Do you recall what you told Sergeant Keefe about  
14 what he said specifically about that?

15 A He said that he couldn't come out because the  
16 police were looking for him. That's exactly what he said.

17 Q Do you remember saying something about being on  
18 the low?

19 MR. BENSON: Objection. Leading, Your  
20 Honor.

21 THE COURT: Sustained.

22 BY MR. FURNSTAHL:

23 Q Do you remember exactly what it was that you  
24 told Sergeant Keefe?

25 A Yes.

1 Q What was it that you -- what was it that you  
2 told him?

3 A That Marvin said he couldn't come out because  
4 the police were looking for him and he had to stay on the  
5 low -- on the down low.

6 Q Stay on the down low. What does that mean, on  
7 the down low?

8 A He had to kind of hide out.

9 Q Thank you, Jennifer.

10 MR. FURNSTAHL: That's all I have.

11 THE COURT: All right. Mr. Benson,  
12 cross-examination.

13 MR. BENSON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BENSON:

16 Q Ms. Coleman, you and Mr. Furnstahl -- Mr.  
17 Furnstahl indicated you are on probation at this time?

18 A Yes.

19 Q Okay. And as far as you know the prosecutor  
20 took care of your concern with respect to being arrested?

21 A Excuse me?

22 Q You had a concern about being arrested if you  
23 came to court today, right?

24 A Yes.

25 Q Okay. And it's your understanding that the

1 County Attorney's Office took care of that?

2 A Yes.

3 Q So you weren't in danger of being arrested  
4 today, right?

5 A Yes.

6 Q All right. Couple questions for you regarding  
7 the -- because you did have some hesitation when you  
8 looked at Marvin Haynes sitting here?

9 A Yes.

10 Q When you were staying in, was it a house behind  
11 Broadway Liquor?

12 A Yes.

13 Q Is that right? And you were staying with other  
14 people or just staying with a couple of people?

15 A It was quite a few people.

16 Q Okay. And he talked to you, talked about  
17 knowing or hearing of a Little Ant, right?

18 A Yes.

19 Q Poopey?

20 A Yes.

21 Q Okay. And you had been introduced to Poopey  
22 before?

23 A Yes.

24 Q Okay. Now, during that time period it's correct  
25 that there were a couple of, there were two Marvins that

1 were circulating around that group?

2 A Yes.

3 Q One Marvin had like, kind of like an afro at  
4 that time period in the sense of his hair was long and I  
5 don't want to say unmanageable but it was longer, is that  
6 right?

7 A Excuse me?

8 Q There's two Marvins that I'm referring to.  
9 There's two Marvins that hung around the group of people  
10 you were hanging with, right?

11 A Yes.

12 Q And one Marvin had like his hair up kind of in  
13 an afro or at least a longer hairstyle without braids?

14 A Yes.

15 Q The other Marvin, you said he had like some long  
16 braids, right?

17 A I don't remember. I don't remember the other  
18 Marvin. All I remember is Little Marvin, the one that I  
19 knew.

20 Q Okay. But like you said there were two Marvins  
21 that you knew. Does Marvin Miller sound familiar to you?

22 A No, I knew them as Little Marvin and Big Marvin.

23 Q Little Marvin and Big Marvin?

24 A Yes.

25 Q And did you know where both of them, where

1       they both lived?

2           A       No.

3           Q       Okay.  There was -- you talked about the house  
4       that was on Ferrant, you believe it may have been a couple  
5       houses in on Russell, that's where the second conversation  
6       was had?

7           A       The second block on Russell.

8           Q       The second block on Russell?

9           A       Yes.

10          Q       And I believe you testified --correct me if I'm  
11       wrong -- that this was kind of behind Broadway Liquor  
12       Store, like if you were going to go to that house you  
13       would go behind Broadway Liquor Store and I believe you  
14       mentioned Ferrant or Berent Place?

15          A       Excuse me?  The place where I stayed, yes.

16          Q       That's where you stayed?

17          A       Yes.

18          Q       And this, the house that you referred to on  
19       direct examination, that was a house that was pretty much  
20       behind Broadway Liquors but it was up a couple blocks on  
21       Russell, right?

22          A       Yes.

23          Q       Okay.

24          A       Marvin's house, yes.

25          Q       In this group of people, I think you mentioned

1 Jessica Warfield?

2 A Yes.

3 Q And you mentioned Little Ant?

4 A Yes.

5 Q And Poopey, correct?

6 A Yes.

7 Q All right. But as you sit here now we are clear  
8 that there were two Marvins that you knew of?

9 A Yes.

10 Q Okay. One had the hair like up in an afro?

11 MR. FURNSTAHL: Object -- I'm sorry.

12 BY MR. BENSON:

13 Q One had the hair in an afro?

14 MR. FURNSTAHL: Objection. It's been asked  
15 and answered.

16 THE COURT: Sustained.

17 BY MR. BENSON:

18 Q And one had braids?

19 MR. FURNSTAHL: Same objection.

20 THE COURT: Sustained.

21 MR. BENSON: Nothing further, Your Honor.

22 THE COURT: Redirect?

23 MR. FURNSTAHL: Yes, a few questions.

24 REDIRECT EXAMINATION

25 BY MR. FURNSTAHL:



1 Q Jessica, did you know the other Marvin?

2 A Jennifer.

3 Q Jennifer. I'm sorry. Do you know the other  
4 Marvin?

5 A I knew of him.

6 Q Had you ever seen him? Or just heard about him?

7 A I'm not sure. I heard of him.

8 Q Do you remember when you talked to Sergeant  
9 Keefe in that statement that we referred to on October 19,  
10 2004, remember talking to him?

11 A Yes.

12 Q He showed you a photo lineup?

13 A Yes.

14 Q Is the person that you picked out of the photo  
15 lineup, is that the person that you had the conversation  
16 with that, the two conversations with that you described  
17 for the jurors?

18 A Yes.

19 Q Is there any doubt about that?

20 A No.

21 Q And you mentioned that Little Marvin or that  
22 person lived on Russell?

23 A Yes.

24 Q Do you know how far up the street on Russell he  
25 lived?

1           A     He lived on the second block and I don't know  
2 how many houses down on the left.

3           Q     Okay. Thank you, ma'am.

4                     MR. FURNSTAHL: That's all I have.

5                     THE COURT: Mr. Benson, anything else?

6                     MR. BENSON: No, Your Honor.

7                     THE COURT: You can step down.

8                             (Witness excused.)

9                     MR. FURNSTAHL: May I have a moment then,  
10 Judge?

11                    THE COURT: You may.

12                    MR. FURNSTAHL: We'll recall Sergeant  
13 Mattson.

14                    THE COURT: Sergeant, step up here in front  
15 to be sworn today.

16 Whereupon,

17                             DAVID MATTSON,  
18 after having been first duly sworn, was examined  
19 and testified as follows:

20                    THE CLERK: Please state your full name and  
21 spell your last for the record.

22                    THE WITNESS: David Mattson, M-A-T-T-S-O-N.

23                    THE COURT: Okay, Mr. Furnstahl.

24                    MR. FURNSTAHL: Thank you, Your Honor.

25                             DIRECT EXAMINATION

1 BY MR. FURNSTAHL:

2 Q Sergeant Mattson, during the course of your  
3 investigation you met Poopey, did you not?

4 A Yes, sir.

5 Q Do you know his real name?

6 A Isiah Harper.

7 Q And you, did you and your partner Sergeant Keefe  
8 take a statement from Isiah Harper?

9 A We did.

10 Q When did you take that statement?

11 A On the, I believe it was May 28th.

12 Q All right. Now, I want to talk to you first  
13 about the contacts that you had with Isiah Harper before  
14 May 28th, between May 16th, the day of the murder and May  
15 28th, okay? How many times did you have contact with  
16 Isiah Harper prior to May 28th?

17 A I think it was just one time.

18 Q And where was it?

19 A At the police station downtown.

20 Q How was it that you came in contact with him at  
21 the police station?

22 A Sergeant Keefe had located him, I don't remember  
23 how he got down there this first time.

24 Q All right. And then were there contacts with  
25 Isiah Harper subsequent to May 28th?

1           A     I don't recall if I talked to him after that or  
2 not.

3           Q     Do you remember difficulties with him coming in  
4 to testify at the grand jury?

5           A     Oh, yes. Yes, actually.

6           Q     So there were contacts after?

7           A     Yes.

8           Q     But when, as far as conducting your  
9 investigation and talking to him about his knowledge of  
10 the flower shop murder, when did that take place? How  
11 often did you have contacts with him where you talked  
12 about his knowledge of the flower shop murder?

13          A     The one time where he would tell us a little bit  
14 about it but didn't give us a taped statement, and then  
15 the next time I recall that we had contact with him was on  
16 the 28th again.

17          Q     Okay. There were contacts after that. Did that  
18 have to do with talking about what he knew about the  
19 flower shop?

20          A     No. That was I think to get him to come into  
21 the grand jury or to try to give him a ride to the grand  
22 jury.

23          Q     Make sure he was up?

24          A     Yes.

25          Q     Things like that? Show up on time?

1 A Yes.

2 Q Now, in your experience as an investigator, when  
3 you have information that a person has knowledge about a  
4 crime that you are investigating, you obviously go try to  
5 talk to the person about that, is that right?

6 A Yes.

7 Q You expressed earlier in your testimony I think  
8 it was yesterday that with respect to some crimes that  
9 occur in north Minneapolis it's not always easy to gain  
10 cooperation?

11 A Correct, yes.

12 Q Did it require kind of a more, more of a  
13 technique on your part to gain cooperation in some  
14 situations?

15 A Sometimes, yes.

16 Q In doing that, do you, do witnesses sometimes  
17 lie to you?

18 A Yes.

19 Q Do they sometimes tell you that they don't know  
20 anything when in fact they do?

21 A Yes.

22 Q Do you advise them about a law known as aiding  
23 an offender after the fact?

24 A I do.

25 Q And do you recall doing that with Isiah Harper

1 in this case?

2 A I think we did.

3 Q If he had told you I don't know anything, is  
4 that something that would have triggered your discussions  
5 about aiding an offender?

6 A Probably, if we believed he did know something.

7 Q Okay. And you know that attorneys sometimes  
8 advise their clients of those kinds of things?

9 MR. BENSON: Objection.

10 THE COURT: What's the objection?

11 MR. BENSON: Foundation and relevance.

12 What an attorney does.

13 THE COURT: Sustained as to foundation.

14 BY MR. FURNSTAHL:

15 Q Well, you've been around the system since you've  
16 been a cop for so long, is that right?

17 A Yes.

18 Q Have you had occasion where you've consulted  
19 with attorneys regarding their clients?

20 A Yes.

21 Q And have you had situations where you've  
22 consulted with attorneys in an attempt to gain cooperation  
23 from an attorney's client?

24 A Yes.

25 Q Have you been present when an attorney has

1       advised their client about what could happen if they lie  
2       to the police?

3             A       Yes.

4             Q       Have you been present when you've observed where  
5       attorneys have advised their clients about the law as it  
6       relates to aiding an offender after the fact?

7             A       Yes.

8             Q       With respect to your contact with Isiah Harper  
9       the first time, was that a recorded or unrecorded  
10       statement?

11            A       That was unrecorded.

12            Q       Did you want it to be unrecorded?

13            A       No. We wanted to put him on tape and get a  
14       recorded statement. He didn't want to at that time.

15            Q       So why didn't you go ahead and do it anyway?

16            A       He didn't want to. He wouldn't talk if it was  
17       going to be recorded.

18            Q       Some of the techniques that you have to use that  
19       we talked about before?

20            A       Yes.

21            Q       So, well, when you talked to him that first time  
22       you mentioned, was that at the homicide office?

23            A       Yes.

24            Q       He was brought there by Sergeant Keefe?

25            A       I don't remember exactly how he got down there

1       that first time.

2               Q       Okay. But that's where it was, where the  
3       conversation took place?

4               A       Yes.

5               Q       Was he, would you describe how he was -- what  
6       I'm asking is, was he cooperative or uncooperative or  
7       describe how that went?

8               A       Um, he was willing, he was okay with talking to  
9       us. He didn't really want to give us details. But when  
10      we told him that, you know, we believed you know more than  
11      you are telling us and we, he was okay with telling us  
12      what he knew but he wouldn't go on tape for it.

13              Q       Did he say that?

14              A       You know, I don't remember the specifics, you  
15      know, exactly how he worded it, you know, but we, you  
16      know, when we heard what we heard, um, we wanted a taped  
17      statement and he didn't want to do it. I don't remember  
18      exactly how he verbalized his reluctance to do that. I  
19      know he mentioned that it's a relative of his.

20              Q       He mentioned what?

21              A       That he's a relative of Mr. Haynes and didn't  
22      really want to go and, you know, be in the system.

23              Q       Did you comply with his wishes?

24              A       At that time, yes.

25              Q       All right. And then you subsequently had a



1 taped conversation?

2 A Yes.

3 Q That was the one on May 28th?

4 A Yes.

5 Q Where did you have that conversation?

6 A That was also at our office headquarters.

7 Q The homicide office?

8 A Yes.

9 Q And where in the office did you have the  
10 conversation?

11 A We have individual interview rooms. It would  
12 have been in one of those.

13 Q Is that where the first conversation was?

14 A I think it was.

15 Q All right.

16 A I don't know if it was the same room, but.

17 Q How did he get down to the homicide office?

18 A We gave him a ride.

19 Q Where was he, where did you pick him up from?

20 A Home.

21 Q Did you go there to and pick him up?

22 A I think both Sergeant Keefe and I went there.

23 Q Was his mother there?

24 A Yes.

25 Q Did you tell his mother why you were there to

1 see her son?

2 A Yes.

3 Q What did you say? As best you can recall tell  
4 the jurors what you told Isiah Harper's mother.

5 A His name had come up in this homicide  
6 investigation and that we knew he knew details about it  
7 and that we needed to get this out in the open and asked  
8 her for her permission to bring him down to talk to him.

9 Q Did she deny you permission?

10 A No.

11 Q What did she say?

12 A She gave us permission. I don't remember what  
13 she said exactly.

14 Q And did Isiah then go with you?

15 A He did.

16 Q Did he argue or fuss or fight or anything like  
17 that?

18 A No.

19 Q All right. So you transported him down to the  
20 homicide office, and then did you talk to him before you  
21 turned on the tape?

22 A We probably did.

23 Q What would that conversation have been about?

24 A Just asking him, telling him, you know, we are  
25 going to discuss the same investigation we did last time,

1       you know, we want your cooperation, and we need to get it  
2       on paper, on tape, get a statement as it were.

3               Q       What did he say to that?

4               A       Well, he complied with it at that time.

5               Q       Is that something that he wanted or not wanted  
6       to do?

7               A       No, he was still reluctant.

8               Q       Did you or Sergeant Keefe threaten him at that  
9       time?

10              A       No.

11              Q       The first time you had contact with him did you  
12       threaten him?

13              A       No.

14              Q       At any time -- well, when he didn't show up for  
15       court with the grand jury was he told he could be arrested  
16       if he didn't do that?

17              A       Yes.

18              Q       In fact after the first time he didn't show up  
19       for grand jury did you arrest him?

20              A       I did.

21              Q       All right. Other than telling him or arresting  
22       him for not showing up for court, did you make any kind of  
23       threats in order to get him to talk to you either on May  
24       28th or the conversation before May 28th?

25              A       No.

1 Q Now, and that conversation was recorded,  
2 correct?

3 A Yes, sir.

4 MR. FURNSTAHL: May I approach?

5 THE COURT: You may.

6 MR. FURNSTAHL: Exhibit 70, is that the  
7 next one? That's what I've got.

8 May I approach?

9 THE COURT: You may.

10 BY MR. FURNSTAHL:

11 Q Showing you, Sergeant, what I've marked as  
12 Exhibit 70, does that appear to be a copy of the  
13 conversation that you had with Isiah Harper on May 28th,  
14 2004?

15 A Yes.

16 MR. FURNSTAHL: We would offer the exhibit.

17 THE COURT: Any objection, Mr. Benson?

18 MR. BENSON: Hearsay and Dexter grounds,  
19 Your Honor.

20 THE COURT: Court has previously ruled on  
21 that issue. The exhibit will be received.

22 MR. FURNSTAHL: We would ask to publish it  
23 at this time.

24 THE COURT: You may.

25 MR. FURNSTAHL: It's going to take me a

1 second to set this up.

2 (The taped statement is  
3 played to the jury and the typed transcript is  
4 displayed on a screen.)

5 THE COURT: Members of the jury, we'll take  
6 our afternoon recess at this time. We'll get some  
7 things cleaned away here, so you have 15 minutes.  
8 Please leave your notebooks on your chairs.

9 (Recess.)

10 THE COURT: Okay, Mr. Furnstahl, you can  
11 continue.

12 MR. FURNSTAHL: Thank you, Your Honor.

13 BY MR. FURNSTAHL:

14 Q Sergeant Mattson, you had testified earlier  
15 about the difficulty in getting Isiah Harper to the grand  
16 jury. Remember that?

17 A Yes.

18 Q Will you just briefly explain to this jury what  
19 a grand jury is?

20 A It's a gathering of citizens that are going to  
21 be presented evidence basically in secret. They are the  
22 only ones that hear each person talk.

23 MR. BENSON: Objection. Just a moment.

24 Can we approach, Your Honor?

25 THE COURT: You may.

1 MR. FURNSTAHL: I'll move on. That's all  
2 right.

3 MR. BENSON: Appreciate it.

4 BY MR. FURNSTAHL:

5 Q You have Exhibit 71 in front of you?

6 A I do.

7 Q That's the transcript of the grand jury  
8 proceeding?

9 A Yes.

10 Q Would you turn to page 78? Do you have that?

11 A I do.

12 Q Is that where the testimony of Isiah Harper  
13 commences?

14 A Yes.

15 Q All right. What I'm going to do is I'm going to  
16 read the --

17 MR. FURNSTAHL: Maybe we should approach.

18 (Off-the-record discussion at  
19 the bench out of hearing of the jurors.)

20 THE COURT: Members of the jury, while this  
21 next testimony of Mr. Harper before the grand jury is  
22 read, I'll just remind you that the questions which  
23 are going to be read by Mr. Furnstahl is not  
24 evidence. Only the witness's answers are, all right?

25 BY MR. FURNSTAHL:

1 Q Sergeant, I'm going to start on line 19 on page  
2 78, okay?

3 A Okay.

4 Q Okay. The first thing we need you to do is tell  
5 us your full name and spell your last name.

6 A Isiah Harper, I-S-I-A-H, H-A-R-P-E-R.

7 Q Mr. Harper, how old you?

8 A 14.

9 Q And you were just -- you've been given some  
10 advice by your mother outside, correct?

11 A Yes.

12 Q Now you just took an oath, correct?

13 A Huh?

14 Q You just took an oath to tell the truth, right?

15 A Yup.

16 Q Do you have any questions about that oath?

17 A No.

18 Q Is everything all clear in your mind about your  
19 responsibility given the fact that you've been sworn under  
20 oath?

21 A Yeah.

22 Q I'm sorry?

23 A Yes.

24 Q So you have no questions?

25 A Shook head negatively. It was a negative

1 response.

2 Q So you have to answer out loud, sir.

3 A No.

4 Q You also gave a statement to the Minneapolis  
5 police department, correct?

6 A What they told me to say.

7 Q My question is, did you give a statement to the  
8 Minneapolis police department?

9 A Yes.

10 Q That was to Sergeants Keefe and Mattson,  
11 correct?

12 A Yes.

13 Q That was on May 28, 2004?

14 A Yes.

15 Q At 12:10 in the afternoon, correct?

16 A Yes.

17 Q Directing your attention to page 13 of that  
18 statement where I'm pointing, the second to the last  
19 question, can you read that?

20 A I can't read.

21 Q It says, quote, Poopey is everything, close  
22 quote. Poopey is your nickname, right?

23 A Yes.

24 Q It says, quote, is everything you told us today  
25 true to best of your ability, closed quote. You remember



1       them asking you that?

2           A     Yes.

3           Q     And what did you respond to that?

4           A     Yes.

5           Q     You told them that everything you said in here  
6       was truthful?

7           A     Yes.

8           Q     Now, you know Marvin Haynes?

9           A     Yes, sir.

10          Q     How do you know Marvin Haynes?

11          A     He's my cousin.

12          Q     He's your blood cousin?

13          A     Yes.

14          Q     Does he have a nickname that he goes by?

15          A     Little Marvin.

16          Q     Little Marvin?

17          A     Yes.

18          Q     And how long have you known Marvin Haynes?

19          A     All my life.

20          Q     Okay. So when I say Little Marvin or Marvin  
21       Haynes, there's no question who I'm talking about,  
22       correct?

23          A     Correct.

24          Q     Now, do you remember seeing Little Marvin on May  
25       16, 2004, the day of the alleged murder at the flower

1 shop?

2 A No. I was at home.

3 Q Oh, you are following your mother's advice?

4 A I was at home.

5 Q Well, that's not what you told the Minneapolis  
6 police department.

7 A Yes, yes, it was. That's what I told them.

8 Q Well, isn't it a fact --

9 A I told them.

10 Q Excuse me. I have to ask the question before  
11 you can respond, okay? Do you understand that? Do you  
12 understand that, Mr. Harper?

13 A Yes.

14 Q Now, your mother was outside telling you to say  
15 that you were at home at that time, is that right?

16 A Right.

17 Q And that in telling you to say that you didn't  
18 know anything, right?

19 A Correct.

20 Q In fact you were subpoenaed to be here last week  
21 at the grand jury, correct?

22 A Yes.

23 Q And you didn't show up?

24 A Yes.

25 Q And Sergeant Mattson went to your house with a

1 bench warrant and arrested you?

2 A Yes.

3 Q And on the way out of the house your mother was  
4 yelling at the police that you didn't know anything,  
5 right?

6 A Yes.

7 Q But that's not what you told the police  
8 department when you talked to them on May 28, 2004, is  
9 that right?

10 A No.

11 Q You told them something different when you  
12 talked to Sergeant Keefe and Sergeant Mattson on May 28,  
13 2004, didn't you?

14 A No.

15 Q So on May 28, 2004 when you talked to Sergeant  
16 Keefe and Sergeant Mattson, you told them that you didn't  
17 know anything about the flower shop murder?

18 A I told them I know something about it but I  
19 didn't say I talked to Marvin that day.

20 Q So did you tell Sergeant Keefe and Sergeant  
21 Mattson that you knew something about the flower shop  
22 murder when you talked to them on May 28, 2004?

23 A Yeah.

24 Q Can you read at all, sir?

25 A Gesturing.

1 Q Can you read at all?

2 A No. But I remember what I said.

3 Q Okay. So you don't need to look at your  
4 statement or have it read. Do you need to have it read to  
5 you?

6 A No.

7 Q You told the police on the day of the flower  
8 shop murder, and there's been testimony that that occurred  
9 on -- well, do you remember the day of the week, do you  
10 remember the day of the week that was?

11 A Sunday.

12 Q Do you remember the date?

13 A No.

14 Q But you know it was a Sunday?

15 A Yes.

16 Q And what month?

17 A May, I think.

18 Q May, you think?

19 A Nodded.

20 Q You have to answer out loud.

21 A Yes. Yeah.

22 Q And you told Sergeants Keefe and Mattson that  
23 earlier that day you were at a friend's house, correct?

24 A Correct.

25 Q You told them that you were at Muffy's house,

1 correct?

2 A Correct.

3 Q You went over to Muffy's house, correct?

4 A Yes.

5 Q You told the police that you were, that while at  
6 Muffy's house you saw your cousin Marvin Haynes?

7 A Yes.

8 Q And you saw another person by the name of  
9 Daquan?

10 A Yes.

11 Q That's D-A-Q-U-A-N, and what's Daquan's last  
12 name?

13 A I don't know.

14 Q You don't know Daquan's last name?

15 A Shook head negatively.

16 Q You have to answer out loud, sir.

17 A No.

18 Q And you told the officers that Daquan said that  
19 he and Marvin, your cousin, were going to hit a lick,  
20 correct?

21 A Correct.

22 Q What does, quote, hit a lick, closed quote,  
23 mean?

24 A A robbery.

25 Q Who else did you say was at Muffy's that

1 morning?

2 A The rest of us.

3 Q Who's the rest of you?

4 A Anthony.

5 Q And who else?

6 A I can't remember who else was there.

7 Q Was Little John there?

8 A Yeah.

9 Q And Justin?

10 A Yes.

11 Q And Charles?

12 A Yes.

13 Q And your cousin Marvin said he was going to hit

14 a lick with Daquan, correct?

15 A Correct.

16 Q And it looked like he had a gun on him?

17 A Yes.

18 Q Did you see Daquan with a gun?

19 A No. When he pulled up.

20 Q At some point then you saw him with a gun?

21 A Yes.

22 Q Describe that gun.

23 A I didn't see it all the way, I just saw a

24 handle.

25 Q And the handle was chrome, right?

1 A Yes.

2 Q And was it a semiautomatic or a revolver?

3 A Revolver.

4 Q And you said you saw it when it was on Daquan  
5 when they pulled up, right?

6 A Yes.

7 Q And what kind of vehicle were they in?

8 A At first they was in a truck but I think they  
9 switched into the white Chevy.

10 Q Okay. Who was driving?

11 A Daquan.

12 Q And that was the morning of the day of the  
13 flower shop murder, correct?

14 A Correct.

15 Q You know that that was before the murder,  
16 correct?

17 A Correct.

18 Q And your cousin Marvin at that point in time at  
19 Muffy's told you that he was going to hit a lick with  
20 Daquan?

21 A Correct.

22 Q All right. Then at some point later on you had  
23 a conversation with your cousin Marvin Haynes, correct?

24 A Days before that.

25 Q I'm talking about afterwards.

1 A No.

2 Q You told Sergeants --

3 A Over the phone.

4 Q Over the phone?

5 A Yes.

6 Q And he told you that he had shot someone?

7 A Yes.

8 Q He said he had shot someone, he shot at -- he  
9 shot a white male?

10 A Yes.

11 Q He shot him how many times?

12 A Twice.

13 Q Where did he say he shot him?

14 A He didn't know. He was just scared, he said.

15 Q Where was this white guy when he was shot?

16 A He said on the corner.

17 Q The flower shop?

18 A I guess. He told me on the corner.

19 Q The flower shop is located on the corner,  
20 correct?

21 A Well, yeah, correct.

22 Q Do you recall telling Sergeants Keefe and  
23 Mattson that Marvin Haynes told you that he shot the white  
24 male at the flower shop?

25 A At, on the corner, I told them on the corner, I



1 didn't say no --

2 Q Okay. He told you what gun he used to shoot  
3 this white male?

4 A No, he didn't tell me.

5 Q Do you remember telling Sergeants Keefe and  
6 Mattson what he told you he used?

7 A No.

8 Q Do you remember telling them that Marvin told  
9 you that he used the chrome revolver that you had seen  
10 Daquan with earlier?

11 A Correct.

12 Q All right. He told you during that telephone  
13 conversation, he told you to look for Daquan?

14 A Correct.

15 Q Did he tell you whether or not, did Marvin tell  
16 you whether or not he had got any money when he went into  
17 the flower shop?

18 A No.

19 Q No what? No he didn't tell you or no he didn't  
20 get any money?

21 A He didn't tell me.

22 Q Do you remember telling Sergeants Keefe and  
23 Mattson that he didn't get any money because he was  
24 scared?

25 A Yes.

1 Q Is that correct?

2 A Yes.

3 Q All right. Do you remember him telling you  
4 where Daquan was when this happened?

5 A No.

6 Q Do you remember telling Sergeants Keefe and  
7 Mattson?

8 A In the car.

9 Q And where was the car located?

10 A In the back of the store.

11 Q In the alley, right?

12 A Yes.

13 Q And that, and he told you this, he told you  
14 during this conversation whether or not anybody else was  
15 inside the flower shop at the time?

16 A It wasn't -- he didn't tell me.

17 Q Just him, right?

18 A Yes.

19 Q All right. At Muffy's house you said you saw a  
20 number of people including Daquan and Daquan had told you  
21 that he was going to hit a lick with Marvin, is that  
22 right?

23 A Yes.

24 Q Then suddenly Marvin also said the same thing?

25 A Yes.

1 Q And you saw Daquan had the silver gun because  
2 you saw the handle, is that -- you saw Daquan with that  
3 gun or Marvin or both?

4 A Daquan.

5 Q Only Daquan?

6 A Yes.

7 Q And then you -- what was the deal about the car  
8 Daquan was driving? Was that as they were leaving there  
9 or was there a number of people leaving the house, or what  
10 were the circumstances where you saw Daquan driving?

11 A Driving? I didn't see him driving.

12 Q Did you see them drive away after that, after  
13 that conversation?

14 A Well, we -- let me start over. We all, we all  
15 got in separate cars and drove away.

16 Q You drove away in a separate car? Did you see  
17 what car, whether or not Daquan and Marvin Haynes drove  
18 away in the same vehicle?

19 A Yeah.

20 Q Did they did drive away in the same vehicle?

21 A Yes.

22 MR. FURNSTAHL: That's all I have.

23 THE COURT: Cross-examination, Mr. Benson.

24 MR. BENSON: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. BENSON:

2 Q Detective, I want to talk to you about a couple  
3 of things in these statements that you just, or that was  
4 just read. With respect to --

5 MR. BENSON: Referring you to supplement  
6 38, counsel, page eight.

7 MR. FURNSTAHL: I got it. Thanks.

8 BY MR. BENSON:

9 Q There was a transcript made of the taped  
10 statement of Isiah Harper, right?

11 A Yes, sir.

12 Q And you've reviewed that obviously before today,  
13 right?

14 A Yes.

15 Q Obviously we had, we sat through it today?

16 A Yes.

17 Q And in that statement there's mention of,  
18 there's a question that was asked I believe by Sergeant  
19 Keefe, after you left Muffy's house and you picked up  
20 Marvin Miller where did you go. Answer, to Jennifer's  
21 house. Question, to Jennifer's house, okay, where does  
22 Jennifer live. Answer, behind the Broadway Liquor Store.

23 You do recall that statement, right?

24 A Yes.

25 Q And have you guys checked out Marvin Miller?

1 A I'm sorry?

2 Q Have you talked to Marvin Miller?

3 A I don't remember if I talked to him or not.

4 Q You got any reports or anything like that that  
5 indicate that you talked to Marvin Miller?

6 A I don't recall.

7 Q You don't recall if you have reports?

8 A I don't recall. I've talked to a lot of people,  
9 some several different times. I don't recall Marvin  
10 Miller myself right now.

11 Q Okay. You got any notes?

12 A Not of that, no.

13 Q Okay. You are aware that Marvin Miller lives at  
14 2126 Queen Avenue North, right?

15 A I'm not sure.

16 Q Well, you are aware that Marvin Miller is  
17 someone different than Marvin Haynes?

18 A Yes.

19 Q And it does appear from that statement that  
20 Marvin Miller has some association with Jennifer's house?

21 MR. FURNSTAHL: I'm going to object to that  
22 as being argumentative.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Repeat your question.

25 BY MR. BENSON:

1           Q     Well, it appears that Marvin Miller has some  
2     association with Jennifer's house according to the  
3     statement that we've seen today?

4           A     I guess I don't know what their association  
5     would be.

6           Q     Well, according to that statement, according to  
7     that statement Isiah Harper says that he and Marvin Miller  
8     went to Jennifer's house, right?

9           A     Okay. Yes.

10          Q     That's what the statement said?

11          A     Yes, sir.

12          Q     And therefore Marvin Miller would have actually  
13     been at Jennifer's house?

14                     MR. FURNSTAHL: Object to that. He's  
15     asking the witness to comment on evidence.

16                     THE COURT: Overruled. He can answer.

17                     THE WITNESS: Repeat the question.

18     BY MR. BENSON:

19          Q     I say therefore Marvin Miller, according to the  
20     statement from Isiah Harper, Marvin Miller would have been  
21     at Jennifer's house?

22          A     Probably, yes.

23          Q     Okay. And you are familiar with the, the  
24     Broadway Liquor Store, right?

25          A     I haven't been in it. I know generally where it

1 is.

2 Q You are aware from this investigation that  
3 Jennifer lives somewhere near the Broadway Liquor Store?

4 A Yes, sir.

5 Q Right?

6 A Yes.

7 Q You are aware of that general area, correct?

8 A Yes.

9 Q And 2126 Queen Avenue North is near that general  
10 area, right?

11 A Yes.

12 Q Okay. Now, focusing on that statement again  
13 just for a moment, I'll refer counsel to supplement 38,  
14 page ten. According to this statement Isiah Harper says,  
15 he said he only told me he shot him once in the head, he  
16 didn't tell me where he shot him at the second time.

17 That's what was in that statement, correct?

18 A Yes.

19 Q And you were present at the autopsy in this  
20 case?

21 A Yes.

22 Q And the deceased, Randy Sherer, he wasn't shot  
23 in the head, was he?

24 A No.

25 Q So at least that would be an inaccuracy with

1 respect to the location of the wound in this case, right?

2 A Yes.

3 Q Okay. Now, this May 28th statement that you  
4 took from Isiah Harper, you had had a previous  
5 conversation with him, correct?

6 A Yes.

7 Q According to you, you recall one conversation.

8 A Yes.

9 Q One previous conversation?

10 A Correct.

11 Q And at that conversation, at the time of that  
12 first conversation Isiah Harper was actually named by  
13 another witness as possibly being involved in the murder,  
14 right?

15 MR. FURNSTAHL: I'm going to object to that  
16 as being hearsay. Can we approach?

17 THE COURT: You may approach.

18 (Off-the-record discussion at  
19 the bench out of hearing of the jurors.)

20 THE COURT: Ladies and gentlemen, counsel  
21 is about to introduce statements that someone made to  
22 this witness. These statements are what are often  
23 referred to as hearsay. Hearsay statements can be  
24 inadmissible if they are offered as proof of the  
25 truth of the matter asserted in the statements. If



1 the hearsay is not offered for the truth of the  
2 matter asserted in the statements or if it falls  
3 within one of the many legal exceptions to the  
4 hearsay rule then they may be admitted into evidence.  
5 In this case defense is not offering the statements  
6 as evidence of the truth of the matter asserted in  
7 the statements. Instead the statements are offered  
8 to show the statements' effect on the listener. This  
9 means that the evidence is not being received as  
10 evidence that Isiah Harper committed the crimes  
11 charged in the case, the statements are admissible  
12 for the sole purpose of showing that the officer took  
13 certain actions as a result of hearing the  
14 statements, that is the statements that caused him to  
15 go and interview Mr. Harper.

16 You may proceed, Mr. Benson.

17 MR. BENSON: Thank you, Your Honor.

18 BY MR. BENSON:

19 Q On May 21st someone informed you that Isiah  
20 Harper may be involved in this offense, right?

21 A Yes.

22 Q You hesitated. I mean, that is a correct  
23 assessment, right?

24 A Well, I think the question that was put to that  
25 person was who could be involved.

1 Q Yeah.

2 A And one of the persons he mentioned was Poopey.

3 Q Um-hum. And that was -- well, what I asked you  
4 was that Isiah Harper may have been involved, correct?  
5 That was the information that you got, Isiah Harper may  
6 have been involved?

7 A Could. Could have been.

8 Q Could, could have been involved. That's fine.  
9 That was on May 21st, right?

10 A From that person that you are talking about,  
11 yes.

12 Q Did somebody else give you that information?

13 A No. No, I just thought you were trying to  
14 clarify the person we're talking about on the 21st.

15 Q Yes. So on May 21st you got information that  
16 Isiah Harper may have been or could have been involved?

17 A Yes.

18 Q Okay. And of course you went, as lead  
19 investigator you went to find Isiah Harper, right?

20 A Yes. We wanted to talk to him.

21 Q And according to you that would have been the  
22 first --

23 MR. FURNSTAHL: Objection. Foundation.

24 Ask to voir dire.

25 THE COURT: What is the legal objection?

1 MR. FURNSTAHL: Foundation. I can make an  
2 offer of proof if I can come to the bench.

3 THE COURT: All right. You can come to the  
4 bench.

5 (Off-the-record discussion at  
6 the bench out of hearing of the jurors.)

7 THE COURT: Okay, Mr. Benson. You can  
8 continue.

9 MR. BENSON: Thank you.

10 BY MR. BENSON:

11 Q All right, Detective. On May 21st you received  
12 some information that Isiah Harper could be involved in  
13 this case?

14 MR. FURNSTAHL: Objection, Judge.  
15 Irrelevant. And foundation.

16 THE COURT: Overruled. You can answer. I  
17 think that answer has already been given but you may  
18 answer the question one more time.

19 THE WITNESS: Yes.

20 BY MR. BENSON:

21 Q On May 28th as we've talked about you took this  
22 formal statement with the -- you tape-recorded it, right?

23 A With Mr. Harper, you mean?

24 Q With Mr. Harper.

25 A Yes.

1 Q Okay. Sometime before May 28th according to you  
2 you met with Isiah Harper once, correct?

3 A That's all I remember, yes.

4 Q That is all you remember?

5 A I mean as far as sometime before. I don't know  
6 the exact date.

7 Q Okay. And according to you, you only met with  
8 him one time before May 28th, correct?

9 A Yes.

10 Q It wasn't four or five times?

11 A No.

12 Q All right. And then on May 28th you sat down,  
13 you pulled out the tape recorder, right?

14 A Essentially, yes.

15 Q And there was a conversation before you pulled  
16 out the tape recorder?

17 A Probably talked first, yes.

18 Q You talked to him for awhile about what he was  
19 going to tell you on the tape, correct?

20 A Yeah. We asked him what he knew, yes.

21 Q Then you turned on the tape recorder?

22 A Yes.

23 Q This is on the 28th?

24 A Yes. That's when we got his statement.

25 Q And we talked yesterday about, I believe it was

1 yesterday, about the purpose of police reports, right?

2 A Did we talk about that yesterday?

3 Q If you don't remember that's fine.

4 A I don't remember. Probably.

5 Q And the importance of police reports is to  
6 assist you as a police officer in testifying when you come  
7 to trial, right?

8 A Yes.

9 Q Especially in a case that may not come to trial  
10 for 15, 16 months, correct?

11 A Yes.

12 Q So you can give details, particular details  
13 about what was said, correct?

14 A Yes.

15 Q Or what information you gained in your  
16 investigation, right?

17 A Yes.

18 Q And for example yesterday with Ms. McDermid's  
19 statements it was a big issue about what her actual words  
20 were, correct?

21 A I wasn't here when Ms. McDermid testified.

22 Q I'm sorry. I said Ms. McDermid's statements to  
23 you.

24 A Okay. I'm sorry. Would you repeat your  
25 question?

1           Q     It was a very big deal about what Ms. McDermid's  
2 words were during the live lineup procedure, correct?

3           A     Yes, you raised that issue.

4           Q     And we spent some time talking about what her  
5 words were, what her exact words were or at least best of  
6 your recollection, correct?

7           A     Yes..

8           Q     And you indicated that that's because of the  
9 report that you filled out you could look at that report  
10 and give us your best assessment of what those words were,  
11 correct?

12          A     Yes.

13          Q     All right. So you know as a lead investigator  
14 in a homicide case it's important to take, you know,  
15 police reports, right?

16          A     Yes.

17          Q     Or take notes?

18          A     Yes.

19          Q     All right. And in this case, in this instance  
20 with Isiah Harper in your contact with him before May 28th  
21 you didn't take any notes, did you?

22          A     Actually I think I did. I don't have any notes  
23 because after I got his statement and we review statements  
24 there's no need to keep our notes because that is what we  
25 make our reports on.

1 Q Okay. But you don't have a report in this, with  
2 respect to that first statement, right?

3 A That's true.

4 Q So you are saying you took some notes or you may  
5 have taken some notes and you destroyed them?

6 A After the reports were made.

7 Q But you don't have the report, correct?

8 MR. FURNSTAHL: Objection. It's been asked  
9 and answered.

10 THE COURT: Overruled. You can answer.

11 Let's clarify the question.

12 BY MR. BENSON:

13 Q You don't have a report with respect to that  
14 conversation you had with Isiah Harper before May 28th?

15 A No, because the statement that we took on the  
16 28th essentially gave us the same information so I didn't  
17 make a separate one.

18 Q But it's a separate contact with a witness,  
19 right?

20 A That's true.

21 Q That witness told you something, correct?

22 A Yes.

23 Q Gave you some information, right?

24 A Yes.

25 Q And you don't recall, I believe your testimony

1 on direct examination today was that you don't recall some  
2 of the details or what the exact words were during that  
3 conversation, right?

4 A True.

5 Q And if you kept your notes you might be able to  
6 recall what was said that day, correct?

7 A I don't know, sir.

8 Q Well, you don't recall what was said that day,  
9 according to your testimony?

10 A Not word for word.

11 MR. FURNSTAHL: Objection. That's  
12 redundant.

13 THE COURT: Overruled. Answer will stand.  
14 Now go ahead.

15 BY MR. BENSON:

16 Q And as we said the purpose of taking notes or  
17 doing a police report is to be able to relay what happened  
18 that day?

19 MR. FURNSTAHL: Same objection. Redundant.

20 THE COURT: Sustained as to redundant on  
21 this one, as to repetitive.

22 BY MR. BENSON:

23 Q And as far as a -- well, as a lead investigator  
24 in a homicide case, interviewing witnesses or potential  
25 witnesses or potential suspects, that's an important task,



1 correct?

2 A Yes.

3 Q It's important because you are investigating a  
4 murder, right?

5 A Yes.

6 Q And you would want to document each and every  
7 witness you talked to, wouldn't that make sense?

8 MR. FURNSTAHL: Objection. That's  
9 argumentative.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Repeat your question.

12 BY MR. BENSON:

13 Q It would make sense to document each and every  
14 contact that you have with an individual, correct?

15 A Not necessarily each time I talk to them, would  
16 I necessarily.

17 Q Well, in this case with respect to Isiah Harper,  
18 you've testified that he didn't want you to record his  
19 statement, right? Recorded statement?

20 A Yes.

21 Q But his desire whether he wanted to or not  
22 didn't prevent you from putting a police report together,  
23 did it?

24 A No.

25 Q You chose not to put a police report regarding

1       that contact, correct?

2           A     You could put it that way. It was more a  
3       question that we were going to try to talk to him again to  
4       see if he would -- try to gain his cooperation.

5           Q     But you chose not to do a police report, right?

6           A     I don't know if I made the conscious decision or  
7       if I just didn't think about it at that time.

8           Q     You chose to tear up your notes from that day,  
9       right?

10          A     Like I said after we had our statement there was  
11       no need for them, so.

12          Q     But that was a choice that you made?

13          A     Yes.

14          Q     And you did in fact destroy your notes from that  
15       day?

16          A     Yes.

17                   MR. FURNSTAHL: Objection. It's redundant.

18                   THE COURT: Sustained as to repetitive.

19       BY MR. BENSON:

20          Q     Now, you were asked whether you threatened Isiah  
21       Harper during this unrecorded statement, do you remember  
22       that?

23          A     Yes.

24          Q     You said no, right?

25          A     That's correct.

1 Q You're aware that Isiah Harper says that you did  
2 threaten him?

3 A Okay.

4 Q You are aware of that, correct?

5 A The implication was made, I guess what --

6 Q That's why you were asked a question by the  
7 State, right?

8 MR. FURNSTAHL: Objection.

9 THE COURT: Sustained as to outside his  
10 knowledge.

11 MR. BENSON: Okay.

12 BY MR. BENSON:

13 Q So as you sit here right now you are not aware  
14 Isiah Harper has said that you threatened him in order to  
15 get his statement?

16 A I don't know specifically what he said.

17 Q Are you aware that Isiah Harper has said that  
18 you put words in his mouth and threatened him to make his  
19 statement, that is supplement 38?

20 A I guess the implication was made that --

21 Q So you are aware?

22 A Yeah.

23 Q Okay. And it would be fair to say if you had  
24 actually kept your notes or made a police report you might  
25 have some indication of what you actually said that day?

1 MR. FURNSTAHL: Objection. That's  
2 argumentative. Calls for speculation.

3 THE COURT: Overruled. I'll allow him to  
4 answer this one more time. It's somewhat different  
5 than the last question.

6 THE WITNESS: Repeat the question again.

7 BY MR. BENSON:

8 Q You agree that you had, you are aware that  
9 you've been accused of threatening Isiah Harper, right?

10 A Yes.

11 Q And you've been accused of putting words in his  
12 mouth?

13 A Yes.

14 Q And if you had actually kept your notes or done  
15 a police report you might be able to address those issues,  
16 correct?

17 A I can't address --

18 MR. FURNSTAHL: Objection. That's  
19 argumentative and calls for speculation.

20 THE COURT: Sustained as to speculation.

21 BY MR. BENSON:

22 Q Detective, you didn't use -- or you didn't take  
23 notes, you didn't take notes --

24 MR. FURNSTAHL: Objection. Asked and  
25 answered.

1 THE COURT: Wait until he finishes the  
2 question.

3 MR. FURNSTAHL: Apologize.

4 THE COURT: All right.

5 BY MR. BENSON:

6 Q We've established you didn't take notes, right,  
7 during that unrecorded conversation?

8 A On the 28th you mean?

9 Q The unrecorded --

10 A Oh, oh.

11 Q -- conversation?

12 A No, I think I did. I just didn't save them.

13 Q And that conversation, the first unrecorded  
14 conversation according to you was at the police station,  
15 correct?

16 A I believe it was.

17 Q You went to Isiah Harper's house --

18 MR. FURNSTAHL: Objection. Misstates the  
19 testimony. I'm sorry, I didn't mean to interrupt  
20 you.

21 THE COURT: Sustained. I don't believe  
22 that was his testimony. He said he didn't recall how  
23 he got down there the first time.

24 BY MR. BENSON:

25 Q You went to -- you were in the homicide office?

1 A Yes.

2 Q With Isiah Harper?

3 A Yes.

4 Q And it was you and it was Sergeant Keefe as  
5 well?

6 A Yes, sir.

7 Q And you told him that he could possibly look at  
8 15 years, right?

9 A I don't remember that.

10 Q Remember Mr. Furnstahl asking you about the  
11 aiding an offender?

12 A Yes.

13 Q Okay. And you talked to him about, according to  
14 your testimony earlier you talked about aiding an  
15 offender?

16 A Yes.

17 Q And you told him he could get 15 years?

18 MR. FURNSTAHL: Objection. Asked and  
19 answered. Doesn't remember.

20 THE COURT: Sustained.

21 BY MR. BENSON:

22 Q You told him he could get some time.

23 A I don't remember specifically how we explained  
24 that aiding an offender, we tell them you could get  
25 one-half of the offender's time if you aid that offender,

1 I believe that's how the statute is worded.

2 Q Okay. And that's how you explained that to  
3 Isiah Harper, right?

4 A I believe we did.

5 Q And as you sit here now you are saying you don't  
6 remember whether you used the words 15 years?

7 A Right.

8 Q Do you remember talking to him about going to,  
9 possibly going to jail for aiding an offender?

10 MR. FURNSTAHL: Objection. It's been asked  
11 and answered.

12 THE COURT: Sustained.

13 BY MR. BENSON:

14 Q Now, as you said you are aware, or you are aware  
15 that there's been an implication that you said something  
16 to Isiah Harper, that you threatened Isiah Harper; you are  
17 aware of that right?

18 A Yes.

19 Q And if Isiah Harper says that you threatened him  
20 he would be lying?

21 A Yes.

22 Q When Ravi Seeley says that he whispered  
23 something in your ear like I'm not sure Marvin Haynes is  
24 the guy when he's doing a live lineup, Ravi Seeley would  
25 be lying?

1 MR. FURNSTAHL: Objection. It's beyond the  
2 scope.

3 THE COURT: It is and I'll sustain it for  
4 argumentative.

5 BY MR. BENSON:

6 Q Let me ask about this, the absence of your  
7 notes. Normally when you do a police report, I'm asking  
8 you about generally what you do as a police officer.

9 A Sure.

10 Q Normally you get your notes, you take your notes  
11 and you go to a room and you dictate your notes to  
12 someone, correct?

13 A Or into a tape recorder to be typed, that type  
14 of thing.

15 Q And when you do that, then somebody types it up  
16 afterwards, right?

17 A Yes.

18 Q And then that's when you destroy your notes?

19 A Yes.

20 Q Now, in this case with Isiah Harper's unrecorded  
21 statement, did you take the information, put it on a tape  
22 or take it to a dictator?

23 A No.

24 Q You just destroyed those notes?

25 MR. FURNSTAHL: Objection. It's redundant.



1 It's been asked and answered.

2 THE COURT: Sustained.

3 MR. BENSON: Nothing further at this time.

4 THE COURT: Any redirect?

5 MR. FURNSTAHL: Yes.

6 REDIRECT EXAMINATION

7 BY MR. FURNSTAHL:

8 Q Let's talk about procedures and protocols of  
9 note taking and report making and things like that so it's  
10 clear to the jurors, okay?

11 Now, every time you have a conversation or a contact  
12 with a witness do you prepare a report?

13 A No.

14 Q Now, we've been referring to some of these  
15 reports as supplements, is that right?

16 A That's correct.

17 Q When you have a specific case like a shooting  
18 each case is given a case number, file number, right?

19 A Yes.

20 Q And then you prepare reports that go as part of  
21 the case?

22 A Correct.

23 Q And those are given supplement numbers?

24 A Yes.

25 Q And then you also take formal statements, is

1 that right?

2 A That's true.

3 Q Those are given supplement numbers, is that  
4 right?

5 A Yes.

6 Q Now, are you required if you, for example, take  
7 a formal statement as you did with Isiah Harper on May  
8 28th, are you required to prepare a separate supplement  
9 that summarizes that?

10 A No.

11 Q All right. Do you sometimes do it, sometimes  
12 not?

13 A Yes.

14 Q Now, in this case are you -- well, in general  
15 are you required to prepare a summary of a contact with a  
16 witness right after you have it? Or do you do that at a  
17 time when you have the opportunity to do it?

18 A We do it sometime later if needed.

19 Q Depending upon what?

20 A Well, our time constraints when we're talking to  
21 people if we want to go back and clarify something with  
22 them before we do a final report.

23 Q So is there any policy as to how long after a  
24 contact with a person you must prepare a report?

25 A No.

1 Q And I'm going to differentiate report from that  
2 Q and A, okay, so when I talk about a report I'm talking  
3 about a summary that you do, all right?

4 A Okay.

5 Q As opposed to a formal Q and A. So there's no  
6 requirement that you prepare a report a certain amount of  
7 time after a contact with a witness?

8 A That's correct.

9 Q No requirement that you even prepare a report on  
10 every contact?

11 A That's right.

12 Q Or a report that you prepare, not just a report  
13 on every contact with a witness but you might have  
14 contacts with witnesses for which there are no reports  
15 prepared?

16 A That's correct.

17 Q Now, so for example would you explain to the  
18 jurors why you might have a contact with a witness and not  
19 prepare a report?

20 A Um, well, like I say, in this case they didn't  
21 want to go on tape at that time, um. We wanted to talk --

22 Q I don't think I made my question clear. You  
23 said that you will have contact with witnesses but not  
24 every contact with any witness requires a report. So  
25 could you explain why you might have a contact with

1 someone, not necessarily a witness, but just someone and  
2 no report is ever made? Do you understand my question or  
3 am I confusing you?

4 A You are kind of confusing me there.

5 Q If you talk to someone that doesn't have any  
6 information that's helpful to the investigation do you  
7 normally do a supplement on that or a report on that?

8 A No.

9 Q Are you required to?

10 A No.

11 Q And in this case the first contact that you had  
12 with Isiah Harper was unrecorded and there was no report,  
13 that we've heard a bunch of times, right?

14 A Correct.

15 Q Now, had Isiah Harper -- and you didn't record  
16 it the first time because that was his request?

17 A Yes.

18 Q You were trying to get him to cooperate?

19 A Yes, sir.

20 Q Had he not agreed to cooperate and give a formal  
21 Q and A would you then have had the opportunity to prepare  
22 your own report?

23 MR. BENSON: Objection. Speculation.

24 THE COURT: Overruled. I'll allow him to  
25 answer as his general procedure.

1 THE WITNESS: That's what I would have done  
2 is if he still refused to answer or go on tape as it  
3 were, then I would have made a summary of what he  
4 told us and then he would have to be subpoenaed for  
5 that information, I guess.

6 BY MR. FURNSTAHL:

7 Q Now, is that generally the procedure and  
8 protocol at the homicide division?

9 A Yes.

10 Q In this case you know there was a witness by the  
11 name of Ravi Seeley. You know Ravi, right?

12 A Yes, I do.

13 Q And you are aware when he spoke to Sergeants  
14 Folkens and King he did not want to give a formal Q and A?

15 A That's my understanding.

16 Q You've had a chance to review all the reports in  
17 this case?

18 A Yes.

19 Q Did Sergeants King and Folkens prepare their own  
20 report when Ravi refused to, or requested not to give a  
21 formal Q and A?

22 A I believe they did a summary of that.

23 Q And you would have done that had Isiah not given  
24 you a formal Q and A?

25 A Yes.

1           Q     Now, do you need, do you need to have your notes  
2     or prepare a separate report to be able to tell the jury  
3     that you did not threaten Isiah Harper the first time that  
4     you had contact with him?

5           A     No. I know I never threatened him.

6           Q     Thank you, sir.

7                     MR. FURNSTAHL: That is all I have.

8                     THE COURT: Mr. Benson, any additional  
9     questions?

10                    MR. BENSON: Yes, Your Honor.

11                             RE CROSS-EXAMINATION

12     BY MR. BENSON:

13           Q     Counsel mentioned Ravi Seeley, and you reviewed  
14     the reports, correct?

15           A     Yes.

16           Q     And those officers did actually, as indicated  
17     those officers did a supplement, right?

18           A     Yes.

19           Q     Even though Ravi Seeley said I don't want, I  
20     don't want to do a recorded statement, right?

21           A     Yes.

22           Q     They wrote down what Ravi Seeley told them,  
23     correct?

24           A     Yes, that sounds right.

25           Q     Because it was important what Ravi Seeley told

1       them, right?

2               A       Yes.

3               Q       And you being the lead investigator in this  
4       case, you chose not to do that?

5                       MR. FURNSTAHL:  Objection.

6       BY MR. BENSON:

7               Q       With respect to Isiah Harper?

8                       MR. FURNSTAHL:  Objection.  It's  
9       argumentative and asked and answered.

10                      THE COURT:  Sustained.

11       BY MR. BENSON:

12              Q       But those officers with respect to Ravi Seeley  
13       they did do, they did their report -- and they did their  
14       report, correct?

15                      MR. FURNSTAHL:  Objection, asked and  
16       answered.

17                      THE COURT:  Sustained.

18       BY MR. BENSON:

19              Q       And they gave that report to you?

20                      MR. FURNSTAHL:  Objection, asked and  
21       answered.

22                      THE COURT:  Overruled.  He can answer that.

23                      THE WITNESS:  What was the last part?

24       BY MR. BENSON:

25              Q       They gave that report to you or made it

1 available to you?

2 A It goes in the computer and then I read it at  
3 some point. It's not like they handed it to me.

4 Q And you read it so you knew according to police  
5 officers what Ravi Seeley had said?

6 A Yes.

7 Q Now, as we sit here now, we don't have any  
8 record of what Isiah Harper said in that unrecorded  
9 conversation?

10 MR. FURNSTAHL: Objection. It's redundant.

11 It's been established that it wasn't recorded.

12 THE COURT: Sustained.

13 BY MR. BENSON:

14 Q Because of that we have your word that you  
15 didn't threaten Isiah Harper?

16 MR. FURNSTAHL: Objection. That's  
17 argumentative.

18 THE COURT: Overruled. He can answer that  
19 one time.

20 THE WITNESS: Repeat.

21 BY MR. BENSON:

22 Q We have your word that you didn't threaten Isiah  
23 Harper?

24 A Yes.

25 Q Just as we have your word that Ravi Seeley



1 didn't whisper in your ear?

2 A Yes.

3 Q And if your word is to be believed both of those  
4 witnesses must be lying?

5 MR. FURNSTAHL: Objection. That's  
6 argumentative.

7 THE COURT: Sustained.

8 MR. BENSON: Nothing further, Your Honor.

9 MR. FURNSTAHL: Just a couple questions.  
10 Promise.

11 REDIRECT EXAMINATION

12 BY MR. FURNSTAHL:

13 Q Did Ravi Seeley ever give a formal Q and A?

14 A Not that I'm aware of.

15 Q Is your word good enough on those points that  
16 counsel keeps talking about?

17 A It is for me. I would prefer to have somebody  
18 on tape because then that removes all doubt, but if you  
19 don't get it, you don't get it.

20 Q Thank you, sir.

21 MR. FURNSTAHL: That's all I have.

22 THE COURT: Anything else?

23 MR. BENSON: Nothing, Your Honor.

24 THE COURT: You can step down, Sergeant.

25 (Witness excused.)

1 THE COURT: Members of the jury, I'm going  
2 to excuse you for just a few minutes. It's literally  
3 going to be a couple minutes and you'll be right back  
4 out here, all right?

5 (Jurors exit.)

6 THE COURT: Have a seat for now and before  
7 you start testifying I'll have you sworn and stand up  
8 but we'll bring the jury in first. All right.

9 (The following is in the  
10 presence of the jury.)

11 THE COURT: Okay, Mr. Furnstahl.

12 MR. FURNSTAHL: Call Anthony Todd.

13 THE COURT: Mr. Todd, stand and raise your  
14 right hand to be sworn, please.

15 Whereupon,

16 ANTHONY TODD,  
17 after having been first duly sworn, was examined  
18 and testified as follows:

19 THE COURT: I'm going to give you one  
20 warning and one warning only, you do not use any  
21 different language and you answer the questions given  
22 to you otherwise I would hold you in contempt, okay?  
23 Go ahead and be seated.

24 All right, Mr. Furnstahl.

25 DIRECT EXAMINATION

1 BY MR. FURNSTAHL:

2 Q Mr. Todd, I need you to speak up loudly so  
3 everyone can hear you too, okay. You have to answer out  
4 loud too, okay?

5 A (Nods head.)

6 Q You have to answer yes or no.

7 A Yeah, yeah.

8 Q You know Little Marvin?

9 A Yes.

10 Q He's the person over here?

11 MR. BENSON: Objection. Leading.

12 THE WITNESS: Yeah.

13 THE COURT: Sustained.

14 BY MR. FURNSTAHL:

15 Q Where is he, is Little Marvin present in the  
16 courtroom?

17 A Yes.

18 Q Would you identify him by indicating where he's  
19 seated and what he's wearing? Just point to him.

20 A (Points.)

21 MR. FURNSTAHL: The record should reflect  
22 he's pointing to the defendant.

23 THE COURT: Record will so reflect.

24 BY MR. FURNSTAHL:

25 Q The morning of -- you know what I mean about the

1 flower shop murder, don't you?

2 A Yeah.

3 Q The morning of the flower shop murder were you  
4 at Muffy's?

5 A Yeah.

6 Q Who else was there?

7 A Daquan and, um.

8 Q Daquan and who?

9 A It was Daquan, Antoine and Marvin. Poopey.

10 Q Daquan, Antoine, Marvin and Poopey? You have to  
11 answer out loud.

12 A Yeah.

13 Q Who is Antoine? What's Antoine's last name?

14 A I don't know.

15 Q But you guys were at Muffy's?

16 A Yeah.

17 Q Did you hear Marvin say anything that -- while  
18 he was at Muffy's?

19 A Yeah.

20 Q What did he say?

21 A He was going a hit a lick.

22 Q I couldn't understand.

23 A I think it was hit a lick, whatever they call  
24 it.

25 Q Fixing to hit a lick? You have to answer out

1 loud.

2 A Yes.

3 Q How many times did you hear him say that?

4 A Like three.

5 Q I'm sorry?

6 A Three.

7 Q And did you observe his appearance at that time?

8 A What is that?

9 Q Could you tell whether or not he was sober or  
10 not? Do you know what I mean?

11 MR. BENSON: Objection. Leading.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MR. FURNSTAHL:

15 Q Do you know what I mean by the word sober or  
16 intox --

17 A Yeah.

18 Q Could you tell whether or not Little Marvin was  
19 sober or intoxicated?

20 A No.

21 Q No, you couldn't tell?

22 A No.

23 Q Did you tell myself and Sergeant Mattson that it  
24 looked like Little Marvin --

25 A Yeah.

1 Q I'm sorry?

2 A Yeah.

3 Q Was he or wasn't he?

4 A Yeah, man.

5 Q He was what? Was he sober or was he intoxicated

6 or high?

7 A Probably sober.

8 Q Pardon me?

9 A Sober.

10 Q Did you tell Sergeant Mattson and I that he

11 looked high that morning?

12 A Yeah.

13 Q Was he sober or was he high?

14 A High, probably.

15 Q High what?

16 A High.

17 Q He was high? Is that what you said? I'm sorry?

18 A Yeah.

19 Q You don't want to be here, is that right?

20 A Hum?

21 Q You don't want to be here, do you? Right?

22 A Um-hum. No.

23 Q And how was he acting? What I'm asking is was

24 he acting happy or was he acting mad?

25 A Mad.

1 Q So he looked high, he was acting mad, and he  
2 said three or four times that he was fixing to hit a lick?

3 A Yeah.

4 Q Who was he fixing to hit a lick with?

5 A Daquan.

6 Q Did you see -- and how did, how did Daquan and  
7 Little Marvin get to Muffy's?

8 A Green Explorer.

9 Q Who was driving?

10 A Daquan.

11 Q And did you see Daquan and Little Marvin leave  
12 Muffy's?

13 A Yeah.

14 Q How did they leave?

15 A In the green truck.

16 Q Who was driving?

17 A Daquan.

18 Q Was Marvin, Little Marvin in the truck?

19 A Yeah.

20 Q Where was he?

21 A (Unintelligible.)

22 Q But he was in the truck?

23 A Yeah.

24 Q Someplace in the truck?

25 A Yeah.

1 Q But just not driving?

2 A Yeah.

3 MR. FURNSTAHL: If I can have a moment,  
4 Judge.

5 THE COURT: You may.

6 MR. FURNSTAHL: Thank you, sir. That's all  
7 I have.

8 THE COURT: Mr. Benson, cross-examination.

9 CROSS-EXAMINATION

10 BY MR. BENSON:

11 Q Mr. Todd, according to you today Marvin said --  
12 Marvin got into a truck?

13 A Yeah.

14 Q Is that right? That green truck?

15 A Yeah.

16 Q Not a white Chevy?

17 A No.

18 Q Okay. You are sure it's a green truck?

19 A Yeah.

20 Q All right. And that's what you are saying  
21 today, right?

22 A Yeah.

23 Q All right. On June 18th you spoke to the  
24 police, correct?

25 A Yeah.



1 Q And that was the first time you spoke to the  
2 police in relation to this case, right?

3 A Yeah.

4 THE COURT: Counsel, we should have a year  
5 on that. June 18, 2004?

6 MR. BENSON: Yes, Your Honor.

7 BY MR. BENSON:

8 Q June 18, 2004, right?

9 A Yeah.

10 Q And they took a statement from you, right?

11 A Yeah.

12 Q And you were asked the question, at any point in  
13 time did you hear talk about hitting a lick or robbing  
14 someone or someplace, and your answer was nope. N-O-P-E.  
15 Right?

16 A Yeah.

17 Q That was the first day you talked to the police,  
18 right?

19 A Yeah.

20 Q And then you were asked the question, at any  
21 point in time did you see anybody in possession of a  
22 handgun. Your answer was nope. Correct?

23 A Yeah.

24 Q That's what you said on the first date you  
25 talked to the police, correct?

1 A Yeah.

2 Q And then the police found you later and took a  
3 statement, correct?

4 A Yes.

5 Q And when they found you you were actually at the  
6 St. Croix boys camp, right?

7 A Yes.

8 Q That was in northern Minnesota?

9 A Yes.

10 Q And you were in custody?

11 A Yes.

12 Q And at that point you changed your story, right?

13 A Yes.

14 Q Gave them some details, right?

15 A Yes.

16 Q After you were in custody?

17 A Yeah.

18 Q Let me ask you. You know a Marvin Miller,  
19 correct?

20 A Yes.

21 Q Okay. Somebody different than Marvin Haynes?

22 A Yeah.

23 Q Okay. And at that time period Marvin Miller  
24 actually had some long braids in his hair, correct?

25 A Not long braids.

1 Q He had braids?

2 A Yeah.

3 Q During that time period Marvin Haynes had an  
4 afro, correct?

5 A Yes.

6 Q And he didn't have braids in May of 2004?

7 A In May?

8 Q Yeah. Around the time you were --

9 A Yeah.

10 Q In May of 2004 Marvin Haynes had an afro, right?

11 A Yeah.

12 Q Okay. But Marvin Miller had some braids, right?

13 A Yeah.

14 Q All right. Thank you, sir.

15 REDIRECT EXAMINATION

16 BY MR. FURNSTAHL:

17 Q How is it that you remember that Marvin Haynes,  
18 Little Marvin, had an afro back what, 15 months ago?

19 A 15 months ago?

20 Q Did you understand the question I was asking  
21 you?

22 A Yeah.

23 Q Do you remember what Marvin Haynes, Little  
24 Marvin's hair looked like back in May of 2004?

25 A In 2004?

1 Q Right.

2 A He had braids.

3 Q Little Marvin had braids? You have to answer  
4 out loud.

5 A Yes.

6 Q Like he has now?

7 A Yes.

8 Q Something like he has now?

9 A Yes.

10 Q Now --

11 MR. FURNSTAHL: I guess I need to approach  
12 and get some direction from the Court.

13 THE COURT: All right.

14 (Off-the-record discussion at  
15 the bench out of hearing of the jurors.)

16 BY MR. FURNSTAHL:

17 Q Just a couple more questions, Mr. Todd. First  
18 of all the St. Croix boys camp is, what kind of facility  
19 is that? What kind of things do you do there?

20 A Like?

21 Q Is that like canoeing?

22 A No.

23 Q Camping?

24 A Yeah.

25 Q Paddling boats at all?

1 A No.

2 Q Riding horses?

3 A No.

4 Q What kind of things do you do there?

5 A Like working there.

6 Q Working?

7 A (Nods head.) Yes.

8 Q You have to answer out loud.

9 A Yes.

10 Q And Sergeant Keefe talked to you at the St.

11 Croix boys camp and that's in Hudson, Wisconsin?

12 A Yeah.

13 Q What?

14 A I think. I don't know where it's mostly at.

15 Q But he talked to you on October 13, 2004?

16 A Yeah.

17 Q That's the second time that you talked to the  
18 officers?

19 A Yes.

20 Q And the reason you told -- and on October 13,  
21 2004, you told him that Little Marvin, on the day, morning  
22 of the flower shop murder, you told him that he was at  
23 Muffy's, right?

24 A Yeah.

25 Q And you told him at that time that Marvin said a

1 few times that he was fixing to hit a lick, right?

2 A Yes.

3 Q And you didn't tell him that when you first met  
4 him on June 18th, 2004 because you were afraid of Little  
5 Marvin, right?

6 MR. BENSON: Objection, leading.

7 THE WITNESS: Yeah.

8 THE COURT: Sustained.

9 BY MR. FURNSTAHL:

10 Q Why didn't you tell him when you first talked to  
11 him on June 18, 2004, why didn't you tell him at that time  
12 that Little Marvin was saying that he was fixing to hit a  
13 lick?

14 MR. BENSON: Objection. He's already been  
15 led. Can we approach?

16 THE COURT: You may.

17 MR. FURNSTAHL: Nothing further.

18 THE COURT: Anything else, Mr. Benson?

19 MR. BENSON: Just briefly.

20 RECROSS-EXAMINATION

21 BY MR. BENSON:

22 Q Mr. Todd, about this boys' camp, you were sent  
23 to that boys camp, right?

24 A Yeah.

25 MR. BENSON: Nothing further, Your Honor.

1 MR. FURNSTAHL: Nothing further.

2 THE COURT: Members of the jury, you are  
3 going to be excused until nine o'clock tomorrow  
4 morning. Same procedure. Leave your notebooks on  
5 your chair and come back to the courtroom tomorrow  
6 morning at nine o'clock.

7 (Jurors exit courtroom.)

8 THE COURT: Now, counsel, why don't you --

9 MR. FURNSTAHL: Can we send him down?

10 THE COURT: Yeah. Go ahead.

11 MR. BENSON: Your Honor --

12 THE COURT: Let's come up here and do that.  
13 Okay. Go ahead.

14 MR. BENSON: Your Honor, regarding Anthony  
15 Todd, Your Honor, during the middle of -- after my  
16 cross-examination of Anthony Todd, at one point we  
17 approached the bench, I believe Mr. Furnstahl asked  
18 to approach the bench to get a ruling from this Court  
19 regarding what he was going to go into as far as  
20 whether Mr. Todd was afraid of, either afraid or  
21 going into the incident such that Marvin Haynes had  
22 allegedly assaulted Anthony Todd in the past.

23 We approached, we had a discussion at the bench,  
24 and it's my understanding, I believe it's the Court  
25 understanding that after that discussion the Court

1 determined that that area of redirect was more  
2 prejudicial than probative particularly given that my  
3 cross-examination was limited in the fact that I  
4 couldn't bring out that Anthony Todd, who appeared in  
5 street clothes today, that Anthony Todd was not --  
6 was in custody. I was prevented from bringing that  
7 out in my cross-examination so I was limited already.

8 I think the Court factored that into its  
9 assessment when we left the bench that the State  
10 would not go into any fear or being afraid of Marvin  
11 Haynes or any past assault of Marvin Haynes, and once  
12 we left the bench the State asked directly that  
13 question, whether Marvin Haynes -- or rather Anthony  
14 Todd was afraid of Marvin Haynes.

15 So that's the record I'm making now. Obviously  
16 the State can respond but I do believe it was more  
17 prejudicial than probative given all the  
18 circumstances. I would also move for a mistrial.

19 MR. FURNSTAHL: Counsel wants to argue the  
20 motion for the mistrial, grounds for it?

21 MR. BENSON: Actually the State could  
22 respond. Well, I can do that.

23 THE COURT: Go ahead.

24 MR. BENSON: We are here, I think it does  
25 effect the substantial rights of Marvin Haynes in



1           this regard. One, my right to cross-examine was  
2           limited by this Court. That's something that the  
3           Court may have discretion to do at times. However,  
4           because I was limited, the Court made a specific  
5           ruling that the prejudice that the State -- the  
6           prejudice of the State bringing out that Anthony Todd  
7           was afraid of or been assaulted in the past by Marvin  
8           Haynes, that that prejudice outweighed the protection  
9           or the relevance of the probative value of that  
10          information. Because we were just at the bench and  
11          the Court made its ruling, said that it was unduly  
12          prejudicial and then we come back and within the next  
13          three questions the State is asking that particular  
14          question, obviously it's prejudicial and it's  
15          something that this jury can't unring the bell, this  
16          jury heard this.

17                 So primarily because it's a violation of this  
18          Court's order, secondly because it's unduly  
19          prejudicial, I believe that he can't receive a fair  
20          trial.

21                         THE COURT: Just so the record is clear,  
22          when you say I limited you with regard to  
23          cross-examination, I allowed you to indicate that he  
24          had been in custody at the time he gave the second  
25          statement at St. Croix camp but not that he was in

1 custody today.

2 MR. BENSON: Yes, Your Honor. That's a  
3 correct recitation of the limitation.

4 THE COURT: Mr. Furnstahl.

5 MR. FURNSTAHL: I guess I'm being accused  
6 of intentionally violating a court order.

7 The record should reflect that yesterday, well  
8 throughout this trial I have tried to keep the Court  
9 apprised of any issues that may arise and it was  
10 yesterday that I indicated that should Anthony Todd  
11 testify that we -- and it was brought out that he has  
12 given inconsistent statements -- that we would seek  
13 to explain to the jurors why he gave inconsistent  
14 statements and in the second statement that counsel  
15 has it indicates that he, he didn't tell the truth  
16 the first time because he didn't want to get involved  
17 and because he was afraid of Marvin Haynes. And it  
18 indicates in that report that he has, he was aware  
19 that Marvin Haynes had stolen a weapon from his  
20 friend in the past, and also that he was assaulted by  
21 Marvin Haynes. There was a situation where Marvin  
22 Haynes was trying to rob him of his clothing and  
23 struck him in the head with a gun. And that was part  
24 and parcel as to the reasons why Anthony Todd did not  
25 tell the truth when he spoke to Sergeant Keefe on

1 June 18, 2004.

2 And I had --I don't know if it went into that  
3 detail but I had indicated to the Court yesterday in  
4 chambers that that was a potential issue. Before --  
5 and I didn't talk to Mr. Todd about the inconsistent  
6 statements on direct examination because I knew then  
7 there might not be a basis for me to rehabilitate  
8 them. So then counsel brought on cross-examination  
9 the inconsistencies and at that time as I indicated  
10 in chambers yesterday I approached the Court to get  
11 permission to do just what I had indicated I would  
12 want to do.

13 I understood the Court to say that I could not  
14 get into the details. I understood the Court to say  
15 that that was more prejudicial than probative and  
16 then I said well I should at least, words to the  
17 effect that I should at least be allowed to ask him  
18 the question and you said what are you going to do if  
19 he doesn't remember the question. I said I would try  
20 to refresh his recollection. You shook your head no,  
21 and then I said well at least let me ask the question  
22 and I understood you to say, either say or nod your  
23 head yes, and that's why I did it. I thought the  
24 Court gave me permission to do just that, and I know  
25 if there's a conviction in this case I know what

1           there's going to be, more prosecutorial misconduct,  
2           you know.

3           So I guess I would ask the Court to make a  
4           finding as to whether or not I was intentionally  
5           avoiding or ignoring the Court's order.

6           THE COURT: All right.

7           MR. FURNSTAHL: Because in my mind I was  
8           not. I was complying with the Court's order.

9           THE COURT: You have something else you  
10          want to say, Mr. Benson?

11          MR. BENSON: I'll wait until after  
12          you've --

13          THE COURT: Pardon me?

14          MR. BENSON: I can wait.

15          THE COURT: I want to hear what you have  
16          say before I make my ruling, because when I make my  
17          ruling then we're done.

18          MR. BENSON: That's fine. Regardless of  
19          whether the State intended to do this or not, we were  
20          at the bench, at least I was clear what the Court's  
21          ruling was. I believe the Court was clear what the  
22          Court's ruling was and the important thing is that  
23          the Court's ruling, which I believe is accurate, the  
24          Court's ruling is that that information that the  
25          State wanted to present was more prejudicial than

1 probative. Given everything that we've been through  
2 with this witness to this point, that's the bottom  
3 line.

4 And quite frankly I don't care whether it was  
5 intentional or not, the jury has heard it and they  
6 have heard information and evidence that's more  
7 prejudicial than probative. And, you know, whether  
8 Mr. Furnstahl meant it or not it doesn't matter. It  
9 was contrary to the Court's ruling and the jury has  
10 heard it and for that reason I'm moving for the  
11 mistrial.

12 THE COURT: All right. First of all with  
13 regard to the various things that the prosecutor did  
14 want to cross-examine Mr. Todd on, and that is the  
15 fact that he had seen the defendant with a gun,  
16 defendant had stolen a gun from some friend of his,  
17 the defendant had assaulted him, the defendant had  
18 stolen something from him, and the fact that he was  
19 afraid of the defendant, and we did have some  
20 discussion on that yesterday and I did indicate in  
21 the ruling today that I felt that that was, those  
22 instances of misconduct, the specifics, were more  
23 prejudicial than probative and I did not want the  
24 prosecutor to go into that.

25 Court will find specifically based on what we

1 had, the discussion at the bench, I'm not going to  
2 find that the prosecutor made a purposeful violation  
3 of this Court's order. I don't think that's the  
4 case. But I do think that, that asking the  
5 questions, I mean clearly now we have in there only  
6 the information that at least the defendant or at  
7 least Mr. Todd told an officer that he was afraid of  
8 Marvin Haynes, that's what we have in the record now  
9 along with the fact that, that Mr. Todd was in  
10 custody at the time he gave the second statement to  
11 the police. I don't find that to be so prejudicial  
12 as to require a mistrial so I'm going to deny the  
13 motion for a mistrial.

14 And we will resume testimony tomorrow morning,  
15 nine o'clock.

16 MR. BENSON: Your Honor, and I may have  
17 missed it but can you, for the record can you either  
18 verify or not verify what your ruling actually was at  
19 the bench regarding -- I understand you've said that  
20 it wasn't intentional, I understand that.

21 THE COURT: I think the defense counsel was  
22 accurate and I think I tried to communicate that I  
23 didn't want the prosecutor to go into the fear, fear  
24 of the defendant as an issue or that may have caused  
25 Mr. Todd to change his testimony. Or not to give the

1 statement the first time. So I think that's  
2 accurate. You know, probably could have been clearer  
3 maybe but I don't think Mr. Furnstahl purposely  
4 violated this Court's order.

5 MR. BENSON: Your Honor, just one last  
6 thing. Just for the record, as far as logically,  
7 I've been given some information by Mr. Furnstahl  
8 today regarding the witness Antoine Lee which is  
9 actually on the State's witness list, I'm not sure  
10 how long the State is going to go tomorrow, I'm going  
11 to try and get a subpoena on Antoine Lee today. It's  
12 my understanding that he was here earlier today. He  
13 may have had some -- it's my understanding, and Mr.  
14 Furnstahl correct me if I'm wrong, Antoine Lee  
15 indicated that he may have thought that there was, he  
16 was describing or talking about another Marvin. It's  
17 my understanding that Mr. Furnstahl instructed him  
18 that he's going to come and tell the truth; however,  
19 I'm not sure if the State is still calling that  
20 witness. I have to get him under subpoena. If there  
21 is any delay on my part it would just be if I can't  
22 find him and give a subpoena. I do have an address  
23 on Queen Avenue which Mr. Furnstahl provided to me.

24 MR. FURNSTAHL: Let me complete the record  
25 on that. Mr. Lee has been reluctant to appear and

1 has expressed that to Cathy Watson, our victim  
2 witness person. She has communicated that to us and  
3 I think she's had a few discussions about getting  
4 down here, that he didn't want to come down here so  
5 he found a way -- and he didn't want to testify so he  
6 found what he thinks is a way that he won't have to  
7 testify by saying that he now -- and I have to get  
8 the exact from Ms. Backland -- but words to the  
9 effect that he just realized that the Marvin that he  
10 was talking about when he spoke to the officer was  
11 not this Marvin, Little Marvin, even though in his  
12 statement he was clear that he was talking about  
13 Little Marvin. And in his statement he said that,  
14 that a day or so before the flower shop he was in a  
15 car with Daquan Bradley, they picked up Marvin Haynes  
16 and Marvin Haynes and Daquan Bradley were talking  
17 about hitting a lick and then a day or so after the  
18 flower shop murder he saw Marvin Haynes and Marvin  
19 Haynes said that at that point he was running from  
20 the cops, that he was on the down low.

21 THE COURT: So is Mr. Lee under subpoena by  
22 the prosecutor or did you release him?

23 MR. FURNSTAHL: We sent him home, yes.

24 THE COURT: All right. But you provided  
25 his address to defense counsel, or the defense



1 counsel already had it?

2 MR. BENSON: I had it with the statement  
3 that Antoine Lee had given.

4 THE COURT: All right. We're in recess  
5 until nine. I'll see counsel for one minute.

6 (Whereupon, the proceedings  
7 conclude for this day.)

8 \* \* \*

9 STATE OF MINNESOTA)  
10 ) ss. REPORTER'S CERTIFICATE  
COUNTY OF HENNEPIN)

11 I, Jolyn R. Lund, Official Court Reporter, do  
12 hereby certify that the above and foregoing is a true and  
13 accurate transcription of my original stenographic notes  
14 in said matter.

15 Date: March 3, 2006


  
\_\_\_\_\_  
Jolyn R. Lund  
Official Court Reporter  
1023-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206

EXHIBIT 1

TAPED STATEMENT OF ISIAH HARPER - 5/28/04 @ 1210 HRS

BY SGT KEEFE &amp; SGT MATTSON

CL 04-117071

Transcribed by ht

Q. ISIAH could you give me your full name and birthdate?

R. ISIAH LEE HARPER. July 26, 1989.

Q. What's your current address and telephone number?

R. 3015 Oliver. My number just got changed. I don't know it.

Q. Okay and is that in Minneapolis, Minnesota?

R. Yes.

Q. What's your mother's name?

R. CYNTHIA.

Q. CYNTHIA HARPER?

R. Yes.

Q. Did your mother just meet with SGT MATTSON and I and allow you to come down here and talk to us?

R. Yes.

SGT MATTSON:

Q. ISIAH, what's your nickname?

R. POOPY.

Q. Do you understand you are not under arrest at this time?

R. Yes.

SGT KEEFE:

Q. Calling your attention to May 16, 2004 in the early morning do you recall what you did when you got up that morning?

R. I went over to MUFFY's house.

Q. Okay you went over to MUFFY's house?

R. Yeah.

Q. Okay. Where does MUFFY live?

R. I forgot. I forgot the block.

Q. Okay is it close to your house?

R. Yes.

Q. Okay and what happened when you got over to MUFFY's house?

R. All the little friends was over there and stuff and they was talking about - MARVIN was talking about going to hit the lick.

Q. Okay. I have some photographs I would like to show you. And let me know if you identify anybody. I am showing you photograph #1. Do you recognize anyone in that photo?

R. Yes.

Q. Who is that?

R. MARVIN HAYNES.

Q. MARVIN HAYNES?

R. Yes.

SGT MATTSON:

Q. What does he go by?

R. LITTLE MARVIN.

Q. [REDACTED] that the MARVIN you are referring to when you say at MUFFY's house he was going to hit the lick?

R. Yeah.

Q. Yes?

R. Yes.

Q. What does "hit a lick" mean to you?

R. Hitting a lick getting some money.

Q. By what means?

R. Rob.

SGT KEEFE:

Q. A robbery? Okay I am showing you a photograph #2. Do you recognize anybody in photograph #2?

R. Yes.

Q. Who is that?

R. DAQUAN

Q. You have to speak up?

R. DAQUAN.

Q. Do you know his last name?

R. No.

Q. [REDACTED] you know his nickname?

R. No.

Q. Okay. I am now showing you photograph #3. Do you recognize anyone in that photograph?

R. Yes.

Q. Who is that?

R. That's LITTLE JOHN. I don't know his real name.

Q. Okay. And I am now showing you photograph #4. Do you recognize anyone in that photograph?

R. Yes.

Q. Who is that?

R. ANTHONY.

Q. Do you know his real name?

R. No.

Q. Okay.

SGT MATTSON:

Q. What about his nickname?

R. ANT.

Q. ANT?

R. Yeah.

SGT KEEFE:

Q. Okay so I have shown you 4 photographs. Okay. At approximately what time on Sunday, May 16, 2004 did you arrive at MUFFY's house?

-----  
R. Around 10 in the morning.

Q. Okay. And when you got there these four young men were there with MUFFY. Is that correct?

R. Yes.

Q. In addition to these four was there a young man there by the name of JUSTIN?

R. Yes.

Q. Do you know JUSTIN's last name?

R. No.

Q. Could you describe him for us?

R. Tall, dark skinned, always wearing baggy pants and chucks.

Q. Okay. What are chucks?

R. Shoes. Shuck-tangles (sp?)

Q. Do you know where he lives?

R. No.

Q. Do you know where he goes to school?

R. No.

Q. Was there also a young man there by the name of CHARLES?

R. Yes. I just met CHARLES. I don't - he's just a real real tall, tall dark skinned dude with big lips.

Q. Was there anyone else there?

R. No.

Q. Okay. Did you talk to LITTLE MARVIN that morning?

R. Yes. I talked to him and ANTHONY. ANTHONY told me that my cousin was stupid because he fixin' do something stupid.

Q. So ANTHONY told you your cousin was fixin' to do something stupid. Who would your cousin be?

R. MARVIN HAYNES.

Q. What exactly did ANTHONY tell you?

R. That he didn't tell me. MARVIN told me that he was gonna go to the lick, him and DAQUAN.

Q. Okay. So LITTLE MARVIN told you and DAQUAN were going to hit a lick?

R. Yes.

Q. And as you have already told us, hit a lick means to rob someone and obtain some money. Is that correct?

R. Yes.

Q. Did he tell you where he was going to hit a lick?

R. No.

Q. At any time prior to this did he ever tell you he was going to hit a lick at a business in north Minneapolis?

R. No.

SCOTT MATTSO:

Q. Was LITTLE MARVIN armed? Did he have a gun that day or was he acting like he had a gun?

R. He was acting.

Q. What was he doing that made you think he had a gun?

-----  
R. He grabbed his pocket.

Q. And?

R. And then it looked like he had a gun.

Q. And he did what?

R. And it looked like he had a gun.

Q. Okay. Have you known LITTLE MARVIN to carry a gun in the past?

R. No.

Q. Okay.

SGT KEEFE:

Q. What about DAQUAN?

R. DAQUAN. Yeah.

Q. What do you mean Yeah?

R. Yeah he's known for carrying a gun.

Q. He what?

R. He's known for carrying a gun.

Q. He's known for carrying a gun?

R. Yeah.

Q. On that morning Sunday, May 16, 2004 did you see either MARVIN or DAQUAN in possession of a handgun?

R. DAQUAN and MARVIN it looked like but I know for sure DAQUAN had it on his left. A chrome revolver.

SGT MATTSON:

Q. Now we have talked to you before. Correct?

R. Yes.

Q. The last time we talked to you you had told us you had seen MARVIN at a party on the Saturday night before this on the 15th?

R. Yeah way before that.

Q. Okay but when we talked to that time -

R. I saw MARVIN.

Q. You saw MARVIN. Pardon?

R. He had a gun.

Q. Who did?

R. MARVIN.

Q. Okay so you have seen MARVIN with a gun before?

R. Yeah.

SGT KEEFE:

Q. Is that a yes?

R. Yes.

Q. To clarify you kind of mumbled that. Explain what you know about DAQUAN and him having a

97  
R. On he pulled up he showed me a chrome revolver.

Q. You actually saw a chrome revolver?

R. Yeah.

Q. And who had it?

R. DAQUAN.

Q. And where did he have the gun?

R. On his lap.

Q. On his lap. Okay. When you say he pulled up, was he walking or how did he pull up?

R. In the Chevy.

Q. In the Chevy?

R. With MARVIN.

Q. Pardon me?

R. And picked up MARVIN.

Q. So he pulled up in a CHEVY and picked up LITTLE MARVIN?

R. Yeah.

Q. In front of MUFFY's house?

R. Yes.

Q. And so DAQUAN was driving?

R. Yes.

SGT MATTSON:

Q. What color was the Chevy?

R. White. A white box Chevy.

SGT KEEFE:

Q. Where did he get that car?

R. Stole it I guess.

Q. He stole it?

R. Yes.

Q. Okay do you know when and where he stole it?

R. On Emerson he said.

Q. He said he stole it on Emerson?

R. Yep.

Q. Did he say when he stole it?

R. No.

SGT MATTSON:

Q. What were you driving that day?

R. A brown Buick.

Q. A brown Buick?

R. Yes.

Q. And we showed you a picture of a brown Buick. Is that correct?

R. Yes.

Q. Was that the one you were driving?

R. Yes.

Q. This one here with the out of state plates?

R. Ah.

-----  
Q. That looks like the one you were driving?

R. No.

Q. Say this brown Buick that you were driving you parked it after it ran out of gas. Is that correct?

R. Yes.

Q. Where did you run out of gas with it?

R. Down there on Olson Highway.

Q. Do you recall the cross street of Olson Highway and what?

R. Un nuh (negative)

Q. Just south of Olson Highway or just off of Olson Highway?

R. Yeah.

Q. Okay. All right. And that's where this one was found so. Okay.

SGT KEEFE:

Q. Okay so backing up a little bit. You were all inside or outside of MUFFY's house?

R. Outside.

Q. Outside?

R. Yes.

Q. Okay so after MARVIN told you that he was going to hit a lick?

R. Yes.

Q. What did he and DAQUAN do?

R. Jumped in the car.

Q. They jumped in the white car?

R. Drove off.

Q. And drove off?

R. Yes.

Q. What did you do?

R. Drove off.

Q. In what car?

R. The brown Buick.

Q. The brown Buick?

R. Yes.

Q. Was anyone with you?

R. I picked up MARVIN after that.

Q. MARVIN who?

R. MARVIN MILLER.

Q. Not your cousin MARVIN HAYNES but MARVIN MILLER?

R. Yeah.

Q. And where did you pick up MARVIN MILLER?

R. Seen him coming down to MUFFY's house so I turned around.

Q. Okay so you turned around to pick up MARVIN MILLER. Meanwhile, MARVIN HAYNES/LITTLE MARVIN drove off in the white Chevrolet. Is that correct?

R. Yes.

Q. What did the rest of the people do that were there?

R. They was in the truck.

Q. What truck?

R. The brown I mean the green one.

Q. The green what?

R. The green Ford truck. *came on Antuan say he saw D+ Daquan in*

Q. Was it a truck or a sport utility vehicle?

R. It was a truck.

SGT MATTSON:

Q. Like a pickup truck or?

R. A Ford Explorer.

SGT KEEFE:

Q. He just said Ford Explorer. Okay Ford Explorer?

R. Yeah. They had pickup trucks too but I don't remember.

Q. But specifically that day May 16, 2004 the rest of the people who were there LITTLE ANT, JUSTIN, LITTLE JOHN, CHARLES and MUFFY. What did they do? Did they stay behind or did they get in a vehicle and leave?

R. Get in the vehicle and leave.

Q. What vehicle did they get into?

R. The one with ANTHONY.

Q.ardon me?

R. one the green Ford Explorer.

Q. The green Ford Explorer. Okay. And who drove that vehicle?

R. JUSTIN.

Q. Who?

R. JUSTIN.

Q. JUSTIN drove it?

R. Yes.

Q. Okay. All right and where did they go in that vehicle?

R. I don't know.

Q. Did any one of those people ever tell you where they went?

R. No. I told you ANTHONY said if he don't get his half he's gonna kill someone.

SGT MATTSON:

Q. His half of what?

R. The money.

Q. DAQUAN got arrested sometime after this robbery. Correct?

R. Yes.

SGT KEEFE:

Q. After the flower shop robbery?

R. Yeah.

SGT MATTSON:

Q. And who was he robbing or jacking when he got arrested do you know?

R. A Mexican they said.



## Case Supplement

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Q. A Mexican?

R. They said he took him out of his truck.

Q. Took them out of their truck?

R. Uh huh (yes)

Q. Do you know if they got any money in that caper?

R. Yeah. They said he got caught with like 1200 I think.

SGT KEEFE:

Q. Who got caught with \$1,200?

R. DAQUAN.

Q. Okay and where did he obtain that \$1,200?

R. From the Mexican they said.

Q. From the Mexican?

R. Yeah.

Q. Did they rob him personally or did rob him of the vehicle?

R. They could have - they could have - ANTHONY could have followed him and could have dropped MARVIN off at the flower shop and then went to go do what they did. But I don't know because I wasn't with them.

Q. Okay. You weren't with LITTLE MARVIN or DAQUAN. Correct?

R. Correct.

SGT MATTSON:

Q. Where did you go? Where would you have been?

R. Where would I have been?

Q. Yeah.

R. At their house.

SGT KEEFE:

Q. At what?

R. At a girl's house.

Q. What girl?

R. This girl MARVIN know.

SGT MATTSON:

Q. Do you know her name?

R. JENNIFER.

Q. Do you know her last name?

R. No.

Q. This would have been what between 11:30 and noon?

SGT KEEFE:

Q. After you left MUFFY's house and you picked up MARVIN MILLER where did you go?

R. To JENNIFER's house.

Q. To JENNIFER's house. Okay. Where does JENNIFER live?

R. Behind the Broadway Liquor Store.

Q. Behind the Broadway Liquor Store at Broadway and Penn?

R. Uh huh (positive)

Q. What is JENNIFER's last name?

-----  
R: I don't know.

Q: How old is JENNIFER?

R: Probably - she older than us like 16 - 17.

Q: All right. Okay.

SGT MATTSON:

Q: When did you see MARVIN next?

R: My cousin?

Q: Yes. MARVIN HAYNES?

R: I didn't see him after that cause I talked to him. After I talked to him I heard he got arrested. I heard him and DAQUAN got arrested.

SGT KEEFE:

Q: Okay before MARVIN HAYNES was arrested and after you saw him at MUFFY's house, did you talk to him?

R: He called me and told me that he shot somebody. And he told me to go look for DAQUAN. And then when I went -

SGT MATTSON:

Q: Who told you they shot somebody?

R: MARVIN that he shot -

SGT KEEFE:

Q: MARVIN. Which MARVIN?

R: My cousin.

Q: What's MARVIN's last name?

R: HAYNES.

Q: MARVIN HAYNES.

SGT MATTSON:

Q: When did he tell you that? The same day?

R: Yeah. The day he called me.

SGT KEEFE:

Q: About what time?

R: I can't remember.

Q: You have to speak up.

R: I can't remember. I don't know he called me and told me to go look for DAQUAN and he told me he shot somebody.

Q: Okay he told you to go look for DAQUAN and he told you he shot someone?

R: Yeah.

Q: Correct?

R: Yes.

Q: And did he tell you any other details regarding this person he shot?

R: No.

Q: Okay. We've had some interference with some people outside who were talking here loud and I think you have been distracted. Did LITTLE MARVIN/MARVIN HAYNES tell you any other details besides shooting someone?

R: No.

Q: Are you sure?

-----  
R: Yes.

Q. May I let me let me help you here. Did he tell you the race of the man he shot?

R. Yeah. He was telling me he shot a white man.

Q. He told you he shot a white man?

R. Yes.

SGT MATTSON:

Q. Did he tell you why?

R. Because he wouldn't give up the money.

Q. Did he say if he was concerned as to whether the guy was alive or dead?

R. Yeah.

Q. What did he say?

R. He said he didn't know if he was dead.

Q. Did he tell you how many times he shot this man?

R. Twice.

SGT KEEFE:

Q. Okay did he tell you where he shot him?

R. No.

Q. Did he -

R. He said he only told me he shot him once in the head. He didn't tell me where he shot him at the second time.

Q. Did he tell you what he shot him with? Which gun? What kind of gun?

R. The chrome.

Q. The chrome what?

R. The gun that DAQUAN had.

Q. He shot the man - the white man with the chrome gun that DAQUAN had?

R. Yes.

SGT MATTSON:

Q. Did he tell you what he did with it after?

R. No.

Q. Did he tell you what happened after the robbery?

R. No.

SGT KEEFE:

Q. Did he tell you whether or not he got any money from this man?

R. Uh nuh (negative) He didn't.

Q. He said he didn't get any money from the man?

R. Yeah cause he said he was scared.

Q. Did he tell you -

R. So he shot him.

Q. Pardon me?

R. He said he was scared after he shot him.

Q. He was scared after he shot him?

R. Uh huh (positive)

-----  
Q. Did he tell you he shot the man inside the flower shop?

R. Yes.

Q. Pardon me?

R. Yes.

Q. Okay. And did he tell you where DAQUAN was when he shot the man inside the flower shop?

R. No. He said that he was in the back.

Q. He was in the back?

R. Yeah in the Chevy.

Q. In the Chevy?

R. Yeah.

Q. And when he said in the back what does that mean?

R. Waiting.

Q. Pardon me?

R. Sitting in the back waiting.

Q. Sitting in the back waiting.

SGT MATTSON:

Q. Do you mean like a get-away vehicle?

R. Yeah.

Q. Did he say - did MARVIN tell you if anybody else went inside with him?

R. No, it was just him.

Q. Was just MARVIN?

R. Yeah.

Q. You have to speak up. You have to speak up ISIAH.

R. It was just MARVIN.

Q. It was just MARVIN?

R. Yes.

Q. Did he say where the white Chevy was parked at?

R. In the alley behind the shop.

Q. In the alley behind the shop?

R. Yes.

Q. Okay. Did he say where they went right after he shot the man?

R. No.

Q. Okay.

SGT MATTSON:

Q. POOPY do you know if LITTLE MARVIN/MARVIN HAYNES is in any kind of a street gang or anything like that?

R. Yes. GD.

Q. Okay. Was this a gang thing? Were the people with him also in a gang or was this just something he was doing?

R. All was different gang.

Q. Pardon?

R. We all different gangs.

Q. Was this a gang robbery or was this just a robbery?

R. Just a robbery. Some of us was Crips. Some of us was GD's. Some of us Black Stones.

Q. And you are a Black Stone?

R. Yes. I am the only Black Stone.

Q. Okay.

R. And then the dude -

Q. Okay.

SGT KEEFE:

Q. POOPY if you would please would you initial and sign each one of these photos that you have identified here? The first one being of MARVIN HAYNES.

R. Initial.

Q. Initial. Yeah. Put your initials and then sign it. Put your signature on there.

R. What?

Q. Just sign your name. And then today's date. The date is May 28, 2004.

SGT MATTSON:

Q. And the one you are signing there is - okay. That's MARVIN HAYNES that you are looking at?

R. Yeah.

Q. Write down what you know his nickname to be.

SGT KEEFE:

Q. Okay I see you are writing down LITTLE MARVIN. Okay. And would you put the time down there. 12:30. Just write 12:30 p.m. Okay moving on to photo #2 a man you have identified a DAQUAN. Would you also do the same thing? Just put your initials and your signature and the date and time.

R. Put the date and time.

Q. Yeah 5/28/04. And then you can put down the time as 12:32.

SGT MATTSON:

Q. Does DAQUAN BRADLEY have a nickname?

R. No.

Q. No. Okay.

SGT KEEFE:

Q. Moving on to photo #3 again would you write your name the date and time and for the record I have already noted on there that this young man goes by the nickname of LITTLE JOHN and BIBID. Have you ever known this young man to go by the nickname BIBID?

SGT MATTSON:

Q. BD wasn't it?

R. That ain't BD.

SGT KEEFE:

Q. Pardon me?

R. That ain't BD.

Q. That is not BD so that's a mistake on my part. Okay. And then how about Emerson Murder Boys. Is he a member of that gang?

R. No, that's BIBID though.

-----  
Q. That's BIBID?

R. Yeah.

Q. [REDACTED] here let me just for the record I am just going to cross that out and put my initials there.

R. BIBID the leader of EMB.

SGT MATTSON:

Q. This guy is?

R. No. BIBID is.

Q. But this isn't BIBID.

SGT KEEFE:

Q. This is not BIBID.

R. No that's mob squad. We don't like EMB's.

Q. This young man you know as?

R. I know BIBID though. I went to school with him.

Q. But photo #3 you know this young man as LITTLE JOHN correct?

R. Yes.

Q. And his actual name is JEREMY DAVENPORT. And Photo #2 is DAQUAN BRADLEY and photo #1 is MARVIN HAYNES. And photo #4 is ANTHONY MICHAEL TODD. Okay. Moving on to photograph #4 again would you sign and date that photograph and write in the nickname of ANTHONY TODD.

R. What you having me do this for?

Q. We just want to confirm we are talking about the right people because often time's kids use nicknames.

R. [REDACTED] VIN gonna find out anyway. I already know how the system is. I've been through it.

SGT MATTSON:

Q. What's his nickname that you just signed?

R. It's already there.

Q. LITTLE ANT?

R. Yeah.

Q. Or ANT.

SGT KEEFE:

Q. SGT MATTSON do you have anything else?

SGT MATTSON:

Q. POOPY, Is everything you told us today true to the best of your ability?

R. Yes.

SGT KEEFE:

Q. I don't have anything further.

END OF STATEMENT

04035635  
A052444 1312 (9)

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

FILED

DISTRICT COURT

06 MAR -3

FOURTH JUDICIAL DISTRICT

ORIGINAL

3 -----  
4 State of Minnesota,

FILED  
DISTRICT  
COUNTY ADMINISTRATOR  
File No. 05045635  
S.Ct. File A05-2444

5 Respondent/Plaintiff,

6 vs.

TRIAL TRANSCRIPT

7 MARVIN HAYNES, JR.,

VOL. VIII, pp. 1312-1437

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, and a jury, at 659-C  
13 Hennepin County Government Center, Minneapolis,  
14 Minnesota, on the **1st day of September, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.  
22  
23

24 CLERKS: Toni Rahn, Andrea Martin

25 REPORTER: Jolyn R. Lund

04035635

## I N D E X

PLAINTIFF'S WITNESSES:

Jennifer Coleman

Direct by Mr. Furnstahl. . . . . 1314  
 Cross by Mr. Benson. . . . . 1319  
 Redirect by Mr. Furnstahl. . . . . 1323  
 Recross by Mr. Benson. . . . . 1323

Dr. Kathryn Berg

Direct by Mr. Furnstahl. . . . . 1325

Sgt. David Mattson

Direct by Mr. Furnstahl. . . . . 1344  
 Cross by Mr. Benson. . . . . 1347  
 Redirect by Mr. Furnstahl. . . . . 1353  
 Recross by Mr. Benson. . . . . 1356

DEFENDANT'S WITNESSES:

Marvin Haynes, Jr.

Direct by Mr. Benson . . . . . 1357  
 Cross by Mr. Furnstahl . . . . . 1368  
 Redirect by Mr. Benson . . . . . 1413, 1414  
 Recross by Mr. Furnstahl . . . . . 1414, 1415

Officer Judith Marie Rollins

Direct by Mr. Benson . . . . . 1417  
 Cross by Mr. Furnstahl . . . . . 1421  
 Redirect by Mr. Benson . . . . . 1428

## E X H I B I T S

	<u>Identified</u>	<u>Offered</u>	<u>Rec'd</u>
Nos. 54-65 - Autopsy photos	1330	1330	1330
No. 66 - Autopsy Power Point	1329	1330	1330
No. 72 - Coleman lineup	1315	1316	1316
No. 73 - Marvin Miller photo	1346	1347	1347
No. 74 - No. Minneapolis map	1376	1376	1376
No. 96 - Haynes 5/16/04 photo	1365		



1 (Whereupon, the following  
2 proceedings occur in the presence of the jury.)

3 THE COURT: Okay. Mr. Furnstahl, you can  
4 call your next witness.

5 MR. FURNSTAHL: We are going to recall  
6 Jennifer Coleman.

7 THE COURT: All right. Ms. Coleman, would  
8 you step back up in front to be sworn today.

9 Whereupon,

10 JENNIFER COLEMAN,  
11 after having been first duly sworn, was examined  
12 and testified as follows:

13 THE CLERK: Please state your full name and  
14 spell your last for the record.

15 THE WITNESS: Jennifer Coleman,  
16 C-O-L-E-M-A-N.

17 THE COURT: Okay, Mr. Furnstahl.

18 DIRECT EXAMINATION

19 BY MR. FURNSTAHL:

20 Q Ms. Coleman, yesterday when you were testifying  
21 we did not have the photo lineup that Sergeant Keefe  
22 showed you, correct?

23 A Yes.

24 Q We had a chance to retrieve it overnight and you  
25 had a chance to take a look at it again this morning?

1 A Yes.

2 MR. FURNSTAHL: May I approach?

3 THE COURT: You may.

4 BY MR. FURNSTAHL:

5 Q Showing you what I've marked as Exhibit 72, it's  
6 a brown manila envelope, and out of that I took a group of  
7 six photographs and another single photograph, is that  
8 correct?

9 A Yes.

10 Q And paging forward to the fifth photograph, do  
11 you recognize that?

12 A Yes.

13 Q Do you recognize the signature on the bottom?

14 A Yes.

15 Q Whose signature is that?

16 A Mine.

17 Q Did you put a date there?

18 A Yes.

19 Q What date?

20 A 10/19/04.

21 Q Is this the photo lineup that Sergeant Keefe  
22 showed you?

23 A Yes.

24 MR. FURNSTAHL: We would offer -- well, let  
25 me finish this up.

1 BY MR. FURNSTAHL:

2 Q Did you indicate -- when you were talking to  
3 Sergeant Keefe, did you indicate that you were not  
4 familiar with Little Marvin when he had short hair?

5 A Yes.

6 Q As a result did he show you a photograph with  
7 longer hair?

8 A Yes.

9 Q Out of that same envelope, did I pull out this  
10 photograph?

11 A Yes.

12 Q Does this appear to be the other photograph that  
13 Sergeant Keefe showed you?

14 A Yes.

15 MR. FURNSTAHL: We would offer Exhibit 72.

16 THE COURT: Any objection Mr. Benson?

17 MR. BENSON: No, Your Honor.

18 THE COURT: Exhibit 72 will be received.

19 MR. FURNSTAHL: I would just ask to publish  
20 the two photographs of the defendant.

21 THE COURT: Go ahead.

22 MR. FURNSTAHL: I'll just walk these by.

23 BY MR. FURNSTAHL:

24 Q Now, yesterday you were telling us that you had  
25 two conversations with Little Marvin, one when you

1 believed it was the day after the flower shop murder where  
2 he was bragging about shooting the guy?

3 A Yes.

4 Q And the second at a house where he said he was  
5 on the down low?

6 A Yes.

7 Q Is there any doubt in your mind that the person  
8 that you picked out of Exhibit 72, that was the person you  
9 had the conversations with?

10 A No.

11 Q Any doubt?

12 A No.

13 Q All right. Now, after court yesterday -- well,  
14 you had indicated that -- you gave us some description as  
15 to the house where you had that second conversation with  
16 Little Marvin, correct?

17 A Yes.

18 Q You said it was close to whereby where you were  
19 living at the time?

20 A Yes.

21 Q Did I ask Sergeant Mattson and you to go out and  
22 see if you could locate that house after court yesterday?

23 A Yes.

24 Q Did you locate the house?

25 A Yes.

1 Q Do you recall the address of the house that you  
2 located?

3 A To the best of my memory, 2126 Queen, I believe.

4 Q Okay. That's the best of your recollection?

5 A Yes.

6 Q Could be a number off here or there but it was  
7 on Queen?

8 A Yes.

9 Q Now, did Little Marvin ever tell you that that  
10 was in fact his house?

11 A I don't know.

12 Q Why did you -- yesterday you, I believe you  
13 testified that it was, that conversation was at his house  
14 at the residence on Queen. Why did you say it was his  
15 house?

16 A That was the only house I ever seen him at.

17 Q And you don't recall if you ever even  
18 represented it was at his house?

19 A Excuse me?

20 Q You don't ever recall if he ever told you that  
21 in fact it was his house?

22 A Yes.

23 Q Thank you, ma'am.

24 MR. FURNSTAHL: That's all I have.

25 THE COURT: Cross-examination, Mr. Benson?

1 MR. BENSON: Yes.

2 CROSS-EXAMINATION

3 BY MR. BENSON:

4 Q Ms. Coleman, yesterday you did testify that you  
5 went to this Marvin's house, correct? With respect to the  
6 second conversation?

7 A Yes.

8 Q That you went to this Marvin's house?

9 A Yes.

10 Q And that house was you said a couple of blocks  
11 behind or within a couple blocks behind Broadway Liquors,  
12 is that right?

13 A Excuse me?

14 Q Let me ask you this way. Yesterday you thought  
15 the house might have been on Russell Avenue a couple  
16 blocks up, right?

17 A I didn't know the name of the street, but yes.

18 Q Okay. But yesterday after court you went to the  
19 house and you picked out a house at 2126 Queen Avenue?

20 A Yes.

21 Q And are you aware that a person named Marvin  
22 Miller lives at that address of 2126 Queen Avenue?

23 MR. FURNSTAHL: Objection. Assumes facts  
24 not in evidence.

25 MR. BENSON: I'm asking if she's aware.

1 THE COURT: Overruled. You can answer if  
2 you know the answer.

3 THE WITNESS: Can you ask the question  
4 again?

5 BY MR. BENSON:

6 Q Are you aware that a person named Marvin Miller  
7 lives at 2126 Queen Avenue North?

8 A I don't know last names.

9 Q Okay. Okay. Yesterday we talked about, you  
10 know, what you knew, at that time period you knew two  
11 different Marvins, right?

12 A I knew one and I knew of the other.

13 Q And you said you had seen, at least you had seen  
14 both of them, right?

15 A Yes.

16 Q Okay. But in any event yesterday after court  
17 you had an opportunity to go to the area and the house  
18 that you had this conversation with a Marvin at was on  
19 Queen Avenue?

20 A Yes.

21 Q Okay. And that was -- you were staying at a  
22 house near Broadway and Penn, right?

23 A Yes.

24 Q Okay. And that house on Queen, about how far is  
25 that house from Broadway and Penn?

1           A     I stayed in the house on Ferrant Place right  
2 behind the Broadway Liquor Store and if you go from my  
3 house, from the house I stayed at, you keep going straight  
4 instead of taking that right or left you go down two  
5 blocks and on the second block on the left-hand side  
6 that's where he stayed.

7           Q     Okay. And that was your testimony yesterday  
8 that's where that person stayed, right?

9           A     Yes.

10          Q     As far as you know that's that person's house?

11          A     Yes.

12          Q     Okay. And you didn't, yesterday you didn't go  
13 up to 33rd and Russell, did you?

14          A     No.

15          Q     You are familiar somewhat with the north side  
16 because you had been there for sometime last -- last year,  
17 right?

18          A     Yes.

19          Q     And you are aware that 33rd and Russell is at  
20 least ten blocks from -- or ten to 12 blocks from 21st and  
21 Queen, right?

22          A     I don't know where Russell is.

23          Q     Russell is one block over from Queen, right?

24          A     I don't know.

25          Q     Okay. Well, the house that you saw was on 21st



1 and Queen?

2 MR. FURNSTAHL: Objection. Redundant.

3 THE COURT: Overruled.

4 BY MR. BENSON:

5 Q It was on 21st and Queen, right?

6 A Yes.

7 Q Okay. And in Minneapolis, you've spent some  
8 time in north Minneapolis, the numbers go up like 21, 22,  
9 23, 24 and so on, correct?

10 A I don't know.

11 Q Okay. All right. And the blocks go in  
12 alphabetical order in a grid system so it would be Queen  
13 and Russell, right?

14 A I don't know.

15 Q Okay. But you know that the house -- well, you  
16 weren't taken to a house at 3343 Russell Avenue North  
17 yesterday, correct?

18 MR. FURNSTAHL: Objection. Asked and  
19 answered.

20 THE COURT: Sustained.

21 MR. BENSON: Your Honor, I don't think that  
22 question was asked.

23 THE COURT: She said she didn't see the  
24 house at Russell in answer to your other question  
25 earlier.

1 MR. BENSON: Nothing further, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. FURNSTAHL:

4 Q Just a couple more questions, Jennifer, if I  
5 might.

6 Had you seen Little Marvin more than one time at that  
7 house on Queen?

8 A Yes.

9 Q And you said that the other Marvin, you knew of  
10 him?

11 A Yes.

12 Q But you knew Little Marvin?

13 A Yes.

14 Q But you had also seen the other Marvin?

15 A Yes.

16 Q Okay. And the person that you picked out of  
17 that photo lineup in Exhibit 72, that's the person that  
18 you had the two conversations with?

19 A Yes.

20 Q No doubt?

21 A No doubt.

22 Q Thank you, ma'am.

23 MR. FURNSTAHL: That's all I have.

24 MR. BENSON: Briefly.

25 RECROSS-EXAMINATION

1 BY MR. BENSON:

2 Q There was only one Marvin that you knew that  
3 lived at 2126 Queen, right?

4 A Yes.

5 Q Just one Marvin?

6 A Yes.

7 Q All right.

8 MR. BENSON: Nothing further, Your Honor.

9 MR. FURNSTAHL: Nothing further.

10 THE COURT: All right. You can step down.

11 (Witness excused.)

12 MR. FURNSTAHL: Call Dr. Kathy Berg.

13 THE COURT: All right. Doctor, would you  
14 step right up here and raise your right hand to be  
15 sworn, please?

16 Whereupon,

17 KATHRYN BERG,  
18 after having been first duly sworn, was examined  
19 and testified as follows:

20 THE CLERK: Please state your full name and  
21 spell your last for the record.

22 THE WITNESS: It's Dr. Kathryn,  
23 K-A-T-H-R-Y-N, Berg, B E R G.

24 THE COURT: Okay, Mr. Furnstahl.

25 MR. FURNSTAHL: Thank you, Your Honor.

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1 the manner of the person's death is.

2 Q Have you testified in the past as an expert as  
3 to cause and manners of deaths of individuals?

4 A Yes, I have.

5 Q Based upon your training and experience and the  
6 results you see during autopsy?

7 A Yes.

8 Q So you know a little bit about the drill about  
9 the qualifications to the jury?

10 A Yes.

11 Q Would you do that, please?

12 A Sure. I received my bachelor of arts degree  
13 from Gustavus Adolphus College in 1978. I went to medical  
14 school at the University of South Dakota School of  
15 Medicine graduating in 1983. I then went to the Mayo  
16 Clinic in Rochester, Minnesota, where I started a  
17 pediatric residency program and completed one year before  
18 I switched into pathology and completed a residency  
19 training program in anatomic and clinical pathology, which  
20 anatomic pathology being the form of pathology that does  
21 things like hospital autopsies, looking at tissue that's  
22 taken out at the time of surgery under the microscope to  
23 see if it's cancer or infection or normal tissue, as well  
24 as clinical pathology which is laboratory medicine and  
25 that is the study of alterations in blood tests or urine

1 tests or other types of laboratory testing that's done on  
2 a person to help assess what, what diseases the person may  
3 have.

4 When I was done with that I went to Dade County in  
5 Miami, Florida where I did a one-year fellowship,  
6 subspecialty training year in forensic pathology which is  
7 the subspecialty area in pathology where we take all the  
8 information we learned in pathology on how to diagnose  
9 diseases and how treatments alter the diseases in people  
10 and apply it specifically toward death investigation,  
11 looking at specialty training in injuries, what causes  
12 injuries, autopsies looking at the evidence of injury  
13 inside the body and knowing, you know, what caused those,  
14 also interpreting toxicology tests where we take specimens  
15 at the time of autopsy to do drug testing, and looking at  
16 a whole host of natural diseases that can cause sudden and  
17 unexpected death in any young person.

18 And when I completed that in 1990, at the end of June  
19 of 1990 I came to Minneapolis where I've been employed  
20 initially as an assistant medical examiner at the Hennepin  
21 County medical examiner's office and then in 1992 I became  
22 the assistant chief, which is a position I've held since.

23 Q Are you board eligible or board certified in any  
24 disciplines?

25 A I am board certified in both anatomic and

1 clinical pathology and I am board certified in forensic  
2 pathology.

3 Q Would you explain to the jurors what it means to  
4 be board certified as opposed to board eligible?

5 A Board eligible means that you have taken the  
6 appropriate amount of training in a particular area of  
7 medicine, and board certified means that not only have you  
8 taken the training time but you've also passed a rigorous  
9 examination to show that you are proficient in that  
10 particular field of medicine.

11 Q And you've done that in those three disciplines  
12 that you have just described?

13 A Yes, I have.

14 Q Now, how many autopsies do you estimate that you  
15 have performed in your career?

16 A Either performed or supervised, it's probably  
17 close to a thousand.

18 Q You performed an autopsy or supervised an  
19 autopsy of a person identified to you as Harry Sherer?

20 A Yes.

21 Q And when and where did that take place?

22 A That took place on the 17th of May, 2004, at the  
23 Hennepin County medical examiner's office.

24 Q Based upon your training and experience, and  
25 based upon what you viewed during your autopsy, first let

1 me ask you this. The autopsy procedures that you  
2 followed, were those the kind that are generally accepted  
3 by others in your field?

4 A Yes.

5 Q Based upon your training and experience and  
6 based upon your findings at autopsy, do you have an  
7 opinion, do you have opinions to a reasonable degree of  
8 medical certainty as to the cause and manner of the death  
9 of Harry Sherer?

10 A Yes, I do.

11 Q What are your opinions?

12 A The cause of death was a gunshot wound to the  
13 chest and the manner of death was homicide.

14 Q And as part of the autopsy protocol, do you take  
15 photographs?

16 A Yes, we do.

17 Q And we selected some photographs that we can  
18 present to the jury to explain the bases for your  
19 opinions?

20 A Yes.

21 Q And we also put it on a Power Point, right?

22 A That's correct.

23 MR. FURNSTAHL: Judge, we've marked the  
24 Power Point as Exhibit 66. May I approach?

25 THE COURT: You may.



1 BY MR. FURNSTAHL:

2 Q Dr. Berg, showing you what I've marked as  
3 Exhibits 54 through 65 inclusive, could you take a look at  
4 those and I'll ask you if you recognize them.

5 THE COURT: 54 through 65, counsel?

6 MR. FURNSTAHL: Yes.

7 THE COURT: Okay.

8 THE WITNESS: Yes, I do.

9 BY MR. FURNSTAHL:

10 Q What are they?

11 A These are photographs taken from the Power Point  
12 presentation that were taken at the time of the autopsy in  
13 addition to a few schematic diagrams that we have included  
14 for clarification purposes of Mr. Sherer at the time that  
15 his autopsy was performed at our office.

16 MR. FURNSTAHL: We would offer Exhibits 54  
17 through 65 and offer Exhibit 66 only for  
18 demonstrative purposes.

19 THE COURT: Mr. Benson, any objection?

20 MR. BENSON: No, Your Honor.

21 THE COURT: Exhibits 54 through 65 will be  
22 received and you may use 66 for demonstrative  
23 purposes.

24 BY MR. FURNSTAHL:

25 Q And Doctor, the photographs, they will help to

1 explain to the jurors the bases for your opinions?

2 A Yes.

3 Q Can we do that then? Do you know how to run the  
4 thing?

5 What do we see here?

6 A This first photo, Exhibit 54, is a photograph  
7 taken at the time of the autopsy of Mr. Sherer showing the  
8 medical examiner number in the lower part of this slide  
9 which would be 04-1203. What has transpired prior to this  
10 photograph being taken is that representatives from my  
11 office had been to the scene of the death and had taken  
12 photographs there as well as photographs of the  
13 individual. The body was placed into a body bag and  
14 sealed, brought back to the medical examiner's office  
15 where prior to our starting the exam x-rays would have  
16 been taken of areas noted to have injuries at the scene  
17 investigation.

18 Once that's done, then usually the next day we will  
19 break the seal on the bag and we will perform the autopsy  
20 which includes a very thorough external examination  
21 looking at the clothing and personal property that are  
22 present on the body, looking at the outside of the body  
23 for evidence of injury and other changes, marks, scars,  
24 tattoos, that type of thing. And then we will perform the  
25 internal portion of the autopsy which is a very thorough

1 surgical procedure wherein surgical incisions are made on  
2 the outside and we inspect the organs of the body as they  
3 are normally found for evidence of injury to the inside as  
4 well as evidence of other medical problems that the person  
5 may have had.

6 We also obtain specimens of blood and urine and  
7 liver, stomach contents if available, as well as the fluid  
8 that is in the eye for possible toxicology analysis or  
9 other blood testing that may be needed by other  
10 laboratories that work with the investigation.

11 We document what we find with photographs, dictation,  
12 notes, and then when the case is completed the body is  
13 allowed to go to the funeral home where the, with the  
14 family's requests at final disposition. Those things  
15 aren't maintained. So that has happened.

16 We have broken the seal, we have taken the x-rays, we  
17 have looked at the clothing, and now with the body in a  
18 cleaned fashion we are taking the initial -- well,  
19 additional photographs that represent what we had seen at  
20 the time of the autopsy.

21 Q Exhibit 55 then?

22 A 55 is a photograph of the chest of the decedent  
23 at the time of the autopsy which shows the medical  
24 examiner number -- excuse me.

25 Q Go ahead.

1           A     As well as the gunshot wound, the entrance  
2     gunshot wound that was present to the left chest. This is  
3     seen better on a close-up photograph which is Exhibit 56  
4     showing the outside. This black material here or black  
5     area is what's called an abrasion collar. It represents  
6     the scraping of the skin surface as the bullet enters the  
7     body which it did actually as the small area of  
8     perforation right here (points) and this linear area of  
9     abrasion represents impact of the skin as it's moving  
10    against the clothing that the decedent was wearing at the  
11    time relative to the gunshot wound that he was receiving.

12           The eccentric or kind of, it's not uniform but the  
13    eccentricity of the entrance leads us to know that as we  
14    follow the pathway of the bullet through the organs in the  
15    body that it's going to be going at somewhat of an angle  
16    relative to the surface of the skin where it entered.

17           Q     Before you move on, let me ask you, Doctor, what  
18    is stippling?

19           A     Stippling is pinpoint areas of abrasion around  
20    the entrance gunshot wound which represent particles of  
21    burned and unburned gunpowder which may -- which means  
22    that the surface of the area that was injured by the  
23    gunshot wound is close enough that those little particles  
24    will leave marks around the entrance wound, and there was  
25    none of that here.

1           Other things that we look for for a range of fire  
2           would include powder burning which would be a more matte  
3           or dull black discoloration, which we don't have here  
4           either. The black discoloration that we have here is  
5           relative to the fact that the abraded area or the scraped  
6           surface of the skin has dried prior to our taking this  
7           photograph and does not represent gunpowder deposition.

8           Other things that we look for in an entrance wound  
9           would be the outline of muzzle of the weapon if it was  
10          held in close contact or contact to the skin surface,  
11          which we don't have here either. The changes that we have  
12          here are what we would call indeterminate range which  
13          means that the surface of the skin was far enough away  
14          from the muzzle of the gun at the time of its discharge  
15          that the powder and the soots and the burning and the  
16          muzzle do not leave imprints around the entrance to help  
17          with range of fire. So this is indeterminate, and the  
18          changes that we see are all consistent with just being  
19          caused by the projectile itself.

20          Q     All right. Focusing on stippling for just a  
21          minute, with stippling you get a sense for how close the  
22          shooter was to the person that was shot, is that right?

23          A     That's correct.

24          Q     And if there is no stippling then the person,  
25          the shooter is a distance away from his victim such that

1 there does not leave any stippling, you can't tell how far  
2 away?

3 A Right.

4 Q And if you are -- is it correct that if you do  
5 see stippling, then you can estimate that the shooter may  
6 be as close as 18 inches or closer?

7 A I don't know that I would put a specific length  
8 on it. In general, for handguns and what you would have  
9 to do is you would have to take the particular weapon and  
10 the same ammunition that was used and do some test firing  
11 which is something the firearms examiner would do to see  
12 what actual distance corresponded to the outside features  
13 of the wound that we see, and in general for handguns the  
14 start of the indeterminate range of fire for us, in that  
15 no other features are present on the wound other than just  
16 the entrance itself, would be within about two to four  
17 feet.

18 Q Okay. So and clear there was no stippling, you  
19 observed no stippling on this wound?

20 A Not to the wound, right.

21 Q Do you want to move to the next slide? This is  
22 57, is it?

23 A 57 is a photograph taken of the back of the  
24 decedent which shows the exit wound associated with the  
25 entrance on the left chest. And this is a close-up

1 photograph.

2 Q This is 58 then?

3 A It's Exhibit 58, which shows the slit like  
4 laceration or tearing which is very typical for exit  
5 wounds and there isn't any abrasion with this. There's  
6 some tearing associated with the exit and then there was  
7 damage to the organs underneath or within the body  
8 relative to the pathway of this particular projectile.

9 And we knew that what had been injured as a result of  
10 this gunshot wound included the skin and soft tissue over  
11 his left chest. The projectile went through the first rib  
12 on the left and then through the space between the first  
13 and second rib with damage to the upper part of the second  
14 rib, it went through the left upper lobe of his lung, the  
15 arch of the aorta, the aorta being the main artery that  
16 takes blood away from the heart to get to the rest of the  
17 body; went through the trachea which is the wind pipe, the  
18 right upper lobe of his lung, exited the right side of the  
19 chest through the right sixth rib, and the space between  
20 the right sixth and seventh rib, and then exited the body  
21 on, excuse me, on the back.

22 Q Was this the -- I'm sorry, Doctor?

23 A And this is Exhibit 58 again just showing the  
24 exit and no fragments or projectile was recovered from  
25 this particular wound.

1 Q Was this the fatal wound?

2 A This was the fatal wound.

3 Q How long would Mr. Sherer have lived after  
4 having received such a wound?

5 A Not very long at all. The major damage to the,  
6 both the airway, the wind pipe and the arch of the aorta  
7 was such that there would have been extensive immediate  
8 blood loss which would have affected the functioning of  
9 the rest of the organs of the body as well as the  
10 inability to properly breathe because of the communication  
11 between the aorta and the wind pipe prohibiting normal  
12 respirations. So a combination of not being able to  
13 breathe properly and not being able to pump blood to the  
14 rest of the body to maintain life, it would have been a  
15 matter of minutes before Mr. Sherer would have died.

16 Q Go to Exhibit 59.

17 A This is a photograph of the left side of the  
18 decedent at the time of the autopsy showing what is called  
19 a graze gunshot wound. This was the second gunshot wound  
20 injury that he had to his body.

21 Q How many gunshot wounds did you observe in  
22 total?

23 A There were two. And this is a photograph,  
24 Exhibit 60, of a close-up of this graze wound which --

25 Q Don't you love technology?



1           A     If I had my high school daughter here it would  
2     be a whole lot easier.

3           Q     I'm glad you are doing it and not me, Doctor.

4           A     But this is, this -- to the left of the slide  
5     here would be the front of the decedent's entire body, to  
6     the right would be the back, and this gunshot wound is  
7     going from the front to the back and slightly downward.  
8     And the reason that we know that is because of the changes  
9     to the skin surface. The little tears that are present  
10    into the skin surface indicate the direction the  
11    projectile came, whereas the skin tags point the direction  
12    the bullet came from.

13           And all this is is just a scraping of the skin  
14    surface and the very top portion of the underlying  
15    subcutaneous tissue or the fatty tissue under the skin  
16    related to the wound and did not cause any internal damage  
17    at all to the organs that were under this.

18           Q     Is there any way for you to determine the order  
19    that he received, that Mr. Sherer received the wounds?

20           A     No, it's not.

21           Q     So this could have been the first shot, this  
22    could have been the second shot?

23           A     That's correct.

24           Q     Let's move to 61, is that right?

25           A     61 is a photograph with an arrow schematic in it

1 that was of the x-ray taken prior to our starting the  
2 autopsy which gives a better representation of the pathway  
3 of the projectile for the fatal gunshot wound that entered  
4 on, which would be your right but it's actually the  
5 deceased's left side of his body, left chest, and it goes  
6 from the deceased's left side to his right side in a  
7 downward fashion and actually from the front side that's  
8 where the entrance was to his back which is where the exit  
9 was.

10 This big structure in the middle of the slide is the  
11 heart and these areas that are very dark are the areas  
12 where the lungs would live.

13 Q How about 62?

14 A Additional injuries that were noted but not felt  
15 to be due to gunshot wounds were this abrasion which is  
16 present on the right forearm just below the elbow. That's  
17 Exhibit 62.

18 Exhibit 63 is a close-up of that particular wound.  
19 It's an abrasion, it's a scraping. I don't know what  
20 caused that other than it was something that was sustained  
21 about the time that he received the gunshot wounds.

22 Q Could it be consistent with him after having  
23 received the fatal wound falling down and scraping his  
24 skin on some surface?

25 A Yes, it is. It is, and the reason that I say

1 that is because this is a very -- it's a bony surface so  
2 this would be the surface that would be very close to  
3 something that he may have impacted with.

4 Q 64 then?

5 A And 64 is a photograph taken at the time of the  
6 autopsy of the right -- excuse me, left leg of the  
7 decedent. This is his knee, and this is an area again of  
8 abrasion which is sort of yellow in discoloration and that  
9 reflects the fact that that was something that happened  
10 very closely to the time that he died in that there's not  
11 a lot of blood flowing to that area to give the more red,  
12 dark, dark red maroon colors that we saw with some of the  
13 other wounds.

14 Q Could this be consistent with likewise his  
15 scraping it after having received gunshot wounds?

16 A That he could have collapsed to his knees, yes.

17 Q And Exhibit 65?

18 A Exhibit 65 is a schematic that shows the  
19 standard anatomic position diagram that we utilize to help  
20 explain where wounds are on the body. When we describe  
21 the wounds in terms of what direction they are going  
22 within the body, it is with the standard anatomic position  
23 which is upright with your palms facing forward. That's  
24 so anybody reading the exam would know what, what we were  
25 talking about.

1 But this next slide, which is part of I think  
2 Exhibit 66, but this shows the entrance gunshot wound to  
3 his left chest associated with then on the back the exit  
4 wound, the graze gunshot wound which was to the lower left  
5 chest, the side. The next shows the abrasion that he had  
6 to the right forearm. He had a little scratch which I  
7 forgot to mention but underneath the graze wound which was  
8 very superficial, and then the abrasion that he had below  
9 his left knee.

10 And those would be the injuries that we found at the  
11 time of the autopsy that would all be consistent with  
12 having been, received nearly, at very close proximate time  
13 to the time that he had died.

14 Q Did he have any other physical problems?

15 A Internally, yes. When we looked at the organs  
16 of the body he had what we call coronary artery disease  
17 which is narrowing of the vessels that supply the heart  
18 with blood. And if he had been a person who did not have  
19 these injuries to explain his death, the amount of disease  
20 that he had to those vessels would be consistent with  
21 somebody dying suddenly and unexpectedly.

22 Q He had some pretty serious heart problems?

23 A He had very serious heart problems and I believe  
24 he also had a medical history of some diabetes which would  
25 have made him more likely to develop these problems at an

1 earlier age.

2 Q Would such physical problems with his heart make  
3 it difficult for him to defend himself against a younger,  
4 stronger person?

5 MR. BENSON: Objection, Your Honor.

6 Leading.

7 THE COURT: Sustained as to leading.

8 BY MR. FURNSTAHL:

9 Q What effect would those problems have on his  
10 ability to protect himself physically?

11 A They may not have had any effect at all. They  
12 might have caused him to have shortness of breath or chest  
13 pain.

14 Q Now, did those problems, did they in any way  
15 contribute to his death, or does that change your opinion  
16 as to the cause and manner of his death?

17 A Not at all. The injuries that he had would have  
18 been fatal whether he had this heart disease or not.

19 Q Anything else about the autopsy -- oh, the  
20 toxicology, that's one thing that you do?

21 A Yes, we did. We obtained a specimen of blood  
22 for an alcohol test and that was negative, and we also, he  
23 had urine present in his bladder which we examined for  
24 drugs and abuse and other medications and we did find  
25 caffeine or coffee compound present in his urine drug

1 screen.

2 Q Now, is that something, the toxicology screening  
3 that you do, is that something that you do in all cases or  
4 did you have some specific information that Mr. Sherer  
5 might have those things in his system?

6 A We do the routine alcohol and drug screen on all  
7 of our autopsy personnel -- or all of our autopsy  
8 patients, and for Mr. Sherer it was tailored in that we  
9 looked at the chemistry studies with the eye fluid because  
10 he had a history of diabetes to see if that might have  
11 played a role in his death, and that was within the  
12 expected ranges that we would find for people with or  
13 without diabetes and did not play a role in his death.

14 Q Thank you, Doctor.

15 MR. FURNSTAHL: That's all I have.

16 THE COURT: Cross-examination, Mr. Benson?

17 MR. BENSON: No questions, Your Honor.

18 THE COURT: You can step down, Doctor.

19 (Witness excused.)

20 MR. FURNSTAHL: Can we have a moment then,  
21 Judge, maybe to set this down?

22 THE COURT: Members of the jury, we'll take  
23 our morning recess now while they take down some of  
24 this equipment. You have about 15 minutes.

25 (Recess.)

1 THE COURT: Sergeant Mattson, do you want  
2 to raise your right hand to be sworn today?

3 Whereupon,

4 DAVID MATTSON,  
5 after having been first duly sworn, was examined  
6 and testified as follows:

7 THE CLERK: Go ahead, Mr. Furnstahl.

8 MR. FURNSTAHL: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. FURNSTAHL:

11 Q Sergeant, following court yesterday I asked you  
12 to take Jennifer Coleman out to see if she could locate  
13 the house where she spoke to Little Marvin. You weren't  
14 here for the testimony but I asked you to locate a house  
15 with Jennifer Coleman, correct?

16 A Yes.

17 Q Did you do that?

18 A I did.

19 Q What was the address of the house?

20 A 2126 Queen North.

21 Q Okay. Now, when you saw the house did you  
22 recognize it?

23 A I did.

24 Q And from yesterday you testified in response to  
25 counsel's questions you couldn't recall if you ever spoke

1 to Marvin Miller. Do you remember that?

2 A Yes.

3 Q When you saw the house did that refresh your  
4 recollection?

5 A It did.

6 Q Did you also confer with Sergeant Keefe?

7 A I did this morning.

8 Q Okay. Did that refresh your recollection?

9 A Yes.

10 Q Had you spoken to Marvin Miller during the  
11 course of the investigation?

12 A Yes.

13 Q Do you remember where it was?

14 A I believe it was at his house, and I think we  
15 asked him to come outside to talk so it was outside the  
16 presence of his mother.

17 Q Do you remember when it was?

18 A I don't remember the date.

19 Q Did you prepare a report?

20 A No.

21 Q Yesterday you described that you don't -- you  
22 are not required to prepare a report when you talk to  
23 every witness, is that right?

24 A That's correct.

25 Q If the witness doesn't have any substantial



1 evidence or information that would be a situation where  
2 you wouldn't prepare a report?

3 A Correct.

4 Q Was that such a situation that you had with  
5 Marvin Miller?

6 A I believe so. I don't remember exactly what he  
7 told us or what he had to say.

8 Q All right. And then this morning did I also ask  
9 you to see if you could locate a mug shot of Marvin  
10 Miller?

11 A Yes.

12 Q The closest photograph to the date of the  
13 incident?

14 A Yes.

15 MR. FURNSTAHL: May I approach?

16 THE COURT: You may.

17 BY MR. FURNSTAHL:

18 Q Showing you what I've marked as Exhibit 72, what  
19 is that?

20 A That is a, what's called an M-wrap photograph of  
21 Marvin Miller. M-wrap is our, basically our data bank of  
22 photos

23 Q All right.

24 MR. FURNSTAHL: We would offer Exhibit 72.

25 THE CLERK: We have a 72.

1 MR. BENSON: No objection.

2 THE COURT: Wait a minute. Wait a minute.

3 I think we already have an Exhibit 72.

4 MR. FURNSTAHL: Do we?

5 THE COURT: We are going to have to  
6 renumber it.

7 MR. FURNSTAHL: All right.

8 THE COURT: 73, Mr. Furnstahl.

9 MR. FURNSTAHL: Okay. We would offer 73.

10 THE COURT: Did you say you had no  
11 objection, Mr. Benson?

12 MR. BENSON: No objection.

13 THE COURT: Exhibit 73 will be received.

14 MR. FURNSTAHL: Ask to publish?

15 THE COURT: Go ahead.

16 (Displays on the overhead  
17 projector.)

18 BY MR. FURNSTAHL:

19 Q Is that the Marvin Miller that you and Sergeant  
20 Keefe spoke to?

21 A Yes.

22 MR. FURNSTAHL: Nothing further.

23 THE COURT: Cross-examination, Mr. Benson.

24 CROSS-EXAMINATION

25 BY MR. BENSON:

1           Q     Sergeant Mattson, as you sit here now, you know  
2 or you have information that Marvin Miller lives at 2126  
3 Queen Avenue North?

4           A     Yes, I believe that's correct.

5           Q     Okay. And as we talked about yesterday you  
6 didn't remember that, correct?

7           A     True.

8           Q     And once again you didn't take notes of the  
9 conversation that you had with Marvin Miller?

10          A     True.

11          Q     And you know that there's a witness, Jennifer  
12 Coleman, who is involved in this case?

13          A     Yes.

14          Q     You are the lead investigator, right?

15          A     One of two, yes.

16          Q     And Jennifer Coleman as you know provided  
17 information during the investigation that a Marvin at the,  
18 at this certain house told --

19                   MR. FURNSTAHL: I'm sorry.

20          BY MR. BENSON:

21          Q     You are aware that Jennifer Coleman has provided  
22 information that a Marvin at a house near where she lived  
23 said he was on the down low, he was on the down low or  
24 something to that effect, he's on the down low because the  
25 police are trying to get him, right?

1 MR. FURNSTAHL: Objection. That misstates  
2 her testimony.

3 THE COURT: Sustained.

4 BY MR. BENSON:

5 Q Well, you are aware of Jennifer Coleman, right?

6 A I am.

7 Q And Jennifer Coleman was shown some photos,  
8 right? She was shown a photographic lineup?

9 A I wasn't present for that. I can't speak to  
10 what someone else did.

11 Q Well, you are the only lead investigator here,  
12 right?

13 A At the moment, yes.

14 Q You've read all the reports?

15 A Yes.

16 Q You know from reading those reports that  
17 Jennifer Coleman identified a photo, some photos, she was  
18 shown some photos and she made an identification in those  
19 photos, right?

20 A I believe that's what her statement reads, yes.

21 Q And according to those photos she identified  
22 Marvin Haynes, right?

23 A That's my understanding.

24 Q It should also be your understanding that  
25 Jennifer Coleman says that the person who she had these

1       conversations with lived at a certain house, right?

2                   MR. FURNSTAHL:  Objection.  That calls for  
3       speculation.

4                   THE COURT:  Overruled.  He can answer if  
5       that's what he recalls from the statement she gave.

6                   THE WITNESS:  I would have to see the  
7       statement.  I don't recall.

8                   MR. BENSON:  May I approach, Your Honor?

9                   THE COURT:  You may.

10                  MR. BENSON:  I'll direct counsel to page,  
11       bottom of page two of the statement going into the  
12       top of page three.

13                  MR. FURNSTAHL:  Okay.

14                  MR. BENSON:  May I retrieve the document?

15                  THE COURT:  You may.

16       BY MR. BENSON:

17                  Q     Are you finished?

18                  A     I guess I didn't know exactly what you wanted me  
19       to do here.

20                  MR. BENSON:  Court's indulgence?

21                  THE COURT:  Go ahead.

22                  MR. FURNSTAHL:  Judge, there's no --

23                  THE COURT:  Just wait.  He's refreshing his  
24       recollection.  When he's done he can tell us.

25                  THE WITNESS:  Okay.

1 THE COURT: Okay, Mr. Benson.

2 BY MR. BENSON:

3 Q Detective, all right, you are familiar once  
4 again with the statement from Jennifer Coleman?

5 A Yes.

6 Q All right. So you are aware from that statement  
7 and your knowledge of the case that Jennifer Coleman  
8 indicated the same person told her, one, that he had shot  
9 an old white man at the store, the flower shop?

10 A Yes.

11 Q And two, that in subsequent conversation this  
12 same person said he was on the down low or he was staying  
13 on the down low?

14 A On the low or words to that effect.

15 Q Okay. And this -- and you are also, it's your  
16 understanding as being lead investigator and knowing about  
17 this case, that Jennifer Coleman says that the second  
18 conversation, being on the low, took place at that  
19 person's house.

20 MR. FURNSTAHL: Objection. Foundation.

21 BY MR. BENSON:

22 Q Are you aware of that, sir?

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: I didn't see that it said it  
25 occurred at that house.

1 BY MR. BENSON:

2 Q I'm not asking you right now about the  
3 statement, I'm asking are you aware as lead investigator  
4 in this case are you aware that Jennifer Coleman has  
5 provided information that the person that she spoke to,  
6 she went to their house basically a couple days after the  
7 flower shop incident and that person said I am on the low,  
8 or I'm on the down low.

9 A Or something to that effect, yes.

10 Q So you are aware that that took place at that  
11 person's house, right?

12 A Again, I'm not sure where it took place. If  
13 that's how it reads --

14 Q That's fine. So that's your position as lead  
15 investigator, you don't know what Jennifer Coleman said  
16 about where that conversation took place?

17 A I don't recall specifically, no.

18 Q All right. But you do know that you took her to  
19 a house yesterday and it was at 2126 Queen Avenue?

20 A Yes, sir.

21 Q All right. And that was the house she had that  
22 conversation in, right?

23 A I guess so, yes.

24 Q That's what she told you, right?

25 A That's the house she pointed out. I didn't ask

1 her where she had the conversation.

2 Q That's the house she pointed out?

3 A Yes, sir.

4 Q And that's the house that Marvin Miller lives  
5 at?

6 A Yes, sir.

7 Q All right. And you know that Marvin Haynes  
8 never lived at that address, right?

9 A As far as I know.

10 Q You know Marvin Haynes's address is 34 -- as of  
11 May 16th is 3343 Russell Avenue North?

12 A Yes.

13 Q And you are familiar with that area, correct?

14 A A little bit.

15 Q That north area? And it's fair to say that 33rd  
16 and Russell Avenue North is about 12 blocks away from 21st  
17 and Queen, correct?

18 A Thereabouts.

19 Q Okay.

20 MR. BENSON: Nothing further, Your Honor.

21 THE COURT: Redirect.

22 MR. FURNSTAHL: Yes.

23 REDIRECT EXAMINATION

24 BY MR. FURNSTAHL:

25 Q Has it been your experience that when a suspect



1 is hiding from the cops they might hang out at a friend's  
2 house rather than at home?

3 A Yes.

4 MR. BENSON: Objection. Speculation.

5 THE COURT: Overruled. He can answer.

6 THE WITNESS: Yes.

7 BY MR. FURNSTAHL:

8 Q Now, counsel gave you Jennifer Coleman's  
9 statement. Do you remember that?

10 A Yes.

11 Q He was asking you questions about if the  
12 statement said where Jennifer had that second conversation  
13 with Marvin Haynes, remember that?

14 A Yes.

15 Q Does it say anywhere in the statement where  
16 Jennifer had that second conversation with Marvin Haynes?

17 A I don't think it did. I wasn't paying attention  
18 to that part of it. I was focusing more on what was being  
19 said as opposed to where it was being said.

20 Q Would looking at it refresh your recollection?

21 A Yes, I think it would.

22 Q Bottom of page one, does it say that where  
23 Marvin Haynes told her that he shot the old white man,  
24 where that conversation took place?

25 A At a house near the Broadway Liquor outlet in

1 north Minneapolis.

2 Q Did you understand that to be the house where  
3 Jennifer was living?

4 A Yes.

5 Q And then read silently the next two questions  
6 and answers.

7 Doesn't say anything about where the location of the  
8 second conversation, does it?

9 A No.

10 Q Then the top of page three it says, question,  
11 did he also tell you that the police were looking for him  
12 or he thought the police were looking for him? Is that  
13 right?

14 A Yes.

15 Q What was her answer?

16 A She said yes, he said the police were looking  
17 for him and he had to stay on the low.

18 Q Nothing about where that conversation took  
19 place?

20 A No.

21 Q And did she say in the statement whether or not  
22 he had braided hair or not at this time?

23 A Yes. She stated or said his hair was braided.

24 Q Thank you.

25 MR. FURNSTAHL: That's all I have.

1 THE COURT: Anything else, Mr. Benson?

2 MR. BENSON: Briefly.

3 RE CROSS-EXAMINATION

4 BY MR. BENSON:

5 Q But yesterday after court you did take her to a  
6 house, correct?

7 A Yes. Actually she pointed out two houses to me.  
8 She pointed out the house that she used to live in which  
9 was a blue house on I think it was Ferrant Place or  
10 Ferrant Avenue which is behind the Broadway Liquor Store,  
11 Penn and Broadway, and then we went down Queen Avenue and  
12 she pointed out Marvin Miller's.

13 Q Because that's the house where she had the  
14 second conversation with the person, right?

15 MR. FURNSTAHL: Objection, asked and  
16 answered.

17 THE COURT: Sustained.

18 MR. BENSON: Nothing further, Your Honor.

19 MR. FURNSTAHL: We have nothing further.

20 THE COURT: All right. You can step down,  
21 Detective.

22 MR. FURNSTAHL: Your Honor, the State  
23 rests.

24 MR. BENSON: Can we approach?

25 THE COURT: You may.

1 (Off-the-record discussion at  
2 the bench out of hearing of the jurors.)

3 MR. BENSON: Your Honor, the defense calls  
4 Marvin Haynes.

5 THE COURT: All right. Mr. Haynes, step up  
6 here to raise your right hand to be sworn.

7 Whereupon,

8 MARVIN HAYNES, JUNIOR,  
9 after having been first duly sworn, was examined  
10 and testified as follows:

11 THE CLERK: Please state your full name and  
12 spell your last for the record.

13 THE DEFENDANT: Marvin Junior Haynes,  
14 H-A-Y-N-E-S.

15 THE COURT: Okay, Mr. Benson.

16 MR. BENSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. BENSON:

19 Q Marvin, you may have to speak up a little bit,  
20 okay?

21 A Yup.

22 Q Marvin, I want to take you back to May of last  
23 year.

24 A All right.

25 Q Where were you living at that time?

1 A I was living on 34 -- 3343 Avenue North Russell.

2 Q Okay. And who were you living there with?

3 A My mom, my sister, my sister Cynthia, my sister  
4 Sharita and my sister Baby Girl.

5 Q And what's your mom's name?

6 A Sharon Shipp.

7 Q Okay. What does she do for a living?

8 A She ain't got no job.

9 Q Okay. As of last year, May 2004, where were you  
10 going to school?

11 A IDT.

12 Q And where is IDT?

13 A I think it's in St. Paul.

14 Q Why do you say you think it's in St. Paul?

15 A Because they drive us around. They just pick me  
16 up and then they go to a group of other stops so I don't  
17 really know where it's at.

18 Q What kind of school is IDT?

19 A It's like a little program if you are not doing  
20 too well in public schools, and I choose to go there,  
21 though.

22 Q Okay. So last year what grade were you in?

23 A Tenth.

24 Q Tenth grade?

25 A Yup.

1           Q     All right. Marvin, you know, obviously you know  
2 about the incident that we're here for, the flower shop  
3 incident?

4           A     Yup.

5           Q     Did you shoot anybody on May 16th?

6           A     I never shot anybody.

7           Q     Did you try and rob that store?

8           A     Nope.

9           Q     Were you on that block on May 16th?

10          A     I don't even be around there, that neighborhood.

11          Q     Okay. I want to take you back to the day when  
12 the police, the day when the police came and got you, all  
13 right? Do you recall that day?

14          A     Yeah.

15          Q     All right. What happened -- I mean, how was it  
16 that the police arrested you that day?

17          A     Because I missed court like on, I think it was  
18 like a Wednesday or a Thursday because we didn't have, my  
19 mom didn't have a ride then to take me to court so she was  
20 going to reschedule it so I had a warrant and they came  
21 and picked me up, juvenile warrant.

22          Q     Okay. And then once they picked you up where  
23 did they take you?

24          A     I think they took me downtown to, to the police  
25 station, I think.

1           Q     Okay. And when they took you down to the police  
2 station, what happened?

3           A     They was, at first they was just looking at me  
4 and stuff and saying -- I asked them what I was here for  
5 and then they took my money, then I'm like -- they took me  
6 somewhere in a room -- first they took me back to JDC,  
7 they took my fingerprints and took a picture of me and  
8 stuff and took me back to JDC.

9           Q     And then after they took you back to JDC what  
10 happened?

11          A     They came and got me like a couple days later.  
12 First they told me I was going home and then I didn't  
13 never go home and they took me back to JDC and came and  
14 got me like a couple days later.

15          Q     Okay. And after they came and got you from JDC,  
16 where did they take you?

17          A     They take me back to the place they already took  
18 me at the first time and they put me in a room and was  
19 talking to me.

20          Q     All right. And so tell us, who were you in the  
21 room with?

22          A     I was in the room with the police that was up  
23 here and some other dude, some other police.

24          Q     That would have been Detective Mattson?

25          A     Yeah, I believe so.

1 Q The gentleman that just testified?

2 A Yup.

3 Q And it would have been his partner or another  
4 officer?

5 A Yeah.

6 Q Okay. And what were those officers asking you  
7 about?

8 A First they was just asking me about some  
9 questions about me and my girlfriend, then they asked me  
10 why do I got a warrant and stuff like that.

11 Q Okay. And eventually did they ask you about  
12 whether you had any involvement in this flower shop  
13 incident?

14 A Yeah. They asked me do I have any involvement  
15 with this. First they asked me do I know where it's at  
16 and I told them I didn't know where it's at, I can't  
17 remember, I don't remember no place like that.

18 Q Okay. And did you tell them -- you told them  
19 that you had no involvement whatsoever?

20 A Yeah, I told them that.

21 Q Okay. I want to take you back to a few days  
22 before which would have been May 16th, that Sunday of that  
23 week. Can you focus on that period?

24 A Yeah.

25 Q All right. And then the night before, okay?



1           A     All right.

2           Q     Where were you the night before, which would  
3 have been that Saturday night, what were you doing?

4           A     I was just, I was kicking it with my little  
5 cousin and the rest of my cousins and we was at my  
6 girlfriend house.

7           Q     First of all, who are your cousins?

8           A     Isiah and Spud and his cousin Dee and two of his  
9 cousins. I really don't know them.

10          Q     And your girlfriend is who?

11          A     Her name was Muffy.

12          Q     And you said you were kicking it at Muffy's  
13 house?

14          A     Yeah.

15          Q     And that was a Saturday night?

16          A     Yup.

17          Q     Okay. How long -- what were you guys doing when  
18 you were at Muffy's house?

19          A     I don't know what they was doing. I was in a  
20 room with her and they were just in the front room  
21 watching TV and just kicking it with the rest of the girls  
22 and stuff.

23          Q     Did anybody talk about committing a robbery?

24          A     Nope. I didn't have nothing to do with no  
25 robbery.

1           Q     Then how long were you at Muffy's house that  
2     night?

3           A     Until about like two or three in the morning.

4           Q     Okay. And then what did you do?

5           A     I just left because my other girlfriend was at  
6     home in my mom house so I think I went to the crib --  
7     first I went to drop Poopey off and stuff and then I went  
8     home somewhere.

9           Q     Okay. All right. And after you dropped Poopey  
10    off and you went home, about what time did you get home?

11          A     I got home like at, like at two or three.

12          Q     And what happened after you got home, what did  
13    you do?

14          A     I went in, and I went in my mom room and turned  
15    off the air conditioner because it was cold in the house  
16    and I just fixed me something to eat and I turned the TV  
17    on and laid down and watched TV.

18          Q     And do you recall how long you watched TV?

19          A     No. I think I dozed off like after I ate for  
20    like, 20 minutes later I dozed off, I think. I don't  
21    really recall.

22          Q     Okay. And when did you wake up?

23          A     I woke up at like, like three in the afternoon,  
24    or four or something like that. Late in the afternoon.

25          Q     Okay. And that would have been late in the

1 afternoon on Sunday the 16th?

2 A Yup.

3 Q Okay. So you were sleeping all that time?

4 A Yeah, I slept all that morning.

5 Q Okay. But when you woke up at three o'clock, or  
6 three or four o'clock, what did you do at that point?

7 A My mom was kind of tripping because she told me  
8 don't be on her couch.

9 MR. FURNSTAHL: Objection. Hearsay.

10 THE COURT: It is hearsay. Is it offered  
11 under an exception, Counsel?

12 MR. BENSON: No, it isn't, Your Honor.

13 THE COURT: All right. Sustained.

14 BY MR. BENSON:

15 Q Okay. All right. So just, when I ask you these  
16 questions don't tell me what like somebody else said, just  
17 tell me what you did or what you observed, okay?

18 All right. So you indicated that your mom was  
19 tripping and you -- what happened after that?

20 A I brushed my teeth and got dressed and I left.  
21 I left, I got dressed, brushed my teeth and left.

22 Q Where did you go?

23 A I went on 27th and Penn.

24 Q Why did you go there?

25 A That's where I hang out at. That's were my

1 homies be at.

2 Q What did you do on -- or at 27th and Penn?

3 A I was just out there with the girls. This girl  
4 named Dede. I was trying to get my hair braided.

5 Q Why were you trying to get your hair braided?

6 A Because my girlfriend Diana she wouldn't braid  
7 it because we broke up like two weeks later -- I mean two  
8 weeks before that so she wouldn't braid it. I was just  
9 trying to get it braided.

10 Q Okay. So before that time, describe your hair  
11 for the jury?

12 A It was in an afro. I had it picked out.

13 MR. BENSON: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. BENSON:

16 Q Marvin, showing you Exhibit 96, recognize that  
17 photo?

18 A Yup.

19 Q Now, this is in evidence; it's your booking  
20 photo, right?

21 A Yeah.

22 Q Okay. Is this the length of your hair on and  
23 around May 16th?

24 A Yes. That's how long it was.

25 Q Okay.

1 MR. BENSON: May I show the jury, Your  
2 Honor?

3 THE COURT: You may.

4 MR. FURNSTAHL: Counsel, what exhibit was  
5 that?

6 MR. BENSON: I'm sorry. Exhibit 96.

7 MR. FURNSTAHL: Thank you.

8 (Displays Exhibit 96 to jury.)

9 BY MR. BENSON:

10 Q All right. So going back a little bit, your  
11 hair is in an afro, you went to get your hair braided.  
12 Once again where did you go to get your hair braided?

13 A I went on 26th and Penn and tried to get my hair  
14 braided.

15 Q Okay.

16 A By this girl named Dede.

17 Q Okay. And then after you saw Dede, where did  
18 you go or what did you do?

19 A I went on 26th and Oliver where my other little  
20 hangout spot at, and I was just chilling out there with my  
21 homies and stuff.

22 Q Okay. And what did you do after you left that  
23 area on 26th and Oliver?

24 A I think I went to the crib, or I don't know  
25 where I went. I think I went home that night, later on

1       that day or I think I went over -- I don't know. I think  
2       I went home. That was a long time ago. I can't really  
3       remember.

4           Q     Okay. Okay. And after -- I suppose at that  
5       point after you got home about -- well, how many days  
6       passed before the police came?

7           A     I don't know. I think they came like four or  
8       five days because I missed a court date so that's why I  
9       was expecting them to come get me so I knew I was going to  
10      go to jail because I had a warrant out for my arrest.

11          Q     Okay. Did you, you obviously saw Jennifer  
12      Coleman when she came in here and testified?

13          A     Yup.

14          Q     And did you ever tell Jennifer Coleman that you  
15      shot an old white guy?

16          A     I ain't never told her nothing like that. I  
17      never even hung out with her the whole day.

18          Q     Okay. Did you ever tell her that you were on  
19      the low or on the down low?

20          A     I never told her nothing like that.

21          Q     Okay. All right. So you weren't bragging about  
22      committing this charge, or this offense?

23          A     I never told anybody I killed anybody.

24          Q     Okay. Once again, Marvin, did you shoot Harry  
25      Sherer?

1 A I never killed nobody.

2 Q Were you in that flower shop on May 16th?

3 A No.

4 MR. BENSON: Nothing further, Your Honor.

5 THE COURT: Cross-examination, Mr.

6 Furnstahl.

7 MR. FURNSTAHL: Yes, Your Honor. Thank  
8 you.

9 CROSS-EXAMINATION

10 BY MR. FURNSTAHL:

11 Q You said that you talked to the police, right?

12 A Yup.

13 Q And I'm assuming you are representing to this  
14 jury that when you talked to the police that you told them  
15 the truth?

16 A I told them nothing but the truth.

17 Q Is your answer to my question "yes?"

18 A Yeah.

19 Q But you have, you have lied to the police,  
20 haven't you?

21 A Yup.

22 Q On June 10, 2001, you lied to the police?

23 A I don't remember that day. It probably was a  
24 long time ago but I believe I did.

25 Q You gave a false name and date of birth, right?

1 A Yeah.

2 Q On August 21, 2002, you lied to the police?

3 A I don't remember that one.

4 Q But you don't contest that you lied to the  
5 police on that day?

6 A What that mean?

7 Q You don't deny that you lied to the police that  
8 day --

9 A I don't deny it.

10 Q Excuse me, I have to finish the question before  
11 you can answer.

12 You don't deny that you lied to the police that day,  
13 you just don't remember?

14 MR. BENSON: Objection. Vague, given he  
15 says he doesn't remember.

16 THE COURT: Overruled. He can answer the  
17 question.

18 BY MR. FURNSTAHL:

19 Q Do you remember my question?

20 A I don't --

21 Q Do you want me to repeat it?

22 A Yeah. Repeat that.

23 Q You don't deny lying to the police on August  
24 2002, you just don't remember if that was the date?

25 A Yeah. I don't deny it, but.



1 Q Is that correct?

2 A Yeah, that's correct.

3 Q Are there other days that you have lied to the  
4 police that you don't remember?

5 A I don't remember.

6 Q So there could be other times when you lied to  
7 the police and you don't remember.

8 A Only about little stuff, like.

9 Q Well, my question is could there be other  
10 days -- there could be other days that you've lied to the  
11 police and you just don't remember, is that right?

12 A That could be.

13 Q And you might think it was little stuff, but  
14 obviously the police wouldn't necessarily think that,  
15 right?

16 A Yeah.

17 Q So as far as you're concerned it's little stuff  
18 but as far as the police are concerned it might be big  
19 stuff, right?

20 MR. BENSON: Objection. Asked and  
21 answered.

22 THE DEFENDANT: Yup.

23 THE COURT: If your attorney makes an  
24 objection you need to wait until I rule on it then  
25 I'll tell you whether to answer it or not.

1 BY MR. FURNSTAHL:

2 Q Now, you say that you don't know where the  
3 flower shop is?

4 A I didn't know where it was at. I know where  
5 it's at now.

6 Q Excuse me, excuse me, sir. Your testimony to  
7 this jury is that you are not familiar with the flower  
8 shop, is that right?

9 A When they first came at me I wasn't --

10 Q My question is, are you familiar with the flower  
11 shop, yes or no?

12 A I'm familiar with it now.

13 Q Were you familiar with it before May 16, 2004?

14 A No, I wasn't.

15 Q You lived in north Minneapolis for how long?  
16 All your life, haven't you?

17 A My whole life.

18 Q And you lived about what, 12 blocks from there?

19 A No.

20 Q At some point in time didn't you live about  
21 12 blocks from there?

22 A Huh-uh. I live far away from there.

23 Q Excuse me, sir. On January 6, 2003, didn't you  
24 live at 3114 Emerson Avenue North?

25 A Huh? 3114?

1 Q Did you understand my question or not?

2 A Can you repeat that for me?

3 Q On January 6, 2003, isn't it a fact that you  
4 lived at 3114 Emerson Avenue North?

5 A No, I never lived over there.

6 Q Do you deny that?

7 A I deny that.

8 Q So if you represented to the police that you  
9 lived at that residence, that would not be true?

10 A That wouldn't be true. I never lived on  
11 Emerson.

12 MR. FURNSTAHL: May I have a moment, Judge?

13 THE COURT: You may.

14 BY MR. FURNSTAHL:

15 Q Do you remember talking to the police on  
16 January 6, 2003?

17 A I don't remember that.

18 Q Do you remember talking to them on January 6,  
19 2003 at 1122 Lowry Avenue North?

20 MR. BENSON: Objection, Your Honor. Asked  
21 and answered.

22 THE COURT: Well, he's got more specifics  
23 in this question so I'll allow him to answer it.

24 BY MR. FURNSTAHL:

25 Q Do you remember that?

1 A No, I don't remember that. What time it was?

2 Q Do you remember talking to the police on January  
3 6, 2003 at 1122 Lowry Avenue North at about ten p.m.?

4 A I don't remember that.

5 Q Do you remember being at that place?

6 A No.

7 Q Well, 1122 Lowry Avenue North would be five  
8 blocks west and one block south of the flower shop, would  
9 it not?

10 A If that's where they say it at, yeah.

11 Q Isn't that correct? You are familiar with that  
12 area, right?

13 A Yeah, I'm familiar with the whole area around  
14 there.

15 Q Are you familiar with Lyndale?

16 A No, I'm not familiar around there.

17 Q You know where Lyndale Avenue is, don't you?

18 A Yeah, I know where that's at.

19 Q Lyndale Avenue is a busy avenue, isn't it?

20 A Yeah, it's busy around there.

21 Q And are you testifying to this jury that you've  
22 never been on Lyndale Avenue?

23 A I been, yeah, I been over there before. I ain't  
24 going to say I never because I, that's my -- I lived  
25 around there so long I'm not going to say never.

1 Q You started to say that was your -- what did you  
2 want? What did you want to say, that was your hood?

3 A No. The whole north side, that's where my  
4 whereabouts.

5 Q So you are familiar with the whole north side?

6 A Yeah.

7 Q And the flower shop is at 33 -- is at 33rd and  
8 Lyndale. You are aware of that, right?

9 A Yup.

10 Q And it's your testimony to this jury that before  
11 May 16, 2004, you were not aware of the flower shop at  
12 33rd and Lyndale?

13 A I was not aware of no flower shop.

14 Q My question is were you aware of the flower shop  
15 at 33rd and Lyndale.

16 A I understand your question. I said I wasn't  
17 familiar with it at that time. I wasn't familiar with it.

18 Q Had you traveled up and down Lyndale very often?

19 A I cherry up -- I traveled up Lowry but not  
20 Lyndale.

21 Q Lowry -- Lyndale intersects Lowry, correct?

22 A Yeah, I know.

23 Q Lyndale -- and in fact one of these times when  
24 you lied to the police, the August 21, 2002 time, that was  
25 at Second Street Northeast and Lowry, correct?

1 A If that's what it say, I think.

2 Q Would looking at it refresh your recollection?

3 A Yup.

4 MR. FURNSTAHL: May I approach?

5 THE COURT: You may.

6 BY MR. FURNSTAHL:

7 Q This is Minneapolis police report 02-236049,  
8 correct?

9 A Yup.

10 Q It references Marvin Haynes, Junior, correct?

11 A Um-hum.

12 Q Regarding giving some false information to the  
13 police, lying about giving your name and your date of  
14 birth. You gave your brother's name and date of birth,  
15 right?

16 A Yup.

17 Q And that was at Second Street Northeast and  
18 Lowry Avenue Northeast, right?

19 A Yup.

20 Q That would be five blocks east and one block  
21 south of the flower shop, right?

22 A Yup.

23 MR. FURNSTAHL: Do we have any more exhibit  
24 stickers? I'm out.

25 THE COURT: Yeah, we do.

1 BY MR. FURNSTAHL:

2 Q Mr. Haynes, I'm marking this map as Exhibit 74.  
3 Do you recognize this as the area -- as an area in north  
4 Minneapolis?

5 A Yeah, I recognize that.

6 MR. FURNSTAHL: We would offer Exhibit 74.

7 THE COURT: Any objection, Mr. Benson?

8 MR. BENSON: No objection, Your Honor.

9 THE COURT: Exhibit 74 will be received.

10 BY MR. FURNSTAHL:

11 Q Can you see this all right, Mr. Haynes?

12 A I can't see the letters. My eyes.

13 Q I guess maybe I'll have to put it back over  
14 there, then. This is Exhibit 74, correct?

15 A Yes.

16 Q Here's 33rd, right?

17 A Yeah.

18 Q Here's Lyndale Avenue, correct?

19 A Yup.

20 Q This is Lowry, correct?

21 A Yeah.

22 Q Lyndale is a busy street, right?

23 A Um-hum.

24 Q Is that a yes?

25 A Yeah.

1 Q Is Fremont a busy street?

2 A Fremont? Um, yeah, I think so.

3 Q Penn Avenue is a busy street?

4 A Yeah, Penn.

5 Q It's indicated here where the flower shop is,  
6 right?

7 A Yup.

8 Q Now, on this incident on August 21, 2002 at  
9 Second Street Northeast and Lowry, that would be five  
10 blocks east and one block south, so about right here? Is  
11 that incident, where this incident happened where you lied  
12 to the cops?

13 A I believe, but I don't remember that right  
14 there.

15 Q Isn't that what it says right there?

16 A Yeah, it says.

17 Q Doesn't that refresh your recollection?

18 A It refreshes but I still don't remember being  
19 caught by no police over there.

20 Q Well, I'm asking you is that the location, about  
21 five blocks east and one block south is over here, right  
22 (points)?

23 A Yup.

24 Q And it's your testimony that you never lived at  
25 that other address I was describing on Emerson?



1 A I never lived on Emerson.

2 Q Would looking at this report refresh your  
3 recollection about that?

4 A Yeah.

5 MR. FURNSTAHL: May I approach?

6 THE COURT: You may.

7 BY MR. FURNSTAHL:

8 Q This is Minneapolis police report 03-005503,  
9 correct?

10 A Yup.

11 MR. BENSON: Your Honor, objection to  
12 counsel reading the document. If Mr. Haynes could  
13 just read it to refresh his recollection.

14 THE COURT: He was just asking him to  
15 identify it but let Mr. Haynes read it.

16 THE DEFENDANT: It say 3114 Emerson Avenue  
17 North, Minneapolis, Minnesota.

18 BY MR. FURNSTAHL:

19 Q Little bit louder so the jury can hear?

20 A It say 3114 Emerson Avenue North, Minneapolis,  
21 Minnesota.

22 Q For your home address, right?

23 A I don't know that.

24 Q That's what it says, right?

25 A Yeah, it say that, but I never lived there.

1 Q That would be five blocks west and two blocks  
2 south, so about right here (indicates)?

3 A Yeah.

4 Q And that was regarding an incident that took  
5 place at 1122 Lowry Avenue North, right? That's what it  
6 says?

7 A Yeah, that's what it says.

8 Q Again five blocks west and one block south of  
9 the flower shop?

10 A Yeah.

11 Q Right here (points)?

12 A Yeah.

13 Q So -- and it's your testimony that you don't  
14 know where the flower -- you didn't know where the flower  
15 shop was before this incident?

16 A I didn't know where it was. I didn't even  
17 know they had a flower shop over north.

18 Q I'm just going to mark these. This is where I'm  
19 marking where the first incident where you lied to the  
20 police, right?

21 A Yup.

22 Q And this is where in that other report you told  
23 them that that was your home address, right?

24 MR. BENSON: Objection. Facts not in  
25 evidence.

1 BY MR. FURNSTAHL:

2 Q Listed as your home address?

3 MR. BENSON: Objection, Your Honor..

4 THE COURT: What is the objection?

5 MR. BENSON: Facts not in evidence as far  
6 as Mr. Haynes giving the Court a different address.

7 THE COURT: I think he corrected it. The  
8 second question was that's where it's listed on the  
9 police report as your home address.

10 BY MR. FURNSTAHL:

11 Q And right here is the approximate location of  
12 where that incident took place?

13 A Yeah.

14 Q Would you say that's in close proximity to the  
15 flower shop, Mr. Haynes?

16 A Yeah.

17 Q That's part of the area that you hang out,  
18 right?

19 A No, I don't hang over there.

20 Q Well where do you hang out?

21 A 27th and Penn.

22 Q That is the only place that you hang out?

23 A Yup. 27th and Penn and 26th and Oliver.

24 Q 27th and Penn and 26th and Oliver, those are the  
25 only places that you go to?

1           A     That's the only places that everybody know me  
2     at. Know me where I be at.

3           Q     And how long have you been going to 27th and  
4     Penn and 26th and Oliver, those being the only two places  
5     that you go in north Minneapolis?

6           A     Let me think. Probably my whole life because my  
7     auntie used to live on 26th so I used to be over there a  
8     whole lot.

9           Q     So just to get this straight. It's 27th and  
10    Penn, 26th and Oliver, those are the only two places that  
11    you go and you've been going there your whole life, is  
12    that right?

13          A     That's where I hang out at.

14          Q     That's where you hang out at, right?

15          A     Yup.

16          Q     And that's why you don't have any familiarity  
17    with the location of the flower shop?

18          A     Yeah.

19          Q     Is that right?

20          A     Yup.

21          Q     Have you ever been at 30th and Gerard?

22          A     30th and Gerard? I got to see where it's at to  
23    know where it's at, 30th and Gerard. I don't recall that,  
24    30th and Gerard.

25          Q     Would looking at a report refresh your

1 recollection?

2 A Yup.

3 Q Directing your attention to exhibit -- or to  
4 case number 04-015175, would you just read that silently  
5 to yourself?

6 A I don't know where my address, where they set my  
7 address down.

8 Q Do you want to read this? See if it refreshes  
9 your recollection?

10 A Did I get pulled over?

11 Q That's what it says, right?

12 A Yeah.

13 Q You were driving a car, you were pulled over at  
14 3010 Gerard Avenue North, correct?

15 A Yeah.

16 Q That's seven blocks west and two blocks south of  
17 the flower shop, right?

18 A Yup.

19 Q Say about right there (indicates)? Is that  
20 right?

21 A Yeah.

22 Q And at the time you were coming from 30th and  
23 Fremont, right? Right? Do you want to read this?

24 A Yeah, I remember that. I remember that.

25 Q 30th and Fremont is six blocks west and two

1 blocks south, right?

2 A Yeah. I went that way because --

3 Q Excuse me. About there, right?

4 A Yeah.

5 Q So you were driving, would you say that's in  
6 close proximity to the flower shop?

7 A It look close but it's --

8 Q Thank you, sir.

9 A It's far.

10 Q Certainly not 27th and Penn, is it?

11 A Yup.

12 Q And certainly not 26th and Oliver, is it?

13 A Nope.

14 Q So it's not one of those two places that you  
15 hang out at and have been hanging out at all your life, is  
16 it?

17 A That was just I got pulled over driving.

18 Q Was it one of the places you would hang out with  
19 -- at all your life?

20 A I never hung out on that block but I got pulled  
21 over on that block.

22 Q And have you ever been at 4126 Fremont Avenue  
23 North?

24 MR. BENSON: Objection, Your Honor. 403.

25 THE DEFENDANT: 41 what?

1 THE COURT: Hold it. Wait. Wait. Counsel  
2 can approach.

3 (Off-the-record discussion at  
4 the bench out of hearing of the jury.)

5 BY MR. FURNSTAHL:

6 Q Mr. Haynes, have you ever been to 4126 Fremont  
7 Avenue North?

8 A I think that's my old -- I think that's my  
9 girlfriend old address.

10 Q Is Diana Hutton your old girlfriend, or your  
11 girlfriend?

12 A Yeah.

13 Q That's her old address?

14 A Yeah. It's 42nd. I think 41st -- I think it's  
15 42nd.

16 Q 4126 Fremont? That doesn't sound like it's  
17 right?

18 A That don't sound like it's right. I think it's  
19 42nd.

20 Q Would looking at this refresh your recollection?

21 A Yeah.

22 MR. FURNSTAHL: May I approach?

23 THE COURT: You may.

24 BY MR. FURNSTAHL:

25 Q Does that look right?

1 A 41 --

2 Q 4126 Fremont Avenue North?

3 A Yup.

4 Q That's six blocks east and eight blocks north,

5 right?

6 A Yeah.

7 Q Up over here someplace? Whereabouts is it?

8 A 41st is like right there (points).

9 Q 41st and Fremont?

10 A Right there.

11 Q Up here. So that's, that's a place that you

12 used to hang out at, right?

13 A I used to just go over there sometimes. I used

14 to go over there. Yeah, I used to go over there.

15 Q So you would hang out over there, right?

16 A It's my girlfriend house, why not?

17 Q My question is, is that one of the places you

18 used to hang out at?

19 A I wouldn't call it hanging out.

20 Q You never hung out over there?

21 A I used to spend the night, not hang out.

22 Q Pardon me?

23 A I used to just spend the night at my

24 girlfriend's.

25 Q I didn't hear the first part.



1 A I spent the night.

2 Q So you would spend nights there but you wouldn't  
3 hang out?

4 A Yeah, I wouldn't hang -- I don't know what you  
5 would call it, but.

6 Q That's an area that you are familiar with,  
7 right?

8 A I guess.

9 Q Now, you testified that you were going to IDT at  
10 the time?

11 A Yup.

12 Q You chose to go to that school, is that right?

13 A Yeah.

14 Q Well, were you asked to leave the other high  
15 school or what?

16 A Because they weren't teaching me nothing there  
17 so I figured they might teach me something more up in  
18 there.

19 Q Well, when you talked to the police after this  
20 incident, didn't you tell them that you got kicked out of  
21 high school?

22 A I got kicked out of I think, I believe Franklin  
23 there.

24 Q My question is when you talked to the police  
25 after this incident, the conversation that you had with

1 Sergeant Mattson and Sergeant Keefe, didn't you in fact  
2 tell them that you got kicked out of school?

3 A You can't get kicked out of there, I don't  
4 believe, but.

5 Q Did you tell them that?

6 A I think -- yeah, if it say. Can I look at it,  
7 the report?

8 Q Well, did you remember telling them that?

9 A I don't remember telling them I got kicked out  
10 of high school or nothing like that.

11 Q You are aware there's a transcript of that  
12 conversation?

13 A Yeah.

14 Q Have you seen that transcript?

15 A No. Can I see it?

16 Q Have you seen it?

17 A Have I seen what?

18 Q The transcript of your conversation with the  
19 police?

20 A Oh yeah, I seen that.

21 Q And it says in there that you told them that you  
22 got kicked out of the high school, right?

23 A If it say that, yeah.

24 Q So were you lying when you -- were you lying  
25 about that?

1           A     No, I wasn't lying. If I said it I think I did  
2 got kicked out. I ain't been in school in a little while.

3           Q     Well, you testified that, about the day of your  
4 arrest, remember that? Remember your attorney asking  
5 those questions?

6           A     Yeah.

7           Q     You were arrested on May 19th at 12:40 p.m.,  
8 right?

9           A     Yup.

10          Q     They came and picked you up, right?

11          A     Yeah. I was asleep. They came and picked me  
12 up.

13          Q     You were expecting them?

14          A     No, I wasn't expecting them but I was trying to  
15 get in court.

16          Q     Didn't you testify on direct examination that  
17 you expected the cops to, quote, come get me?

18          A     I expected them to come get me because I had a  
19 warrant for my arrest because I missed court.

20          Q     Because you missed court?

21          A     Yeah.

22          Q     So you were expecting them?

23          A     I wasn't expecting them to just come to my house  
24 like that but I was expecting if I be in the street they  
25 were going to get me regardless of.

1           Q     Then why did you testify on direct examination  
2     that you expected them to, quote, come get me?

3           A     Well, I should have, um, said I should have --

4           Q     My question is, why did you testify to that on  
5     direct examination if you didn't really expect them to  
6     come get you?

7           A     Really what I was trying to say is I was  
8     expecting to turn myself in and get that over with.

9           Q     Do you understand my question?

10          A     No, I don't understand your question.

11          Q     What I'm asking you, now you are telling us that  
12     you did not expect the police to come and get you because  
13     you had a warrant out for missing court the day before,  
14     that's what you testified in response to my questions,  
15     right?

16          A     Yeah, I guess.

17          Q     But on direct examination in response to your  
18     attorney's questions, you testified that you did expect  
19     the cops to come get you as a result of a warrant being  
20     out for missing court the day before, right?

21          A     You talking fast and stuff.

22          Q     Right?

23          A     Yeah.

24          Q     I'll slow down.

25          A     All right.

1 Q When I was asking you questions, you said you  
2 were not expecting the cops to come and get you, right?

3 A Right.

4 Q When your attorney was asking you questions, you  
5 said that you did expect the cops to come get you, right?

6 A Yeah.

7 Q So are you changing your story on that point?

8 A No, I ain't change my story. I'm just saying  
9 that --

10 Q Well, Mr. Haynes, isn't that two different  
11 stories? One minute you say you expect them to come get  
12 you, the next minute you say that you don't expect them to  
13 come get you. Isn't that a change in that story?

14 A Well, I'm just trying to say if I'm having a  
15 warrant out for my arrest they going to come get me  
16 regardless because I got a warrant for my arrest. It  
17 happened before, I missed court they came and got me  
18 before so if I'm asleep I'm probably expecting them to  
19 come get me because --

20 Q That's not my question.

21 A I'm trying to answer it.

22 Q My question is your story about whether or not  
23 you expected them to come get you has changed from when  
24 your attorney asked you questions until when I asked you  
25 questions, right?

1 MR. BENSON: Objection, Your Honor.  
2 Argumentative.

3 THE COURT: Sustained.

4 BY MR. FURNSTAHL:

5 Q You are not able to keep that part of your story  
6 straight, are you?

7 A No, if you think that because I know what's  
8 true.

9 Q That's kind of important because you testified  
10 on direct examination that when you were brought down to  
11 JDC --

12 A Yeah.

13 Q -- at some point in time you asked people why  
14 you were being arrested.

15 A Yeah. Really I ain't --

16 Q You were asked but you knew what they were  
17 arresting you for, right?

18 A I knew they was going to arrest me but this time  
19 seem different because two men, you know what I'm saying,  
20 two men came and got me which wasn't a regular police  
21 officer I always get arrested by. It was different people  
22 so I was thinking what these people come get me for.

23 Q And so you asked Sergeant Mattson and Sergeant  
24 Keefe what you were there for?

25 A After I got in the room I asked them what I was

1       there for. When they came and got me from my house it  
2       wasn't Keefe, it wasn't them. This was some other people.

3           Q       It was a patrol officer? It's your testimony  
4       that when you were in the room with Sergeant Keefe and  
5       Mattson you asked them what you were there for?

6           A       Yeah.

7           Q       Is that right?

8           A       Yeah, what I was there in the room getting  
9       questioned for, I asked them that, yeah.

10          Q       And you know that, that conversation that you  
11       had with them, that was videotaped, right?

12          A       I didn't know, even know it was videotaped.

13          Q       Well, you know that now, don't you?

14          A       Yeah, I know it now because look where I'm at.

15          Q       And you know that there's a transcript -- you  
16       know what I mean about a transcript, that they typed up  
17       the statements that you made and the questions that were  
18       asked of you? You were aware of that, right?

19          A       I didn't know they typed it up, but.

20          Q       You are aware of that now, are you not?

21          A       Yeah, I'm aware of that now.

22          Q       And it's correct that the officers were asking  
23       you questions about the flower shop and your knowledge of  
24       the flower shop, right?

25          A       Yeah.

1           Q     And they wanted to know if you were familiar  
2 with the flower shop, right?

3           A     Yup.

4           Q     And you denied knowing where the flower shop  
5 was?

6           A     I didn't know where it was. I was being honest.

7           Q     When you talked to Sergeants Keefe and Mattson  
8 you denied knowing where the flower shop was, right?

9           A     Yeah. Yup.

10          Q     And said you were aware of the flower shops on I  
11 believe Penn Avenue?

12          A     I said it looked like a flower shop. It look  
13 like something like that because it was right on the  
14 corner and they showed me a picture and I said I thought  
15 it was that because it looked like it.

16          Q     Looked like a flower shop on Penn Avenue, right?

17          A     It look like the place he showed me, like you  
18 can -- he said this is the flower shop, have you ever seen  
19 this place. I said, you ain't -- that's on 27th and Penn  
20 because it looked like --

21          Q     That's -- what I'm asking you --

22          A     -- like my block.

23          Q     You told the officer that when they showed you  
24 the photograph that, that it looked like the flower shop,  
25 the flower shop that you were familiar with on Penn



1 Avenue, right?

2 A I said it looked like the place. I didn't know  
3 nothing about no flower shop. I said it looked like the  
4 place on 27th and Penn.

5 Q Then the officers, they doubted that you were  
6 telling them the truth, right? That's pretty obvious?

7 A They didn't believe I was telling the truth.

8 Q Pardon me?

9 A They didn't believe I was telling the truth.

10 Q They doubted that you were telling them the  
11 truth, right?

12 A Yup.

13 Q So they asked why would your fingerprint be in  
14 that flower shop, right?

15 A Yeah.

16 Q And you said I don't know why my fingerprints  
17 would be in that flower shop, right?

18 A I didn't know because I ain't never been there.  
19 I wouldn't know how my fingerprints got in there.

20 Q You were -- they asked you some more questions,  
21 right?

22 A Yup.

23 Q Up until that point you didn't ask them why they  
24 were asking you questions about the flower shop, did you?  
25 My question is this: Up to that point did you ask them

1       why they were asking you questions about the flower shop,  
2       yes or no?

3           A     Well, can I ask you something?

4           Q     No. You have to answer the question.

5           A     Could you respond that for me then?

6           Q     Up to that point in your conversation with  
7       Sergeants Keefe and Mattson you never asked them why they  
8       were asking you questions about the flower shop, right?

9           A     No, I never asked.

10          Q     You didn't have -- I mean, you were curious  
11       about why these officers were asking you about a flower  
12       shop that you had no familiarity with, right? Right?

13          A     Right.

14          Q     And the warrant was for just for missing court,  
15       right?

16          A     Yeah.

17          Q     Curfew violation or something like that?

18          A     Yup. Curfew violation, I believe.

19          Q     No big deal, right?

20          A     Yup.

21          Q     Flower shop's got nothing to do with your curfew  
22       violation, does it?

23          A     It don't have nothing to do with that.

24          Q     And you don't bother to ask them why were they  
25       asking you questions about a flower shop?

1 A No.

2 Q Is that right?

3 A No, I didn't ask them.

4 Q Is that right?

5 A That's right.

6 Q And as a matter of fact they point out that you  
7 never bothered to ask why they are asking these questions?

8 A Well --

9 Q Isn't that right?

10 A I think yeah, that's right.

11 Q That's right. Because you don't -- I mean, they  
12 are asking you if you are familiar with this area, they  
13 are asking you if you are familiar with the flower shop,  
14 they show you a photograph of the flower shop, they talk  
15 to you more about the flower shop, they ask you more  
16 questions, they tell you that your fingerprints are found  
17 in the flower shop and you don't bother asking what are  
18 you asking me these questions for, right?

19 A Right, but --

20 Q Thank you.

21 A They just started asking me little questions at  
22 first.

23 Q Excuse me, sir. And you know that flower shop's  
24 got nothing to do with your missing court, right?

25 A Yup.

1 Q And so when you -- but your testimony on direct  
2 examination is that at some point in time you asked what  
3 are you downtown for, right?

4 A I believe I did ask them something like that.

5 Q You were pretty certain about that on direct  
6 examination when you are attorney was asking you, right?  
7 Right?

8 A Yeah.

9 Q Did it happen or didn't it?

10 A Did I ask them that?

11 Q Yes.

12 A Yeah, I think I did ask them that.

13 Q Do you think you did or you did?

14 A I did.

15 Q When did you do that?

16 A I did that after they was asking me some  
17 questions, I said what I'm down here in this building for.

18 Q You asked Mattson and Keefe that?

19 A Yeah.

20 Q You said that was shortly after you, you were  
21 put in that room, is that what you said when you asked  
22 that question?

23 A I don't remember. I think it was like after  
24 they was asking me questions I was like what I'm here for.

25 Q It wasn't until they pointed out that you have

1 never asked what occurred at the flower shop that you  
2 finally did decide to make that, make that question,  
3 right?

4 A Yeah, because they told me if I answered  
5 questions I can go home, so.

6 Q Well, they told you that it was kind of curious  
7 that you never asked them what occurred at the flower  
8 shop, right?

9 A Is that what it say in my statement?

10 Q That's what they told you, right? Because they  
11 said that you wouldn't need to ask what happened at the  
12 flower shop if you knew what happened at the flower shop,  
13 right?

14 A I was asking questions because I didn't know  
15 what happened in the flower shop.

16 Q Would you answer my question?

17 A Can you repeat that for me then?

18 Q They said that you wouldn't need to ask what  
19 happened at the flower shop if you knew what happened at  
20 the flower shop, right?

21 A I'm trying to think about that. I wouldn't have  
22 to ask about it if I knew about it. That's what you said?

23 Q That's what I said.

24 A Can you break that down a little bit for me?  
25 Something like that?

1 Q Now, it's your testimony that you were with  
2 Poopey Saturday night?

3 A Yup.

4 Q Did you have a gun with you Saturday night?

5 A Nope.

6 Q You heard Poopey testify to that?

7 A Yeah, I did.

8 Q Depending upon which part he was testifying he  
9 mentioned that, right?

10 A Yeah.

11 Q And you heard the statement where he said that  
12 you had a gun that Saturday night?

13 A Yeah.

14 Q Is that right?

15 A Yeah.

16 Q What Poopey said would not be the truth?

17 A That wouldn't be the truth.

18 Q And you also, you said you never had any  
19 conversation with Jennifer Coleman?

20 A I never talked to her.

21 Q Do you know Jennifer Coleman?

22 A I had seen her. I used to talk to her friends  
23 but that is it.

24 Q Namely Jessica?

25 A If I seen her, I don't know her by name. I just

1 met them through Little Isiah.

2 Q Through Poopey?

3 A Yeah.

4 Q So you would talk to Jennifer's friends but you  
5 wouldn't talk to Jennifer Coleman, right?

6 A She was always running off jumping in cars with  
7 everybody, so.

8 Q My question is you would never talk to Jennifer,  
9 you would talk to her friends, right?

10 A Yeah.

11 Q But you recognized Jennifer when she came in  
12 here, right?

13 A I recognize her.

14 Q Ever have any arguments with her --

15 A Never had an argument with her. Never said hi  
16 to her.

17 Q Excuse me, sir. You have to wait until you  
18 answer my question. You never had any argument or dispute  
19 with her, right?

20 A No.

21 Q You have no reason why she would, she would be  
22 mad at you, right? No reason why she would be mad at you,  
23 right?

24 A I got a reason why she's saying that.

25 Q Well, my question is, you have a reason why she

1 is mad at you?

2 A No, she ain't got no reason to be mad at me  
3 because I never did anything to her.

4 Q And so your testimony is that you were with your  
5 cousin Poopey Saturday night, the night before?

6 A Yup.

7 Q Then you come home, right?

8 A Yeah.

9 Q About two, three o'clock in the morning?

10 A Yup.

11 Q That Sunday morning?

12 A It was Saturday at two or three in the morning.

13 Q Well, as I understand it you are out Saturday  
14 night, right?

15 A Yeah.

16 Q And you come home at two or three in the morning  
17 so that would be Sunday morning, right?

18 A Yeah, you are right.

19 Q That's Sunday, the day of the murder, right?

20 A Yeah.

21 Q There's no question about that, right?

22 A Yeah.

23 Q There is a question?

24 A No, ain't no question. My back. Ain't no  
25 question.



1 Q And your testimony is that you fixed something  
2 to eat?

3 A Yeah. I fixed something to eat. I do all the  
4 time when I go home.

5 Q Watched TV, went into your mother's room to  
6 adjust the air conditioning?

7 A Turned it off because it was cold.

8 Q Do you see your mother?

9 A I see my mom, my sisters. Everybody laying down  
10 sleeping.

11 Q Everybody was there?

12 A Everybody was there.

13 Q And you fall asleep on the couch?

14 A Yup.

15 Q In the living room?

16 A Yeah.

17 Q Where everybody can see you?

18 A Yup.

19 Q And you say that you are there until three  
20 o'clock in the morning -- or three o'clock in the  
21 afternoon?

22 A I guess, yeah.

23 Q Isn't that right?

24 A Yeah.

25 Q So that would be your mother, correct?

1 A That would be my mom.

2 Q Your sister Sharita?

3 A Yup.

4 Q And another sister?

5 A Yeah.

6 Q What is her name?

7 A Cynthia.

8 Q And who else?

9 A And Marquita.

10 Q And who is that, a sister?

11 A Yeah, that's my sister.

12 Q So four people see you sleeping on the couch at  
13 three o'clock in the afternoon?

14 A I don't know if they seen me.

15 MR. BENSON: Objection, Your Honor.

16 Foundation with regards to sleeping.

17 THE COURT: You can answer if you know.

18 THE DEFENDANT: I don't know if they seen  
19 me because --

20 BY MR. FURNSTAHL:

21 Q Well, you said that they were there, right?

22 A I believe they was there but in the morning they  
23 get up and leave.

24 Q Didn't you testify earlier just a little while  
25 ago that they were all there when you got home?

1           A     Yeah, they was all there when I got home.

2           Q     And you said that you were asleep on the couch  
3     in the living room?

4           A     Yes, sir, I was.

5           Q     And where are they sleeping?

6           A     Right around the corner in the room.

7           Q     So if they come out of the room --

8           A     They going to see me.

9           Q     Going to see you, right?

10          A     Yup.

11          Q     And you get up, you see them?

12          A     When I got up later on I seen them and then I  
13     left because she was arguing with me so I didn't want  
14     nothing to do with that. I left.

15          Q     It stands to reason that these four people saw  
16     you sleeping on the couch at the time when the murder at  
17     the flower shop took place, isn't that right?

18          A     I don't know. Yeah, they must have had to seen  
19     me or something like that, I think.

20          Q     Now, you have said you watched TV?

21          A     Yup. Yeah.

22          Q     What did you watch?

23          A     I think I watched Cartoon Network or something  
24     like that. Something. I don't really remember.

25          Q     Now, you know Anthony, right? Anthony Todd?

1 A Yeah. I met him through my cousin Isiah.

2 Q You recognized him when he came in here and  
3 testified?

4 A Yeah.

5 Q You heard him testify that he saw you at Muffy's  
6 the morning of the flower shop murder?

7 A Yeah. I heard him testify to that.

8 Q You heard Poopey testify to that as well, right?

9 A Yeah.

10 Q And you say that Muffy was one of your  
11 girlfriends?

12 A Yeah, she was my girlfriend at the time.

13 Q Where does Muffy live?

14 A She was living on 29th, I believe, and Logan, I  
15 think.

16 Q 29th and Logan?

17 A I think that, yeah.

18 Q And you knew Marvin Miller, right?

19 A Yeah.

20 Q You knew where he lived, right?

21 A I didn't know he lived at the time but I knew he  
22 lived over there by a liquor store.

23 Q Was he a friend of yours?

24 A No, he never been a friend of mine.

25 Q He wasn't one of your homies that you hung out

1 with?

2 A Nope. I didn't really like him because he tried  
3 to high lay one of my girls so, but we came to be kind of  
4 cool.

5 Q So you were friends?

6 A No, I wouldn't call it friends because I ain't  
7 got no friends.

8 Q Acquaintances?

9 A You could say that.

10 Q Um, do you know Jeremy Davenport?

11 A If I see a picture of him I probably know him.

12 Q You don't know Jeremy -- Little John?

13 A If I see a picture I probably know him. I don't  
14 know him by no name.

15 Q Did Poopey, did he know Marvin Miller?

16 A Yeah, he knew hm.

17 Q Is he friends of Marvin Miller?

18 A Yeah, he friends with him.

19 Q Was Poopey driving a brown car around this time?

20 A I don't remember. I don't remember what he was  
21 driving. He don't know how to drive.

22 Q He doesn't know how to drive?

23 A I remember he don't know how to drive.

24 Q So you don't know if he was driving a brown car  
25 that ran out of gas on Olson Memorial?

1           A     I don't know. He left me. He always leave me  
2 and jump in with somebody else, so.

3           Q     My question is, do you know if he was driving  
4 the brown car that ran out of gas on Olson Memorial?

5           A     I don't know if he was driving a brown car, no.  
6 I don't know. If I can remember --

7           Q     Well, you heard Peepee -- Poopey describe how  
8 you and Daquan were talking about hitting a lick, right?

9           A     Yeah, I heard him say that.

10          Q     What does hitting a lick mean?

11          A     That mean going to the block and getting some  
12 money.

13          Q     Going to the block and getting some money?

14          A     Yeah.

15          Q     So it does not mean robbing someone?

16          A     Nope. They got that misconfused (sic.) That  
17 don't mean nothing like that.

18          Q     Have you ever told someone that you wanted to go  
19 hit a lick?

20          A     I never told nobody that because I don't got to  
21 hit licks. I got money already.

22          Q     When you hit a lick then, you go to the block to  
23 get some money, what do you mean you go to the block to  
24 get some money?

25          A     You know what I mean.

1 Q No, I don't.

2 A I sell drugs.

3 Q I see. That's something you know about? I mean  
4 what hit a lick means then?

5 A I heard it say it like that, that's what it  
6 means. I don't really know what it means.

7 Q You really don't know what it means?

8 A I never said it to anybody.

9 Q Well, you just told this jury what it means,  
10 didn't you?

11 A I don't really know what it means. I heard  
12 that, hit a lick, but.

13 Q Well, Mr. Haynes, when you say you don't know  
14 what it means but you just explained to this jury what it  
15 means and you said other people had it confused, right?

16 A Yeah, they had it confused, but --

17 Q So obviously --

18 A Everybody tell me it's go to block and get some  
19 money. They said it's rob somebody. I don't think that  
20 it 'cause everybody else telling me it's something else.

21 Q So obviously you know what hit a lick means,  
22 right?

23 A I think I know what it means. I think I know  
24 what it means. That's what everybody tell me it means.

25 Q Now you think you know what it means?

1 A Yeah. Everybody wouldn't lie to me.

2 Q So you heard Poopey talk about you and Daquan  
3 wanting to go hit a lick, right?

4 A Yup.

5 Q And you heard Anthony Todd say the same thing,  
6 right?

7 A Yeah.

8 Q And you know Daquan, right?

9 A Yeah, I know him.

10 Q You know who we're talking about when we say  
11 Daquan?

12 A Yeah.

13 Q That's an associate of yours?

14 A He ain't no associate or nothing like that. I  
15 didn't see him. I didn't even like him because he used to  
16 go out with my girl.

17 Q He used to go out with Muffy?

18 A Yeah. And that's how I met him over there.  
19 When I first came over there he was over there with her.

20 Q Because he would go over to Muffy's?

21 A Yeah. And I used to be putting him out. I was  
22 just trying to put all of them out.

23 Q So you and Daquan would sometimes be together at  
24 Muffy's?

25 A Sometimes he would be over there with a group of



1 other little boys and I'll tell her like you ain't  
2 supposed to have all these people over here and all that  
3 stuff like that.

4 Q Well, Mr. Haynes, I'm just asking you, is it  
5 correct that there were times when you and Daquan were  
6 over at Muffy's?

7 A Yeah.

8 Q That that's all I'm asking.

9 A Yeah.

10 Q All right. And do you deny that you were acting  
11 like you had a gun when you were over at Muffy's that  
12 morning of the murder?

13 A I did not.

14 MR. BENSON: Objection. Counsel is  
15 assuming -- or stating facts that aren't on this  
16 record.

17 THE COURT: Sustained.

18 BY MR. FURNSTAHL:

19 Q Well, you deny being over at Muffy's that  
20 morning at all, is that right?

21 A Yeah, I deny being over there that morning.

22 Q Now, you've had a chance to look at all the  
23 police reports in this case, haven't you?

24 A Yeah, but I don't look at them. I ain't never  
25 looked at them. My lawyer went through them.

1 Q My question is this: You've had a chance to  
2 look at them, haven't you?

3 A Yeah.

4 Q You even had a chance to look at the statements  
5 of the witnesses, right?

6 A Nope. I didn't have a --

7 Q You didn't look at the statements of the  
8 witnesses?

9 A I had them read to me because I'm -- I could  
10 read but I can't read, announce big words and stuff like  
11 that, but I had them read to me.

12 Q Well, there are statements from some of these  
13 people that you know, right?

14 A Yeah.

15 Q Right?

16 A Yup.

17 Q Like for example Poopey, right?

18 A Yeah.

19 MR. BENSON: Objection.

20 THE COURT: What's the objection?

21 MR. BENSON: I'll wait, Your Honor.

22 THE COURT: All right.

23 BY MR. FURNSTAHL:

24 Q Like for example Anthony Todd?

25 A Yeah.

1 Q Like for example Jennifer Coleman?

2 A Yeah.

3 Q So you had an idea what they were going to  
4 testify to before they came in, right?

5 A I thought they was going to get on the stand and  
6 tell the truth.

7 Q Well, my question is, you had an idea what they  
8 were going to testify to before they came up and took the  
9 stand, right?

10 A Yeah.

11 Q So nothing they said really surprised you?

12 A Yeah, that's -- some of that stuff surprised me.  
13 All that stuff surprised me, what they were saying.

14 Q Well, it was already in the statements that you  
15 read, right? Or were read to you, right?

16 A Yeah.

17 Q So in that respect it wasn't surprising?

18 A It was surprising that my people to get up there  
19 and lie on me, that I ain't, you know what I'm saying,  
20 they know the truth, that was surprising to me. That was  
21 surprising.

22 Q You are calling all these people liars, right?

23 A Yeah. I'm calling them liars. You heard my  
24 cousin get up here and tell the truth and then you made  
25 him go back there, whatever you did, but he know the

1 truth.

2 Q Um-hum.

3 A He know the truth.

4 Q And you are saying that Anthony Todd and  
5 Jennifer would know the truth?

6 A Yeah. They know the truth and she got me  
7 confused with the other Marvin.

8 Q Excuse me. And you are saying that these three  
9 people are lying about you but you are telling the truth.

10 A Yeah, I'm telling the truth, and that's the god  
11 honest truth.

12 MR. FURNSTAHL: If I can have a moment,  
13 Judge?

14 THE COURT: You may.

15 MR. FURNSTAHL: I have nothing further.

16 THE COURT: Redirect, Mr. Benson?

17 MR. BENSON: Briefly.

18 REDIRECT EXAMINATION

19 BY MR. BENSON:

20 Q Marvin, turning your attention to May 16, 2004,  
21 were you five-foot-ten inches tall?

22 A Nope.

23 Q Were you 180 pounds?

24 A No.

25 Q Did you have short hair?

1 A Nope. I had my hair in an afro.

2 Q And of course you are not in your 20s, right?

3 A I'm not in my 20s.

4 MR. BENSON: Nothing further, Your Honor.

5 RE CROSS-EXAMINATION

6 BY MR. FURNSTAHL:

7 Q Did you tell the officers that your hair was  
8 only half out?

9 A Yeah, because --

10 Q So it wasn't all out in an afro like you  
11 explained before, it was only half out, right?

12 A Yeah. I believe I got it braided like --

13 Q So when you testified on direct examination that  
14 you had an all picked-out afro, that isn't the truth, it  
15 was only half out, right?

16 A That weekend it was all out in an afro because I  
17 had a hat on.

18 Q Thank you, sir.

19 MR. FURNSTAHL: That's all I have, Your  
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. BENSON:

23 Q Marvin, I'll give you a chance to actually  
24 testify. During that weekend you had an afro, correct?

25 A Yup.

1 Q And why was it, at the time that you were  
2 arrested, why was your hair half out?

3 A Because my girl Diane she burnt like a little  
4 side of my hair right here so I had to, Dede told me to  
5 keep it up on half side braided so it can grow back  
6 because it was only like that much and all my other rest  
7 of my hair was out long, and it was that little, real  
8 little on the side.

9 Q Okay. But on May 16th you had the afro, right?

10 A Yeah. On May 16th I had a afro.

11 Q Okay. And when you were arrested, as you saw in  
12 the booking photo, you had the afro?

13 A Yeah, I had a afro.

14 Q Okay. Thank you.

15 MR. BENSON: Nothing further, Your Honor.

16 RE CROSS-EXAMINATION

17 BY MR. FURNSTAHL:

18 Q Well, just a few moments ago you indicated that  
19 you told the officers when you talked to them, Sergeants  
20 Keefe and Mattson, that on that Sunday you only had half  
21 an afro, you only had it half picked out, isn't that  
22 right?

23 A I don't remember that. I remember saying -- I  
24 remember having my hair in an afro because I remember I  
25 was like at a party and stuff I had a hat on and I had my

1 afro out, so I remember only having an afro.

2 MR. FURNSTAHL: I have nothing further.

3 THE COURT: Anything else, Mr. Benson?

4 MR. BENSON: No, Your Honor.

5 THE COURT: You can step down.

6 (Witness excused.)

7 MR. BENSON: If I can check for my next  
8 witness, Your Honor?

9 THE COURT: Go ahead.

10 MR. BENSON: Your Honor, my next witness is  
11 Officer Rollins. Can I just have a moment? She  
12 didn't bring a copy of her report.

13 THE COURT: All right. Go ahead.

14 MR. BENSON: Your Honor, the defense calls  
15 Officer Judy Rollins.

16 THE COURT: Officer, would you step up in  
17 front here and raise your right hand to be sworn?

18 Whereupon,

19 JUDITH MARIE ROLLINS,  
20 after having been first duly sworn, was examined  
21 and testified as follows:

22 THE CLERK: Please state your full name and  
23 spell your last name for the record.

24 THE WITNESS: Judith Marie Rollins,  
25 R-O-L-L-I-N-S.

1 THE COURT: Okay, Mr. Benson.

2 MR. BENSON: Thank you.

3 DIRECT EXAMINATION

4 BY MR. BENSON:

5 Q Officer Rollins, where are you presently  
6 employed?

7 A Minneapolis police department, fourth precinct.

8 Q And how long have you been a police officer?

9 A 17 and a half years.

10 Q Okay. And during your time as a police officer,  
11 you've responded to a number of calls?

12 A Yes.

13 Q Okay. And you've dealt with a number of people  
14 who have been victims of a crime?

15 A Yes.

16 Q And is it accurate that when you talk to those  
17 individuals, when you respond to a scene and talk to those  
18 individuals, there are times when you try and calm those  
19 individuals down?

20 A Yes.

21 Q Is that for the purpose of, you know, trying to  
22 get information from them?

23 A Yes, that would be.

24 MR. FURNSTAHL: Objection. It's leading.

25 THE COURT: It was leading but I'll allow



1           it to stand.

2                       MR. BENSON: Okay.

3 BY MR. BENSON:

4           Q     And is it your practice to prepare police  
5 reports regarding your contacts with individuals?

6           A     Yes.

7           Q     And why do you prepare those police reports?

8           A     I suppose for future prosecution and evidence.

9           Q     Okay. So that you are able to recall something  
10 that happened months ago; you are able to recall it by  
11 looking at your report?

12                       MR. FURNSTAHL: Objection. Leading.

13                       THE COURT: Sustained.

14 BY MR. BENSON:

15           Q     Let me ask you, turning your attention to May  
16 16, 2004, did you have occasion to respond to an incident  
17 that occurred at Jerry's Flower Shop in north Minneapolis?

18           A     Yes, I did.

19           Q     And you prepared a report with respect to that?

20           A     Yes.

21           Q     And I provided you a copy of that report?

22           A     Yes.

23           Q     Okay. And is it accurate on May 16, 2004, did  
24 you come in contact with a woman who was a victim of a  
25 robbery attempt?

1 A Yes.

2 Q Okay. And do you recall what that woman's name  
3 was?

4 A If I look at my report I can.

5 Q Okay.

6 A Cynthia McDermid.

7 Q And when you saw Ms. McDermid, she was actually  
8 -- you were the first officer on the scene, right?

9 A Yes.

10 Q Okay. Was anyone else with you? Did you have a  
11 partner?

12 A My partner, Officer Smelter.

13 THE COURT: I'm sorry, I couldn't hear what  
14 the officer's name was.

15 THE WITNESS: Smelter.

16 THE COURT: Smelter.

17 BY MR. BENSON:

18 Q And what did you do when you arrived on the  
19 scene?

20 A We were met by Ms. McDermid and she was  
21 extremely shaken, hysterical, crying, and saying that her  
22 brother may have been shot inside the store.

23 Q Okay. And did you make attempts to calm her  
24 down and get information from her?

25 A Yes, after we went and checked on the victim.

1 Q Okay. Okay. And what attempts did you make to  
2 try and calm Ms. McDermid down?

3 A Several times trying to get a description of the  
4 suspect and what happened.

5 Q Okay. And did she give you a description?

6 A She gave me somewhat of a description.

7 Q She gave you some information?

8 A Yes.

9 Q Okay. And you recorded that information in your  
10 report?

11 A Yes.

12 Q All right. Can you tell the jury, what was the  
13 description that Ms. McDermid gave to you?

14 A I have a black male, approximately 22 years old,  
15 dark complected, with short cropped hair.

16 Q Okay. And those -- let's break it down a little  
17 bit. As far as the information that she gave you, she  
18 told you that it was a black male?

19 A Yes.

20 Q She told you that person was 22 years old?

21 MR. FURNSTAHL: Objection. It's been asked  
22 and answered.

23 THE COURT: Overruled.

24 BY MR. BENSON:

25 Q She told you that that person was 22 years old?

1 A Yes.

2 Q And she indicated that person was dark  
3 complected?

4 A Yes.

5 Q And she indicated that the person that had --  
6 the suspect in this case had short, cropped hair?

7 A Yes.

8 Q Thank you.

9 MR. BENSON: Nothing further, Your Honor.

10 THE COURT: Cross-examination, Mr.  
11 Furnstahl?

12 MR. FURNSTAHL: Yes.

13 CROSS-EXAMINATION

14 BY MR. FURNSTAHL:

15 Q Good morning, Officer.

16 A Morning.

17 Q How long have you been a police officer?

18 A 17 and a half years.

19 Q Okay. And are you familiar with the north side?

20 A Yes.

21 Q How long have you been assigned to the north  
22 side?

23 A 17 years.

24 Q Okay. So you knew where Jerry's Flower Shop  
25 was?

1 A Yes.

2 Q People in the area frequent that flower shop?

3 A Yes.

4 Q It's right on a busy street?

5 A Yes.

6 Q Just north of a busy intersection; that's Lowry

7 and Lyndale, right?

8 A One block off, yeah.

9 Q Okay. Lyndale is a pretty busy street though?

10 A Very busy.

11 Q You were the first squad to arrive?

12 A Yes.

13 Q And Ms. McDermid came running out of the yard at

14 3210 Lyndale Avenue North, right?

15 A That is correct.

16 Q Did you ever meet Ms. McDermid before that?

17 A Never.

18 Q Okay. So she was a stranger to you, obviously?

19 A Yes.

20 Q And you mentioned in response to counsel's  
21 questions that you made some attempts to try to calm her  
22 down, right?

23 A Yes.

24 Q You were never able to calm her down, right?

25 A No.

1 Q She was extremely hysterical?

2 A Yes.

3 Q She was concerned about her brother, right?

4 A Correct.

5 Q She had just been through a situation where she  
6 heard two shots, she knew her brother was inside the  
7 building and she didn't know if her brother was dead or  
8 alive, right?

9 A Correct.

10 Q Right then that was what her focus was was her  
11 brother, right?

12 A Yes.

13 Q Not giving you a description, right?

14 A No.

15 Q You kind of had to pull that to get that out of  
16 her, right?

17 A After a few minutes, after checking on other  
18 things.

19 Q All right. You said that you tried several  
20 times to get a description, right?

21 A Yes.

22 Q And I believe -- in your report you indicated  
23 you got a very limited description, right?

24 A Yes. Yup.

25 Q Now, that's important because what you want to

1 do is you want to air that immediately, right?

2 A Yes.

3 Q Whatever description you get, you want to put  
4 that on the air immediately, right?

5 A Correct.

6 Q So officers that are responding to the scene,  
7 they can look to see if there's anybody that's matching  
8 that description that is running or driving away from the  
9 scene, right?

10 A Right.

11 Q So no matter what you get, you are going to air  
12 it, right?

13 A Yes.

14 Q If it's complete or incomplete, right?

15 A Correct.

16 Q And at that point in time that's your only goal  
17 is to try to get something to put on the air, right?

18 A Yup.

19 Q And you had to struggle with this hysterical  
20 woman who didn't know if her brother was dead or alive,  
21 right?

22 A Correct.

23 Q And as best she could she gave you what you  
24 described was a very limited description after several  
25 attempts?

1 A That's correct.

2 Q You also described her as shaking severely,  
3 right?

4 A Yes.

5 Q And having a hard time talking?

6 A Yes.

7 Q Was she sobbing?

8 A Yes.

9 Q So in between sobs, that's when you were getting  
10 the description, right?

11 A Correct.

12 Q Now, you have no idea if she had ever been  
13 through a situation like this before?

14 A No.

15 Q Pretty obviously -- it was pretty obvious that  
16 she was traumatized by this, right?

17 A Yes.

18 Q Did you have to tell her that her brother was  
19 deceased?

20 A I don't believe I told her right away until  
21 after the medical people left the scene.

22 Q Okay. Was she asking you about her brother?

23 A Yes, she was.

24 Q She was focused on that, right?

25 A Yes.



1 Q Wanted to know what her brother's condition was  
2 but you wanted to know the description?

3 A Yes.

4 Q And she didn't tell you that the person was  
5 five-ten?

6 A Not right away.

7 Q Or that he was 180 pounds?

8 A No.

9 Q All you got was black male, 22 years old, dark  
10 complected, short cropped hair, right?

11 A That's correct.

12 Q Now, did she say she knew for sure the person  
13 was 22 years old? Or that was just an estimate that she  
14 made during this hysteria that she was experiencing?

15 A These are all estimates.

16 Q Now, you were a patrol officer at that time,  
17 right?

18 A Yes.

19 Q Still are?

20 A Yes.

21 Q Counsel asked you about preparing reports and  
22 you said that you prepare reports sometimes so that you  
23 can come into court and testify as you are today?

24 A That's correct.

25 Q Are you on duty today?

1 A Yes.

2 Q Have you had contacts with other citizens today?

3 A Yes.

4 Q Did you prepare a report for every contact that  
5 you had with a citizen?

6 A No.

7 Q You don't do that, do you?

8 A Not for every citizen.

9 Q You have -- if there's a contact that is  
10 relevant to an investigation that you are doing, then you  
11 prepare a report?

12 A That's correct.

13 Q If you have a contact with a citizen that  
14 doesn't have any relevant information, do you prepare a  
15 report for that?

16 A No.

17 Q Because otherwise you would be spending all your  
18 time preparing reports instead of being on the streets,  
19 right?

20 A Correct.

21 Q And the City wants you to be on the streets,  
22 right?

23 A Yes.

24 Q Thank you, ma'am.

25 MR. FURNSTAHL: That's all I have.

1 THE COURT: Mr. Benson.

2 REDIRECT EXAMINATION

3 BY MR. BENSON:

4 Q Ma'am, you prepared your report in this case  
5 because there was important information, right?

6 A Because there was a what?

7 Q Important information.

8 A Yes.

9 Q The description is important information?

10 A Yes.

11 Q And also because this was a murder case?

12 A Yes.

13 Q It's important in a murder case to report that  
14 information?

15 A Correct.

16 MR. FURNSTAHL: Objection. Counsel is  
17 leading.

18 THE COURT: Sustained, but I'll allow the  
19 answer to stand but we need to be not leading.

20 BY MR. BENSON:

21 Q Why is it important in a murder case to record  
22 accurate information?

23 A To recall the incident because these things  
24 don't go to court right away, for evidentiary purposes.

25 Q And is it fair to say that contact, for example,

1 on a jaywalking is different than a contact in a murder  
2 case?

3 A Yes.

4 Q Okay. Just a couple questions regarding your  
5 arrival on the scene. When you arrived on May 16th, it  
6 was in response to a dispatch, correct?

7 A Yes.

8 Q And in response to -- so you knew there was a  
9 911 call that was already made?

10 A Yes.

11 Q All right. And then the 911 person, this  
12 dispatch person put a call out and you were one of the  
13 first officers to arrive?

14 A That's correct.

15 Q All right. Thank you, ma'am.

16 THE COURT: Anything else?

17 MR. FURNSTAHL: I have nothing further.

18 THE COURT: You can step down, Officer.

19 (Witness excused.)

20 MR. BENSON: The defense rests, Your Honor.

21 THE COURT: All right.

22 MR. FURNSTAHL: Can we approach?

23 THE COURT: You may.

24 (Off-the-record discussion at  
25 the bench out of hearing of the jury.)

THE COURT: Members of the jury, I'm going to give you your lunch recess now and we will see if we can get the remaining witness here for rebuttal by two o'clock, so we are going to recess now and come back at two o'clock, and remain in the hall until the clerk comes out to get you.

(Noon recess.)

THE COURT: Members of the jury, we're still on target to complete this case as was estimated tomorrow. We do not have the, there's one more witness that may testify. That person is not available this afternoon and the attorneys and I have some other matters that we have to work on, so what I'm going to do is I'm going to excuse you, have you come back tomorrow morning at nine o'clock. We will then hear, if there's a final witness we will hear from that witness. I will give you your instructions and we will hear the closing arguments of the attorneys and then you will be charged.

That being the case, tomorrow when you come you should bring along some personal items and a change of clothing because after you are charged then you'll be sequestered. Okay? So you are all excused right now. Come back tomorrow morning at nine o'clock.

(Jurors exit the courtroom.)

1           THE COURT: Okay. Mr. Benson, you wish to  
2 make a motion? Or to argue your motion that you  
3 noted previously. I made note that before the  
4 defense counsel started their case that they had  
5 intended to make a motion and we said we would argue  
6 it later.

7           MR. BENSON: Your Honor, yes. I made the  
8 motion for judgment of acquittal. Well, it's my  
9 understanding there is going to be an agreement with  
10 respect to the third charge. With respect to the  
11 first charge, murder in the first degree, the  
12 intentional murder, based upon the record at this  
13 point even looking at the evidence in the light most  
14 favorable to the State, the key element for them in a  
15 first degree charge is an intention to kill.

16           While there's testimony or at least records from  
17 the statement of Isiah Harper that according to Isiah  
18 Harper Marvin Haynes shot a white guy in order to --  
19 because he wouldn't give up the money, I submit to  
20 the Court that that's not enough to establish an  
21 intention to kill, and that's because within those  
22 remarks of Isiah Harper he indicates that Mr. Haynes  
23 was scared, according to Mr. Harper, Mr. Haynes was  
24 scared and that he didn't know whether the person was  
25 alive or dead. Because of that and also because of

1 the circumstances in which Ms. McDermid testified,  
2 she was not present for the actual shooting. She  
3 heard the shots, and although there were two shots,  
4 which was clear from the evidence and the testimony  
5 there were two shots, I don't believe that that's  
6 enough to reach an intention to kill.

7 So for that reason I would more for judgment of  
8 acquittal on that count.

9 THE COURT: Mr. Furnstahl.

10 MR. FURNSTAHL: Well, I guess I would just  
11 submit it on the record unless the Court needs  
12 argument from the State.

13 THE COURT: Based primarily on the evidence  
14 indicating that, number one, there were two shots  
15 fired, it was during the course of an attempted  
16 robbery and the fact that an intent can be formed in  
17 a very short time, the fact that one fires one shot  
18 and then a second shot, the Court finds that's enough  
19 to demonstrate intention.

20 It's not like we have evidence that it was an  
21 accidental squeezing of the trigger and it was a  
22 semiautomatic. It was a revolver which requires  
23 there to be action on the part of the person firing  
24 it to get off two shots, so I will deny the motion  
25 and we will submit it to the jury.

1           And counsel, let us take the final jury  
2 instructions and go over those this afternoon then.

3           MR. FURNSTAHL: Can I make a record on the  
4 608(b) stuff, Judge?

5           THE COURT: Go ahead.

6           MR. FURNSTAHL: The record should reflect  
7 that we've had, with respect to a lot of the issues  
8 that we anticipated would arise during the course of  
9 this trial, we've been dealing with a lot of that,  
10 dealing with a lot of those issues in chambers with  
11 the Court, and I had advised early on about potential  
12 608(b) evidence and we've never put that on the  
13 record.

14           I've provided to counsel the two instances where  
15 the defendant lied to the police and I think it was  
16 understood and I believe the Court made a ruling or  
17 suggested in chambers that that was, that that would  
18 be proper impeachment material. I had also provided  
19 to defense counsel a number of instances where the  
20 defendant was, had contact with law enforcement in  
21 proximity of the flower shop.

22           I alerted the Court and counsel that I thought  
23 that might become admissible should the defendant  
24 testify in accordance with what was represented in  
25 opening statement, that is to say that he didn't know



1 the area, didn't know the flower shop, and the Court  
2 had indicated in chambers it was going to allow me to  
3 introduce a couple of those, and at one point in  
4 time, I think at the last incident counsel objected  
5 on 403 grounds. We went to the bench, the Court at  
6 that time indicated it was going to let me -- if I  
7 remember correctly -- it was going to let me use that  
8 one and another one and I think I just used that one  
9 and that was that.

10 And I also advised the Court and counsel that  
11 there were other, I think three or four instances  
12 where in the past the defendant had been Mirandized  
13 and I had given notice that that was a potential area  
14 that we might go into. That didn't come up, we  
15 didn't address that, but I wanted the record to be  
16 clear that the requirements of State v. Fallin had  
17 been complied with prior to the cross-examination on  
18 those points.

19 THE COURT: Mr. Benson.

20 MR. BENSON: Your Honor, that's a correct  
21 statement of the discussions we had in chambers.

22 I would just note in addition I did object to  
23 the use of those incidents on two grounds; one, that  
24 they were juvenile offenses, and two, on 403 grounds.  
25 This is in our chambers discussion. Based upon our

1 chambers discussion I believe it was the Court's  
2 ruling that you were going to allow at least a  
3 limited number of impeachment opportunities under  
4 608(b), first of all being the false information to  
5 police, that was noticed because you indicated that  
6 does go to the credibility of the witness, in this  
7 case Marvin Haynes, and also with respect to the  
8 specific instances this Court's ruling is my  
9 understanding was that you would allow the State to  
10 point to some close circumstances rather than  
11 13 blocks away, as close as possible as they could  
12 come up with or use given the information they have.  
13 So that was the Court's ruling. We did object to  
14 them.

15 During the course of the trial I did object.  
16 After the State had made what I believe was made its  
17 point after its first few incidents I made a 403  
18 objection at that point and this Court I believe  
19 indicated that it would allow the State to do two  
20 more instances and at that point it may become a 403  
21 issue, and as we sit here now I don't recall whether  
22 the State did one or two more but I believe they  
23 obviously complied with the Court's ruling.

24 THE COURT: And just to clarify what that  
25 issue was, I did tell counsel in advance that if the

1       defendant testifies they could use the two instances  
2       of lying to the police because I felt that was  
3       something that was legitimate and that it  
4       demonstrated that he was not truthful with the  
5       police.

6               With regard to the contacts with law  
7       enforcement, I said if he denied being familiar with  
8       the area around the flower shop, then the prosecutor  
9       could put in several of those stops and the location  
10      of those stops to demonstrate where they occurred,  
11      and counsel correctly recited that at some point in  
12      time defense counsel objected on 403 grounds, they  
13      approached the bench, and I did tell the prosecutor  
14      you could do two more and at that point in time I  
15      thought it would be getting too prejudicial to do any  
16      more than that and counsel complied with that.

17             I did say that I didn't think I would be -- I  
18      hadn't said in advance but I didn't see any reason  
19      that we would be using the times he was Mirandized  
20      and it turns out that that was not used so we didn't  
21      have to deal with that issue, but the Court did say  
22      that was the one area where I was concerned about the  
23      403 analysis being more prejudicial than probative.  
24      So I think counsel is both correct and that's where  
25      we are.

1 Anything else you want to put on the record  
2 before we go look at jury instructions?

3 MR. BENSON: No, Your Honor.

4 MR. FURNSTAHL: No, Judge.

5 THE COURT: Okay. We're in recess until  
6 nine o'clock tomorrow morning.

7 MR. FURNSTAHL: Judge, this is off the  
8 record.

9 (Off-the-record discussion.

10 Whereupon, the proceedings conclude this day.)

11 \* \* \*

12 STATE OF MINNESOTA)


13 ) ss.

REPORTER'S CERTIFICATE

COUNTY OF HENNEPIN)

14 I, Jolyn R. Lund, Official Court Reporter, do  
15 hereby certify that the above and foregoing is a true and  
16 accurate transcription of my original stenographic notes  
in said matter.

17 Date: March 3, 2006

18   
Jolyn R. Lund  
19 Official Court Reporter  
1023-C Government Center  
20 Minneapolis, MN 55487  
(612) 348-3206  
21  
22  
23  
24  
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04035635

1438

A052444  
DISTRICT COURT  
ORIGINAL

10

1 STATE OF MINNESOTA FILED  
2 COUNTY OF HENNEPIN 06 MAR -3 PM 12:42 FOURTH JUDICIAL DISTRICT

3 -----  
4 STATE OF MINNESOTA, D.C. File 04035635  
5 Respondent/Plaintiff, S.Ct. File A05-2444

6 vs. TRIAL TRANSCRIPT

7 MARVIN HAYNES, JR., VOL. IX, pp. 1438-1570

8 Appellant/Defendant.  
9 -----

10 The above-entitled matter came duly on for  
11 trial before The Honorable Robert A. Blaeser, a judge  
12 of the above-named Court, and a jury, at 659-C  
13 Hennepin County Government Center, Minneapolis,  
14 Minnesota, on the **2nd day of September, 2005.**

15 APPEARANCES:

16 MICHAEL FURNSTAHL, ESQ., Assistant Hennepin  
17 County Attorney, appeared for and on behalf of the  
18 State.

19 KASSIUS BENSON, ESQ., Assistant Public  
20 Defender, appeared on behalf of the DEFENDANT, who  
21 was also personally present.

22

23

24 CLERK: Toni Rahn, Andrea Martin

25 REPORTER: Jolyn R. Lund

04035635

## I N D E X

PLAINTIFF'S WITNESSES:

Jessica Warfield

Direct by Mr. Furnstahl. . . . .	1445
Cross by Mr. Benson. . . . .	1450
Redirect by Mr. Furnstahl. . . . .	1453, 1455
Recross by Mr. Benson. . . . .	1454

COURT'S INSTRUCTIONS 1456

PLAINTIFF'S CLOSING 1472, 1547

DEFENSE CLOSING 1516

VERDICT 1571

E X H I B I T S

	<u>Identified</u>	<u>Offered</u>	<u>Rec'd</u>
No. 75 - Warfield lineup	1448	1448	1448

1 (Whereupon, the following  
2 proceedings occur outside the presence of the jury.)

3 THE COURT: First of all, counsel, I am  
4 going to complete the record with regard to the  
5 request for the curative instruction that was made  
6 during the redirect and recross-examination of Mr.  
7 Harper.

8 Looking back at the record, I sustained an  
9 objection to the truth as to what the State wants you  
10 to say about this case. I said disregard that  
11 question. I sustained an objection to testify  
12 consistent with what you testified at the grand jury,  
13 we had a side bar, I sustained and told them to  
14 disregard understanding about what your testimony  
15 should be, and I sustained an objection to, said  
16 that's because that's what Marvin's attorney wanted  
17 you to say, and so I think at this point in time with  
18 those objections being sustained and those questions  
19 being told to be disregarded that I would be doing  
20 nothing more than highlighting to the jury this, and  
21 therefore I'm not going to give the curative  
22 instruction that the State has requested on that  
23 issue. I think I sustained and told the jury to  
24 disregard the questions and really at this point in  
25 time that's the best way to handle it so I'm not

1 going to give that curative instruction.

2 Now, I have the stipulation that Mr. Furnstahl  
3 just wrote out with regard to dismissal of the third  
4 count. And Mr. Benson, have you had a chance to  
5 review that?

6 MR. BENSON: I have, Your Honor.

7 THE COURT: Is that consistent with your  
8 agreement?

9 MR. BENSON: Yes, Your Honor.

10 THE COURT: I'll read that then when we get  
11 the jury in. And you then have one witness left for  
12 rebuttal?

13 MR. FURNSTAHL: I do.

14 THE COURT: Okay.

15 MR. FURNSTAHL: Do you want to read that,  
16 Judge? Maybe makes sense to read it after the case  
17 has been, after we've rested.

18 THE COURT: Yeah. All right. You may  
19 bring the jury in.

20 MR. FURNSTAHL: One other thing, Judge.  
21 Since we're out here outside the presence of the  
22 jury, do we want to make a record about our  
23 conversation?

24 THE COURT: Yes. In particular we have an  
25 instruction here that is nonstandard with regard to



1 all the various hearsay statements that were in  
2 evidence in this case, some substantive and some with  
3 regard to inconsistent or prior consistent  
4 statements, and Mr. Benson you wanted to make a  
5 record on that, is that right?

6 MR. BENSON: Yes, Your Honor. I objected  
7 to that hearsay instruction being submitted in this  
8 case. I believe that that instruction, while the  
9 legal aspects of it is, it's legally accurate, it  
10 unduly highlights the testimony of one witness or  
11 out-of-court statements of one witness, Isiah Harper.  
12 That was my objection to the instruction and it was,  
13 as we sat there it was hard to find a way to satisfy  
14 both parties as far as if we remove that language  
15 regarding Isiah Harper so I requested not to have  
16 that instruction, to have it be the third prong of  
17 the standard impeachment instruction or leave it as  
18 it is. That was my objection.

19 It's my understanding that the Court is going to  
20 give the instruction anyway given that -- given that  
21 position, I did suggest that there be some language  
22 taken from the end of the instruction and repeated  
23 and inserted I believe at the end of a particular  
24 paragraph within that instruction to at least do some  
25 damage control from the defense perspective.

1 THE COURT: Mr. Furnstahl.

2 MR. FURNSTAHL: I believe it's important to  
3 give the instruction for these reasons. If the  
4 instruction isn't given then the instruction in 315,  
5 the impeachment by prior inconsistent statements is  
6 an incorrect statement of the law.

7 In this case we have hearsay admitted for  
8 substantive reasons under three or four exceptions or  
9 exclusions to the hearsay rule. One is prior  
10 identification, two is prior consistent statements,  
11 and three most importantly under the residual hearsay  
12 exception to the rule.

13 As it relates to the residual hearsay exception,  
14 that relates to the statements and grand jury  
15 testimony of Isiah Harper which was inconsistent with  
16 some of his testimony at trial. Without instructing  
17 the jury as to the proper application of the hearsay,  
18 315 is, would misguide them in how to accept and  
19 receive that evidence. So I think that the way the  
20 instruction was crafted deals with the concerns  
21 counsel has.

22 In addition, as counsel indicates it is a  
23 correct recitation of the law. As it relates to the  
24 other instructions, that agrees with all the other  
25 instructions. I believe it was the defense

1           requesting the lesser offense of felony murder in the  
2           second degree. State doesn't have any objection to  
3           that.

4                       THE COURT: Well, with regard to this  
5           hearsay matter, we did have quite a bit of discussion  
6           about that because there were so many separate  
7           hearsay statements that were used in this matter and  
8           the alternative would have been to really list which  
9           ones fall under which exceptions and counsel were  
10          both in agreement that that would be -- and  
11          particularly like I say defense did not want it  
12          listed that way, the Court felt this is a correct  
13          statement of the law and it would be confusing to the  
14          jury to give the simple 315 statement when we have  
15          these, we have grand jury testimony, we have prior  
16          statements, then we have prior identification, and  
17          the prior statements were of different witnesses for  
18          different purposes. So I think this is as best we  
19          can do in terms of clarifying that at this point in  
20          time.

21                     Is there anything else that counsel wants to put  
22           on the record before we bring in the jury to complete  
23           the rebuttal testimony?

24                     MR. FURNSTAHL: Nothing from the State,  
25           Your Honor.

1 MR. BENSON: No, Your Honor.

2 THE COURT: Okay. Then you can bring the  
3 jury in.

4 (The following is in the  
5 presence of the jury.)

6 THE COURT: Okay. Mr. Furnstahl, you can  
7 call your rebuttal witness.

8 MR. FURNSTAHL: Call Jessica Warfield.

9 THE COURT: Ms. Warfield, step right up  
10 here in front and raise your right hand to be sworn,  
11 please.

12 Whereupon,

13 JESSICA WARFIELD,  
14 after having been first duly sworn, was examined  
15 and testified as follows:

16 THE CLERK: Please state your full name and  
17 spell your last name for the record.

18 THE WITNESS: Jessica Warfield,  
19 W-A-R-F-I-E-L-D.

20 THE COURT: Okay, Mr. Furnstahl.

21 MR. FURNSTAHL: Thank you.

22 DIRECT EXAMINATION

23 BY MR. FURNSTAHL:

24 Q Jessica, how old are you?

25 A 17.

1 Q And in May of 2004 were you on runaway status?

2 A Yes.

3 Q Do you know Jennifer?

4 A Yes.

5 Q Do you know Jennifer's last name?

6 A Well, she has two. Coleman or Johnson.

7 Q Do you know which one she goes by?

8 A Coleman.

9 Q Okay.

10 A Last time I checked.

11 Q Back in May of 2004 did you know Ant?

12 A Yes.

13 Q Do you know his full name?

14 A Anthony. I don't know last name.

15 Q Okay. Did you know of two Marvins?

16 A Yes.

17 Q Do you know their last names?

18 THE COURT: You have to answer out loud.

19 THE WITNESS: No.

20 BY MR. FURNSTAHL:

21 Q How were they referred to?

22 A Marvin.

23 Q Was it a Big Marvin, Little Marvin, or just both  
24 Marvin or what?

25 A I called them Big Marvin or Little Marvin.

1           Q     All right. Now, did you know these people  
2     from -- were you staying in an area of north Minneapolis  
3     in May of 2004?

4           A     Yes.

5           Q     And is that where you met these people in north  
6     Minneapolis?

7           A     Yes.

8           Q     Now, I want to talk to you about a conversation  
9     that you had with one of the Marvins, okay?

10          A     Okay. Yes.

11          Q     Okay. Now, do you remember being shown a photo  
12     lineup a couple days ago?

13          A     Yes.

14          Q     And did you pick somebody out in that photo  
15     lineup?

16          A     Yes.

17          Q     Was that the person that you had the  
18     conversation with?

19          A     Yes.

20          Q     Any doubt?

21          A     It looked very, very familiar. It's been a long  
22     time.

23          Q     Okay. But was that one of the Marvins?

24          A     Yes.

25          Q     And it was that Marvin, not the other Marvin?

1 A Not the -- no.

2 Q Is there any doubt about that? It was that  
3 Marvin and not the other Marvin?

4 A Yes.

5 MR. FURNSTAHL: May I approach?

6 THE COURT: You may.

7 BY MR. FURNSTAHL:

8 Q Jessica, I'm showing you what I've marked as  
9 Exhibit 75, it's a brown small manila envelope, correct?

10 A Yes.

11 Q And inside are six photographs, is that right?

12 A Yes.

13 Q Those were photographs that you looked at the  
14 other day, right?

15 A Yes.

16 Q And on the back of photograph number four, did  
17 you sign that?

18 A Yes.

19 Q And date it?

20 A Yes.

21 Q What date?

22 A August 10, 2005.

23 MR. FURNSTAHL: We would offer Exhibit 75.

24 MR. BENSON: No objection, Your Honor.

25 THE COURT: Exhibit 75 will be received.

1 MR. FURNSTAHL: And ask to publish  
2 photograph number four?

3 THE COURT: Go ahead.

4 (Displays on overhead.)

5 BY MR. FURNSTAHL:

6 Q So that is the Marvin that you had the  
7 conversation with, correct?

8 A Yes.

9 Q All right. Now, do you remember where that  
10 conversation took place?

11 A Not exactly. I wasn't really, um, I think it  
12 was on 27th and Russell, or.

13 THE COURT: 27th and what?

14 THE WITNESS: Russell.

15 BY MR. FURNSTAHL:

16 Q Do you remember for sure, or is that kind of one  
17 of the fuzzy facts?

18 A I can't remember exactly where.

19 Q All right. You remember the conversation  
20 though, right?

21 A Parts of it.

22 Q All right. What was the -- what was Marvin  
23 talking about?

24 A Some guy that he, um, at the flower shop that he  
25 ended up shooting. I don't know, it was just basically he



1 was just bragging about it. I don't know. We weren't  
2 really paying attention. Just he was saying he shot some  
3 guy.

4 Q He was bragging about shooting some guy at the  
5 flower shop?

6 A Yes.

7 Q Was Jennifer there?

8 A Yes.

9 Q Thank you, Jessica.

10 MR. FURNSTAHL: That's all I have.

11 THE COURT: Just a minute. We got one more  
12 attorney here.

13 Mr. Benson.

14 MR. BENSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BENSON:

17 Q Ms. Warfield, this Marvin that made this  
18 statement, you were with Jennifer at the time?

19 A Yes.

20 Q Right? And that's Jennifer Coleman?

21 A Yes.

22 Q Right? And you talked about two Marvins that  
23 you know, correct?

24 A Yes.

25 Q You termed them Big Marvin and Little Marvin,

1 correct?

2 A Yes.

3 Q And neither one of them are particularly big  
4 guys, right?

5 A No.

6 Q And one of them had like braids in their hair  
7 during that time period?

8 A Yes.

9 Q Okay. Some braids in their hair sticking away  
10 from their head?

11 A Right like to their head, yes.

12 Q Yes. Okay. And as you testified the Marvin  
13 that you were, that made these statements was the Marvin  
14 who was in front of Jennifer Coleman?

15 A Yes.

16 Q Now, I want to take you back, you've talked  
17 about this procedure on October 10th of this year. Do you  
18 remember talking to a Minneapolis police detective?

19 MR. FURNSTAHL: Objection. August 10th?

20 You said October.

21 THE COURT: You said October. You meant

22 August 10th, right?

23 BY MR. BENSON:

24 Q Yeah, August 10th of this year, right? We  
25 talked about that, right?

1 A Yes.

2 Q But in October of last year, on October 19th of  
3 2004, you spoke with another detective, is that right?

4 A Yes.

5 Q And that detective showed you a lineup, right?

6 A Yes.

7 Q And that lineup included a photograph of someone  
8 named Marvin Haynes, right?

9 A Yes.

10 Q And on that date you couldn't make, you made no  
11 identification on that date, right?

12 A Yes.

13 Q And you started to say during your direct  
14 testimony that some of the things were, you said I wasn't  
15 really -- and then Mr. Furnstahl asked you you are kind of  
16 fuzzy, something like that. Do you remember that?

17 A Yes. I didn't want to talk to him.

18 Q Okay. And during your testimony today you said  
19 you didn't really, it seemed like you didn't really  
20 remember everything about that time period, is that right?

21 A Yes.

22 Q Okay. But as you sit here now you do remember  
23 that you were shown a lineup in October 2004 and you  
24 couldn't identify anyone, correct?

25 A Yes.

1 Q And that the conversation you had with this  
2 Marvin was with Jennifer Coleman, right?

3 A Yes.

4 Q Thank you.

5 MR. BENSON: Nothing further, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. FURNSTAHL:

8 Q Just a couple more questions, Jessica, then you  
9 can get out of here. When you said you didn't want to  
10 talk to him, who did you mean?

11 A The investigator guy.

12 Q From October of 2004?

13 A Yes.

14 Q The first time?

15 A Yes.

16 Q Now, you were shown a photo lineup on that date,  
17 correct?

18 A Yes.

19 Q Was there some confusion in your mind as to who  
20 he was talking about?

21 A Yes. I didn't know which Marvin he was trying  
22 to get at.

23 Q Which Marvin did you think he was trying to get  
24 at, this Marvin or the other Marvin?

25 A The other Marvin.

1 Q That's why you weren't able to pick somebody  
2 out?

3 A Yeah, but I didn't want to make any kind of  
4 mess-up.

5 Q Okay. You didn't want to make any kind of  
6 mess-up, is that what you said?

7 A Yes.

8 Q Now, you were asked about braids. One of the  
9 Marvins had braids?

10 A Yes.

11 Q Which Marvin had the braid, was it this Marvin  
12 or the other Marvin?

13 A This Marvin.

14 Q This one that was in the photo lineup that you  
15 picked out the other day?

16 A Yes.

17 Q Thank you, ma'am.

18 MR. FURNSTAHL: That's all I have.

19 THE COURT: Anything else, Mr. Benson?

20 MR. BENSON: Yes, Your Honor.

21 RE CROSS-EXAMINATION

22 BY MR. BENSON:

23 Q Going back to the October lineup, 2004, that  
24 sergeant, do you recall his name is Sergeant Keefe?

25 A Yes.

1 Q Okay. He was actually pointing at a photo in  
2 that lineup, right?

3 MR. FURNSTAHL: Objection, beyond the  
4 scope.

5 MR. BENSON: He asked about the lineup.

6 THE COURT: Overruled. You can answer.

7 BY MR. BENSON:

8 Q He was actually pointing out a picture in that  
9 lineup, right?

10 A Yes.

11 Q The lineup he was showing you included a picture  
12 of someone named Marvin Haynes, right?

13 A Yes.

14 Q That was, that's who he was trying to see if you  
15 recognized that person, right? And you made no  
16 identification, right?

17 A Yes.

18 Q Thank you.

19 REDIRECT EXAMINATION

20 BY MR. FURNSTAHL:

21 Q You know this to be Marvin Haynes?

22 A Yes.

23 MR. FURNSTAHL: Nothing further.

24 THE COURT: All right. You can step down.

25 (Witness excused.)

1 MR. FURNSTAHL: State rests, Your Honor.

2 MR. BENSON: Your Honor. Can we remove --

3 THE COURT: Okay. Members of the jury, I'm  
4 going to give you your instructions at this time.  
5 Some of these instructions are fairly lengthy. You  
6 will have a written copy of these instructions with  
7 you in the jury room.

8 First of all, we also have a stipulation which  
9 I'm going to advise you of. The parties have agreed  
10 to dismiss the third count of the indictment which is  
11 the charge of aggravated robbery. The reason for the  
12 dismissal is that the crime of aggravated robbery is  
13 already included in the murder charge.

14 Now, it is your duty to decide the questions of  
15 fact in this case. It is my duty to give you the  
16 rules of law you must apply at arriving at your  
17 verdict. You must follow and apply the rules of law  
18 as I give them to you even though you believe the law  
19 is or should be different.

20 Deciding questions of fact is your exclusive  
21 responsibility. In doing so, you must consider all  
22 the evidence you have heard and seen in this trial  
23 and you must disregard anything you may have heard or  
24 seen elsewhere about this case.

25 I have not by these instructions nor by any

1 ruling or expression during the trial intended to  
2 indicate my opinion regarding the facts or the  
3 outcome of this case. If I have said or done  
4 anything that would seem to indicate such an opinion,  
5 you are to disregard it.

6 The defendant is presumed innocent of the charge  
7 made. This presumption remains with the defendant  
8 unless and until the defendant has been proven guilty  
9 beyond a reasonable doubt.

10 That the defendant has been brought before the  
11 court by the ordinary processes of the law and is on  
12 trial should not be considered by you as in any way  
13 suggesting guilt. The burden of proving guilt is on  
14 the State. The defendant does not have to prove  
15 innocence.

16 Proof beyond a reasonable doubt is such proof as  
17 ordinarily prudent men and women would act upon in  
18 their most important affairs. A reasonable doubt is  
19 a doubt based upon reason and common sense. It does  
20 not mean a fanciful or capricious doubt, nor does it  
21 mean beyond all possibility of doubt.

22 In order for you to return a verdict, whether  
23 guilty or not guilty, each juror must agree with that  
24 verdict. Your verdict must be unanimous. You should  
25 discuss the case with one another and deliberate with



1 a view toward reaching agreement if you can do so  
2 without violating your individual judgment. You  
3 should decide the case for yourself but only after  
4 you have discussed the case with your fellow jurors  
5 and have carefully considered their views. You  
6 should not hesitate to reexamine your views and  
7 change your opinion if you become convinced they are  
8 erroneous, but you should not surrender your honest  
9 opinion simply because other jurors disagree or  
10 merely to reach a verdict.

11 Now, a fact may be proven by either direct or  
12 circumstantial evidence or by both. The law does not  
13 prefer one form of evidence over the other. A fact  
14 is proven by direct evidence when, for example, it is  
15 proven by witnesses who testify to what they saw,  
16 heard or experienced, or by physical evidence of the  
17 fact itself. A fact is proven by circumstantial  
18 evidence when its existence can be reasonably  
19 inferred from other facts proven in the case.

20 Now, during this trial I have ruled on  
21 objections to certain testimony and/or exhibits. You  
22 must not concern yourselves with the reasons for the  
23 rulings since they are controlled by rules of law.  
24 By receiving evidence to which objection was made, I  
25 did not intend to indicate the weight to be given

1       such evidence. You are not to speculate as to the  
2       possible answers to questions I did not require to be  
3       answered. You are to disregard all evidence I have  
4       ordered stricken or have told you to disregard.

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

10              You have been allowed to take notes during the  
11       trial. You may take those notes with you to the jury  
12       room. You should not consider those notes binding or  
13       conclusive, whether they are your notes or those of  
14       another juror. The notes should be used as an aid to  
15       your memory and not as a substitute for it. It is  
16       your recollection of the evidence that should  
17       control. You should disregard anything contrary to  
18       your recollection that may be appear from your own  
19       notes or those of another juror. You should not give  
20       greater weight to a particular piece of evidence  
21       solely because it is referred to in a note taken by a  
22       juror.

23              Now, attorneys are officers of the court. It is  
24       their duty to make objections they think proper and  
25       to argue their client's cause. However, the

1 arguments or other remarks of an attorney are not  
2 evidence. If the attorneys or I have made or should  
3 make any statement as to what the evidence is which  
4 differs from your recollection of the evidence, you  
5 should disregard the statement and rely solely on  
6 your own memory.

7 If an attorney's argument contains any statement  
8 of the law that differs from the law I give you,  
9 disregard the statement.

10 Now, you are the sole judges of whether a  
11 witness is to be believed and of the weight to be  
12 given a witness's testimony. There are no hard and  
13 fast rules to guide you in this respect. In  
14 determining believability and weight of testimony,  
15 you may take into consideration the witness's, one,  
16 interest or lack of interest in the outcome of the  
17 case; two, their relationship to the parties; three,  
18 their ability and opportunity to know, remember and  
19 relate the facts; four, their manner; five, their age  
20 and experience; six, their frankness and sincerity or  
21 lack thereof; seven, the reasonableness or  
22 unreasonableness of their testimony in light of other  
23 evidence in the case; eight, any impeachment of the  
24 witness's testimony; and nine, and any other factors  
25 that bear on believability and weight. You should

1           rely in the last analysis upon your own experience,  
2           good judgment, and common sense.

3           Now, during this trial you have heard testimony  
4           about statements witnesses have made outside of  
5           court. As I told you during the trial, these  
6           statements are what the law refers to as hearsay. In  
7           general hearsay statements are not admissible if they  
8           are offered as proof the truth of the matter asserted  
9           in the statement. If hearsay is not offered for the  
10          truth of the matter asserted in the statements or if  
11          the particular statement falls within one of the many  
12          exceptions to the hearsay rule, then that statement  
13          may be admitted into evidence. In this case many of  
14          the statements of the witnesses were introduced under  
15          one of the exceptions to the rule. These statements  
16          were admitted as substance evidence, that's evidence  
17          that the defendant did or did not commit the crimes  
18          charged in the indictment.

19          The May 24th -- May 28, 2004 statement of Isiah  
20          Harper given to the police as well as his testimony  
21          to the grand jury on June 10, 2004, is evidence that  
22          you may consider.

23          In addition, statements that a witness made that  
24          are consistent with their testimony is evidence that  
25          you may consider. Lastly, the statements of any

1 witness that identified the perpetrator of the crimes  
2 charged is evidence that you may consider. It is  
3 solely for you to judge the credibility and the  
4 weight of the evidence.

5 However, there were other hearsay statements  
6 that while admitted cannot be considered by you as  
7 evidence that the defendant did or did not commit the  
8 crimes charged. Prior statements of a witness other  
9 than those of Isiah Harper that were inconsistent  
10 with their testimony are not admissible as  
11 substantive evidence. Those statements can only be  
12 considered by you in deciding the believability and  
13 weight to be given the testimony of the witness who  
14 made the statement. In the case of the defendant,  
15 however, evidence of any statement he may have made  
16 may be considered by you for all purposes.

17 In addition, a statement was introduced to show  
18 that certain actions may have been taken by the  
19 person who heard the statement. That statement  
20 cannot be considered as evidence of the truth of the  
21 matter asserted in the statement. It is solely for  
22 you to judge the credibility and weight of the  
23 evidence. It is my responsibility to explain to you  
24 the proper application of the law as it relates to  
25 hearsay statements. By this instruction I do not

1 intend to convey what weight if any should be given  
2 to any of these statements.

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

15 Testimony has been introduced tending to  
16 identify the defendant as a person observed at the  
17 time of the alleged offense. You should carefully  
18 evaluate this testimony. In doing so, you should  
19 consider such factors as the opportunity of the  
20 witness to see the person at the time of the alleged  
21 offense, the length of time the person was in the  
22 witness's view, the circumstances of that view  
23 including light conditions and the distance involved,  
24 the stress the witness was under at the time, and the  
25 lapse of time between the alleged offense and the

1 identification. If the witness has seen and  
2 identified the person before trial and after the  
3 alleged offense, you should also consider the  
4 circumstances of that earlier identification and you  
5 should consider whether in this trial the witness's  
6 memory is affected by that earlier identification.

7 Now, the statutes of Minnesota provide that  
8 whoever, while attempting to commit the crime of  
9 aggravated robbery causes the death of a human being  
10 with intent to effect that death of that person or  
11 another, is guilty of a crime. That is murder in the  
12 first degree while committing certain crimes.

13 Now, murder in the first degree while committing  
14 certain crimes, the elements are -- elements of  
15 murder in the first degree are, number one, that the  
16 death of Harry Sherer must be proven. Second, the  
17 defendant caused the death of Harry Sherer. Third,  
18 the defendant acted with intent to kill Harry Sherer.  
19 To find the defendant had an intent to kill, you must  
20 find that the defendant acted with the purpose of  
21 causing death or believed that the act would have  
22 that result. Intent, being a process of the mind, is  
23 not always susceptible to proof by direct evidence  
24 but may be inferred from all the circumstances  
25 surrounding the event. It is not necessary that the

1 defendant's act be premeditated. Fourth, at the time  
2 of the act causing the death of Harry Sherer, the  
3 defendant was engaged in the act of attempting to  
4 commit the crime of aggravated robbery.

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

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

25 The elements of an attempt to commit aggravated



1 robbery are first, the defendant intended to commit  
2 the crime of aggravated robbery; second, the  
3 defendant did an act that was a substantial step  
4 toward and more than mere preparation for the  
5 commission of that crime; third, the defendant's act  
6 took place on May 16th, 2004 in Hennepin County. The  
7 statutes of Minnesota define the completed crime of  
8 aggravated robbery as follows. Whoever, knowing he  
9 was not entitled to do so, takes personal property  
10 from another either from the person or in the  
11 presence of the person, and uses force or the threat  
12 of imminent force against any person to overcome  
13 resistance or compel acquiescence in the taking or  
14 carrying away of the property, is guilty of a crime  
15 if the defendant is armed with a dangerous weapon.

16 The elements of the crime of completed  
17 aggravated robbery are, first, the defendant took the  
18 property from the person of Cynthia McDermid or Harry  
19 Sherer or in their presence knowing that the  
20 defendant was not entitled to take it. Second, the  
21 defendant used force or the threat of imminent force  
22 against Cynthia McDermid or Harry Sherer to overcome  
23 resistance or to compel acquiescence in the taking or  
24 carrying off of the property. The term "threat of  
25 imminent force" means the intentional creation in

1 Cynthia McDermid's or Harry Sherer's minds of an  
2 understanding that if either resisted or refused to  
3 cooperate force would immediately be used against  
4 either of them. Third, the defendant was armed with  
5 a dangerous weapon. A firearm, whether loaded or  
6 unloaded, is a dangerous weapon. Fourth, that the  
7 defendant's act took place on May 16, 2004 in  
8 Hennepin County. Fifth, that the defendant's act  
9 took place on May 16th, 2004 in Hennepin County. If  
10 you find that each of these elements has been proven  
11 beyond a reasonable doubt, the defendant is guilty.  
12 If you find that any element has not been proven  
13 beyond a reasonable doubt, the defendant is not  
14 guilty.

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

1           lesser crime.

2           Murder in the second degree while committing a  
3           felony, the statutes of Minnesota provide that  
4           whoever without intent to cause the death of any  
5           person, while attempting to commit a felony offense  
6           causes the death of a human being, is guilty of a  
7           crime. The elements of murder in the second degree  
8           while committing a felony are first, the death of  
9           Harry Sherer must be proven. Second, the defendant  
10          caused the death of Harry Sherer. Third, the  
11          defendant at the time of causing the death of Harry  
12          Sherer was attempting to commit the felony offense of  
13          aggravated robbery. It is not necessary for the  
14          State to prove the defendant had an intent to effect  
15          the death of Harry Sherer but it must prove the  
16          defendant attempted to commit the underlying felony.

17          The statutes of Minnesota provide that a person  
18          is guilty of an attempt to commit a crime with intent  
19          to commit the crime if the person does an act that is  
20          a substantial step toward and more than mere  
21          preparation for the commission of the crime. An  
22          attempt to commit a crime requires both an attempt to  
23          commit the crime and a substantial step toward  
24          commission of the crime. In determining whether a  
25          substantial step has been taken, you must distinguish

1           between mere preparation for and actually beginning  
2           to commit the criminal act on the other. Mere  
3           preparation, which may consist of planning the  
4           offense or of obtaining or arranging the means for  
5           its commission, is not sufficient to constitute an  
6           attempt. An act by a person who intends to commit a  
7           crime is an attempt if the act clearly indicates the  
8           intent to commit the specific crime and it tends  
9           directly to accomplish the crime. The act itself  
10          need not be criminal in nature.

11                 The elements of an attempt to commit aggravated  
12          robbery are, first the defendant intended to commit  
13          the crime of aggravated robbery. Second, the  
14          defendant did an act that was a substantial step  
15          toward and more than mere preparation for the  
16          commission of that crime. Third, the defendant's act  
17          took place on May 16, 2004 in Hennepin County. The  
18          statutes of Minnesota define the completed crime of  
19          aggravated robbery as follows: Whoever, knowing he  
20          was not entitled to do so, takes the personal  
21          property from another either from the person or in  
22          the presence of the person and uses force or the  
23          threat of imminent force against any person to overcome  
24          resistance or compel acquiescence in the taking or  
25          carrying away of the property is guilty of a crime if

1 the defendant is armed with a dangerous weapon.

2 The elements of the completed crime of  
3 aggravated robbery are, first, the defendant took  
4 property from the person of Cynthia McDermid or Harry  
5 Sherer or in their presence knowing that the  
6 defendant was not entitled to take it. Second, the  
7 defendant used force or the threat of imminent force  
8 against Cynthia McDermid or Harry Sherer to overcome  
9 resistance or to compel acquiescence in the taking or  
10 carrying off of the property. The term "threat of  
11 imminent force" means that the intentional creation  
12 in Cynthia McDermid or Harry Sherer's minds of an  
13 understanding that if either resisted or refused to  
14 cooperate, force would immediately be used against  
15 either of them. Third, the defendant was armed with  
16 a dangerous weapon. A firearm, loaded or unloaded,  
17 is a dangerous weapon. Fourth, the defendant's act  
18 took place on May 16, 2004 in Hennepin County.

19 If you find each of these elements has been  
20 proven beyond a reasonable doubt, the defendant is  
21 guilty. If you find that any element has not been  
22 proven beyond a reasonable doubt, the defendant is  
23 not guilty.

24 The statutes of Minnesota provide that whoever  
25 does an act with intent to cause fear in another

1 person of immediate bodily harm or death or  
2 intentionally inflicts or attempts to inflict bodily  
3 harm upon another is guilty of a crime.

4 Assault, physical contact unnecessary. In order  
5 for an assault to have been committed, it is not  
6 necessary that there have been any physical contact  
7 with the body of the person assaulted. The statutes  
8 of Minnesota provide that whoever assaults another  
9 with a dangerous weapon is guilty of a crime.

10 The elements of assault in the second degree are  
11 first, the defendant assaulted Cynthia McDermid.  
12 Second, the defendant in assaulting Cynthia McDermid  
13 used a dangerous weapon. A weapon, whether loaded or  
14 unloaded or even temporarily inoperable, is a  
15 dangerous weapon. Third, the defendant's act took  
16 place on May 16, 2004 in Hennepin County.

17 If you find that each of these elements has been  
18 proven beyond a reasonable doubt, the defendant is  
19 guilty. If you find that any element has not been  
20 proven beyond a reasonable doubt, the defendant is  
21 not guilty.

22 Now, as I indicated to you at the beginning of  
23 the instructions the parties have just stipulated  
24 that the charge of -- in the third charge in the  
25 indictment, the charge of aggravated robbery, is

1 going to be dismissed and the reason for the  
2 dismissal is the fact that the crime of aggravated  
3 robbery is already included in the murder charge.

4 Now, as I indicated in the beginning, these  
5 instructions may be somewhat lengthy and have many  
6 elements, but you will have a written copy of these  
7 instructions with you in the jury room.

8 Now, does counsel wish to point out any errors  
9 or omissions in the instructions?

10 MR. BENSON: No, Your Honor.

11 MR. FURNSTAHL: No, Your Honor.

12 THE COURT: All right. Members of the  
13 jury, we're going to take a brief recess and then we  
14 are going to come back and hear the closing arguments  
15 of the attorneys, so you are going to be excused now  
16 for about ten to 15 minutes and then we'll come back  
17 and hear closing arguments.

18 (Recess.)

19 THE COURT: All right. Counsel, you may  
20 proceed.

21 MR. FURNSTAHL: Thank you, Your Honor.

22 May it please the Court, counsel, ladies and  
23 gentlemen. Before I start with my closing comments I  
24 want to take a second to thank you folks for your  
25 attention and participation in this trial. We are

1 sending you out on the last day of summer on your  
2 holiday and it was something that we tried to avoid  
3 but obviously we were not able to do that.

4 There's a lot of complaints about this system.  
5 A lot of them are justified, but what makes this  
6 system work is the jury, and in order for the jury  
7 system to work it requires 12 people, 14 of you that  
8 are willing to come in and participate, willing to  
9 participate, willing to pay attention, and willing to  
10 sacrifice from your personal and professional lives  
11 and search for the truth and find the verdict that,  
12 that makes -- does justice. All of you agreed to do  
13 that, and even though it's over your weekend holiday,  
14 you agreed to stay with us and search for the truth  
15 and find justice in this case and I just want to take  
16 a second to thank each and every one of you for doing  
17 that.

18 What I want to do in my closing comments is I  
19 want to spend a little bit of time talking about the  
20 law that the judge gave you and reiterate what he  
21 said. If I say anything that differs from what he  
22 said disregard it because he is the judge of the law.  
23 Then what I want to do is maybe frame the issue, help  
24 you to decide exactly what it is you need to decide  
25 when you go back there to deliberate, and then the



1 last thing I want to do is talk about the evidence  
2 that you heard in this case. And again I would  
3 reiterate another instruction that the judge gave you  
4 and that is that if I say something about the  
5 evidence that differs from your recollection, you are  
6 to disregard what I say and rely on your own memories  
7 because you are the judges of facts. He's the judge  
8 of the law; you are the judges of the facts.

9 Now with respect to the law, first I want to  
10 talk about the elements. You know now that there are  
11 two charges before you, two crimes. One is the  
12 murder charge for which there is a lesser included  
13 offense and we'll talk about that in a minute, and  
14 the second charge is the charge of assault against  
15 Cynthia McDermid. So it's the murder charge of Harry  
16 Sherer, the assault charge of Cynthia McDermid.

17 Now, it's not enough to ask a bunch of people  
18 did we prove murder in the first degree. You need  
19 that defined for you, and in the instructions you  
20 will see there are basically two kinds of  
21 instructions. First there's a short paragraph that  
22 is called a definition. That basically says that the  
23 legislature and the governor has decided and decreed  
24 that certain conduct is illegal. That's the  
25 definition portion, just a paragraph. And then

1       you'll see we define the crimes even further and the  
2       way we do that is we break them down into parts and  
3       we call these parts elements, and I have the burden  
4       of proof beyond a reasonable doubt as to each and  
5       every element. Only if I prove all the elements is a  
6       verdict of guilty warranted. If I fail to prove even  
7       one of them, then the verdict is and must be not  
8       guilty.

9               So that's the law. The judge is the judge of  
10       the law and he has given you the law. You are the  
11       judges of the facts. Where there are disputed  
12       questions of fact that are relevant to the elements,  
13       that's where you, you judges of the facts, come in.  
14       So in this case, and we'll talk about this in a  
15       little bit, you'll see there's a dispute of fact as  
16       to whether or not it was the defendant as opposed to  
17       someone else. Was it him or wasn't it him. That's a  
18       disputed question of fact that you must resolve as  
19       judges of the facts.

20               But now if there is a disputed fact that isn't  
21       relevant to the elements like the car that he and  
22       Daquan went to the flower shop that day, there is a  
23       dispute as to whether or not it was a white Chevy or  
24       a green Ford, and if the color of the car or the make  
25       of the car is not relevant to the elements, I don't

1 have to prove what color that car is beyond a  
2 reasonable doubt. I only have to prove the elements.

3 Now, the elements as it relate to murder in the  
4 first degree there are five elements. There is a, we  
5 have to show the death of Harry Sherer, we have to  
6 show that the defendant caused it, we have to show  
7 that he had an intent to kill, we have to show that  
8 at the time that he did this he was attempting to  
9 commit the crime of aggravated robbery, and then we  
10 have to show that -- the venue, that is that it  
11 happened in Hennepin County. We have the burden as  
12 to each and every element, okay? By entering a plea  
13 of not guilty, it places the burden on the State to  
14 prove the case beyond a reasonable doubt.

15 But you'll see from the facts, you'll recognize  
16 from the facts of this case that some of the elements  
17 are contested, some of them are not. That's what I'm  
18 talking about when I said a little bit later on in my  
19 closing arguments I will try to assist you in framing  
20 the issue.

21 So, for example, the element of venue, there's  
22 really no contested question of fact that this crime  
23 or these crimes occurred in Hennepin County,  
24 Minnesota, on May 16th 2004. There's no contested  
25 question of fact really that, that Harry Sherer is

1 dead. We had the medical examiner come in and  
2 testify as to the autopsy.

3 Let me show you the copy of the instructions  
4 that the judge will give you. You will have a copy  
5 of this. I want to do this just because it's a  
6 little confusing when you read it and you look at it,  
7 but when you just think about what is contested in  
8 these elements you'll see there's really only a  
9 couple of issues for you to resolve, couple of  
10 contested questions of fact for you to resolve even  
11 though -- and I remind you again the State has the  
12 burden of proof beyond a reasonable doubt as to each  
13 and every element and it's for you to decide what  
14 elements are contested or what are not.

15 You'll see, as I indicated, there's a definition  
16 section that basically says that the statutes say  
17 that certain conduct is illegal. And then we have  
18 the elements section, and it says the elements are.  
19 There are five elements. One, the death of Harry  
20 Sherer; two, that the defendant caused it; three, he  
21 acted with an intent to kill; and fourth, he acted --  
22 that at the time he was attempting to commit of crime  
23 of aggravated robbery. And here's where it gets a  
24 little confusing and this is basically the reason why  
25 we agreed to dismiss the third count so we didn't

1 have to go through this again and add more confusion.

2 In order to properly instruct you, we have to  
3 instruct you as to the definition and elements of  
4 both attempt and of aggravated robbery. So that's  
5 what you see here. There's the definition of attempt  
6 right here, these are the elements of an attempt  
7 right here (points), this is the definition of  
8 aggravated robbery, and this gives you the definition  
9 of the completed crime of aggravated robbery. Then  
10 it gives you the elements of the completed crime of  
11 aggravated robbery, and remember here what's alleged  
12 here is an attempted robbery because the evidence was  
13 that the defendant didn't get any property. But it  
14 says first the defendant took property. That's a  
15 little bit confusing. Remember it's an attempt.  
16 Okay? This is just the elements of the completed  
17 crime, all right? So you've got to think of that,  
18 these are all kind of sub parts of the fourth  
19 element, that it was done during an attempted  
20 aggravated robbery and that's the fourth element of  
21 the completed crime of aggravated robbery. Here is  
22 the fifth element of the crime of first degree  
23 murder, okay?

24 Now, there is what is referred to as a lesser  
25 included offense which often is the case in trials,

1 and in this case you have a lesser included offense  
2 of second degree murder. Now, the difference between  
3 the greater charge of first degree murder and the  
4 lesser charge of second degree murder, there's only  
5 one difference in that, and that is in first degree  
6 we are required to prove that he intended to kill.  
7 In second degree there is no requirement or no  
8 element of intent.

9 So if you decide at the time -- if you decide  
10 that it was the defendant that committed these acts  
11 and you have a reasonable doubt as to whether or not  
12 he intended to kill, then he is not guilty of first  
13 degree murder but rather he is guilty of second  
14 degree murder.

15 We would argue that the evidence is clear,  
16 beyond a reasonable doubt, that his intent was to  
17 kill. And you look at the facts and the evidence,  
18 apply your common sense and reason, you make the  
19 decision. You ask yourself, and this is the evidence  
20 of intent to kill. First of all, the best evidence  
21 of intent to kill is the fact that you have the body  
22 of Harry Sherer lying prone on the floor of the  
23 flower shop. That is evidence of intent to kill.

24 Secondly, you have the defendant walking into  
25 that store with a gun, a weapon, a murder weapon. A

1 gun is used to kill people. Not like a rubber band  
2 gun or something like that. This was a .38 or a  
3 .357. These are weapons that kill people. That is  
4 evidence of intent to kill.

5 This defendant, if you believe it was him,  
6 brandished that weapon and pointed it in the face of  
7 Cynthia McDermid and then apparently at Harry Sherer.  
8 That is evidence of an intent to kill. He didn't  
9 point it up, according to Cynthia. He didn't hold it  
10 at his side, he didn't just show that he had it in  
11 his pocket. He pointed it directly at her, right in  
12 her face. She said it was about a foot away from  
13 her. That is evidence of an intent to kill.

14 And in addition, he fired not one bullet, but  
15 two bullets at the torso of Randy Sherer. You might  
16 make an argument that it went off, the gun went off  
17 accidentally if there was only one bullet that was  
18 fired, but in this case we have not one but two. We  
19 have evidence from Cynthia McDermid who says she  
20 heard it, we have two bullets found at the scene, and  
21 we have the injuries that were documented by the  
22 medical examiner. That is evidence of an intent to  
23 kill.

24 And the location of the wounds likewise is  
25 evidence of an intent to kill. It wasn't -- Harry

1 Sherer wasn't shot in the leg, he wasn't shot in the  
2 arm, the shot wasn't fired up in the air. It was  
3 fired directly at his torso almost point blank a few  
4 feet away. Not clear how far away by very, very  
5 close. All of that is evidence of intent to kill.

6 So I would submit to you that there is really no  
7 contested question of fact as to whether or not this  
8 act was done with an intent to kill. The real  
9 question for you is whether or not -- is one of  
10 identification and this is something we have to prove  
11 again beyond a reasonable doubt as we do with all the  
12 other elements, and that is is it the defendant that  
13 did it or someone else. We have to prove that beyond  
14 a reasonable doubt.

15 And the burden of proof that we have, as you've  
16 heard and as the judge has instructed you, is proof  
17 beyond a reasonable doubt. This is that instruction.  
18 No doubt everyone of you has heard that phrase proof  
19 beyond a reasonable doubt before you came in here two  
20 weeks ago, but if you've ever heard a definition  
21 applied to it or if you start to conceptualize your  
22 own definition or if someone gives you an  
23 illustration as to what proof beyond a reasonable  
24 doubt means, you must disregard it and you must apply  
25 this because this is the rule of law that we must



1       abide by. This is Judge Blaeser's definition of  
2       proof beyond a reasonable doubt, and it's a stiff  
3       burden and well it should be when you are talking  
4       about liberty interests. It's fair and important  
5       that it be a stiff burden, but it's not an impossible  
6       burden because many people have entered rooms like  
7       this cloaked with the presumption of innocence where  
8       the burden has been placed upon the prosecution to  
9       prove their guilt beyond a reasonable doubt who have  
10      left these rooms after having been found guilty of  
11      proof beyond a reasonable doubt.

12             And the burden of proof doesn't just change  
13      because this is a murder case as opposed to a DWI.  
14      If this were a DWI, if the defendant were on trial  
15      for a DWI, you would be getting the exact same  
16      definition of proof beyond a reasonable doubt. While  
17      we recognize this is a lot more serious than a DWI  
18      case, the burden of proof on me does not change.

19             And it's three sentences, and I would ask you to  
20      focus on the second sentence. It says a reasonable  
21      doubt is a doubt based upon reason and common sense.  
22      Reason and common sense. That's something we talked  
23      about during jury selection. I talked about it with  
24      most or all of you about whether or not, how you felt  
25      about using your common sense and reason in a first

1 degree murder case. In the instruction on  
2 credibility of witnesses, the judge tells you to use  
3 your own experience, your reason and your common  
4 sense in evaluating the credibility of the witnesses.  
5 And it's important that you understand that you can  
6 use that tool when you go back there and decide the  
7 factual disputes that you have to decide in this  
8 case.

9 Lots of people would like this forum to be a lot  
10 more objective, but it's not. You can tell now that  
11 it's a very subjective forum. We have rules of  
12 communication that are very different from what you  
13 are used to. We call these the rules of evidence and  
14 that's why you hear objections and the judge's  
15 rulings on objections. In fact, we'll talk about  
16 this a little bit later, but there was really kind of  
17 a law school exam on hearsay say during the course of  
18 this trial and so -- I lost my train of thought. I'm  
19 tired.

20 So anyways, that's our burden of proof and we  
21 ask you to use your common sense and reason because  
22 in here, because we have -- because it's so objective  
23 and we have, we have rules of communication that are  
24 so foreign to you, we are used to it because we live  
25 in this environment, it might be so foreign to you,

1 and in addition we ask strangers to judge the  
2 credibility of strangers, so the best tool you have  
3 in making these kinds of decisions is your own common  
4 sense and reason. So when you look at the evidence  
5 ask yourself, does that make sense or does that defy  
6 common sense. What does my common sense and reason  
7 tell me about that? That's what we want you to do.  
8 That's what the law tells you to do.

9 Now, that's all the comments I have about the  
10 law. The next thing I want to talk about is framing  
11 the issue. You have the law, in other words the  
12 elements, and the burden of proof that we have along  
13 with the other instructions, now when you go back  
14 there you look, the first thing you'll probably do is  
15 to decide who's going to be your foreperson.

16 I would suggest, and you can accept or reject my  
17 advice because it's up to you to decide what you want  
18 to do, but I would respectfully suggest that maybe  
19 the next thing that you ought to do is to frame the  
20 issue. Exactly just what is it that you have to  
21 decide in order to reach a fair and just verdict in  
22 this case.

23 We talked about the contested question of fact,  
24 potential contested question of fact as it relates to  
25 the lesser included offense of murder in the second

1 degree, whether or not there's an intent or not. Let  
2 me back up just one -- well, we talked about that.  
3 And you can decide if there's a contested question of  
4 fact on that, but I would suggest to you and this is  
5 again just a suggestion, you can accept it or reject  
6 it because you are the judges of the facts, I would  
7 suggest that the issue that you have to decide is  
8 simply this: Was it the defendant. Because if you  
9 say yes, it was, then all of these five elements of  
10 murder in the first degree are proved beyond a  
11 reasonable doubt.

12 And there are three element as it relates to the  
13 charge involving Cynthia McDermid. The assault, we  
14 have to show that she was assaulted, a firearm was  
15 used, and it happened in Hennepin County. The  
16 contested question of fact in that, in that charge is  
17 again is it the defendant. So that's the issue that  
18 you have to resolve, and if you decide, as I said,  
19 the question is simply is it the defendant. If you  
20 say yes, then the verdict is guilty as to both counts  
21 that are left in this indictment, murder in the first  
22 degree and assault in the first degree -- assault in  
23 the second degree. I'm sorry. But if you say no,  
24 then the verdict is not guilty as to both counts.

25 Now, you as judges of the facts are the seekers

1 of the truth because the purpose of a trial is to  
2 search for the truth. Since you are the judges of  
3 the fact, we ask you to be the truth seekers. So  
4 when you look at the evidence, look for the truth in  
5 the evidence because you are the truth seekers. Look  
6 for the truth in the evidence and find the truth in  
7 the evidence, but give the defendant the benefit of  
8 any reasonable doubt.

9 We ask you to look for the truth in the evidence  
10 because a verdict which confirms the truth is a just  
11 verdict. Justice is truth. Outside the courtrooms  
12 all across America you see truth, justice, equality.  
13 Truth and justice go hand in hand. That's why we ask  
14 you to search for the truth and render a verdict that  
15 merely is a confirmation of the truth, irrespective  
16 of which way it goes, because somebody is going to be  
17 affected. Set that kind of stuff aside. Keep your  
18 eye on the prize. Search for and obtain justice, and  
19 I would say you are going to again accept or reject  
20 this, but in every case juries can find the truth.  
21 You can search for it and you can find the truth and  
22 you can do that in this case.

23 Now let's talk about, let's talk about the  
24 evidence. Basically we have two stories here. We  
25 have the defendant's version of the truth, and we

1 have the State's version. Defendant says he was home  
2 sleeping on the couch in front of his family at the  
3 time the murder occurred at about 11:30 on May 16,  
4 2004.

5 State's evidence basically comes in two parts.  
6 We have direct evidence, that is eyewitness  
7 testimony, people that identified him, let's refer to  
8 it as identification evidence in the form of the  
9 testimony of Cynthia McDermid and Ravi Seeley, and  
10 then we have witnesses who observed actions and heard  
11 statements of the defendant's. We have  
12 identification and actions and statements.

13 So we have two different versions here. We have  
14 the defendant's version and the State's version.  
15 When you have a situation like this where you have  
16 two different, two different sets of facts, then  
17 somebody is telling the truth and somebody is not.  
18 This is not a situation where some of the facts are  
19 contested and some are not. You know, defendant says  
20 he wasn't even there. He wasn't at Muffy's, he  
21 didn't make these comments to any of these people, he  
22 was on his couch sleeping. When you have a situation  
23 like this someone is telling the truth and someone is  
24 lying.

25 Let's look at the defense evidence that they

1 introduced. Most it came in the form of defendant's  
2 own testimony and the judge read you the instruction  
3 on credibility of witnesses. There are a number of  
4 factors that are a nonexclusive list that ask you to  
5 use your common sense and reason and life experiences  
6 in judging the credibility or believability of the  
7 individual witnesses, including the defendant.

8 The first factor on that is interest or lack of  
9 interest in the outcome. Nobody is more interested,  
10 has more to gain or lose by your verdict in this case  
11 than this defendant. No one in this trial is more  
12 motivated to sit up there, look you folks in the eye,  
13 each and every one of you right in the eye and lie to  
14 you. Nobody is more motivated to do that than this  
15 defendant.

16 If the State's version of the truth is accurate,  
17 then he has committed two terrible crimes, so what  
18 difference does it make to get up and commit perjury.  
19 He's got nothing to lose. But when you judge the  
20 credibility of his testimony, using your common sense  
21 and reason, you must always keep that in the  
22 forefront. No one is more motivated to lie than this  
23 defendant.

24 And we know from the past that the defendant has  
25 no qualms in lying to the police. He explained it as

1           being well, just little things. To him it was little  
2           things. We, we exposed two such prior instances. He  
3           said there could be more, he just couldn't remember  
4           them, but agreed that the two that we had were  
5           instances where he just flat-out lied to the police.  
6           He said, as I indicated they were little things to  
7           him. Who knows what is a little thing in terms of  
8           the truth or a lie to this defendant? Apparently to  
9           the police officers it wasn't a little thing but to  
10          him it was okay because it was just little things.

11                 In addition we have some inconsistencies in his  
12          testimony from his direct examination until the time  
13          he gets to cross-examination. There are a couple of  
14          points that -- and also inconsistent from his  
15          testimony and what he told the police after he was  
16          arrested on May 18 or 19, 2004. I can't recall the  
17          day.

18                 But one of the things he said, and this might be  
19          one of the little things, but it's curious that these  
20          little things, there is such a discrepancy in these  
21          little things, one of the things he said is that he  
22          was going to school at this school in St. Paul, LDT I  
23          believe it was called. But when he talked to the  
24          police shortly after this happened, he admitted that  
25          he was kicked out of school. Now when I brought that



1 up, he agreed that that's what he told the police  
2 back then. So why, I mean even though this is  
3 something minor such as just where he was going to  
4 school, but why the inconsistencies about this? I  
5 mean we have a person who was motivated to lie, who  
6 has demonstrated a propensity to lie, and now we have  
7 a situation where he's inconsistent about a little  
8 thing. What does your common sense and reason tell  
9 you about the credibility or believability of that  
10 witness?

11 We have an inconsistency about his hair, about  
12 the braids, and on direct examination he said that  
13 his braids were out, his afro was picked out, and  
14 that's an important factor to him because he wants  
15 you to believe that his hair was much different than  
16 that that was described by Cynthia McDermid. It was  
17 consistent with the way it appeared in his mugging  
18 photo when he was mugged a couple -- when the photo  
19 was taken a couple of days afterwards. But he  
20 admitted on cross-examination when I talked to him  
21 that when he spoke to the police his hair was only  
22 half picked out.

23 Now, that's not a little thing, and yet there's  
24 an inconsistency there and there can only be one  
25 truth as to the condition of his hair. Is it half

1 picked out or is it all picked out, or is it in  
2 braids? What does your common sense and reason tell  
3 you about that?

4 And he also talked about, there was another  
5 inconsistency about when he asked the police why he  
6 was there. You remember on direct examination he had  
7 indicated that it was shortly after he was brought  
8 over to the homicide division, he asked the officer  
9 why he was there. And see, that's kind of important  
10 because of the reason -- for the reason that I  
11 brought out on cross-examination. One of the things  
12 the officers noticed was that he never asked what  
13 happened at the flower shop even though they were  
14 questioning him about that. But on direct  
15 examination he asks why he's there early on.

16 I point out on cross-examination that he says  
17 that he knew the police were coming after him because  
18 he missed court the day before for a curfew  
19 violation. He knew the police were coming for him so  
20 therefore he should have no question as to why he's  
21 there, and he agreed with that. And then after I hit  
22 him with that and pointed out about the discrepancy  
23 in terms of his not asking about the flower shop, he  
24 agreed that he asked why he was there after the  
25 police pointed out that he never asked about the

1 flower shop.

2 And he knows, he knows what was in that  
3 statement. He indicated that it was read to him. He  
4 recited what was in it, the general topics that, of  
5 this discussion during direct examination. And yet  
6 he is inconsistent as to when he asks the police why  
7 he is even down there, and that's not a little point.  
8 So what does your common sense and reason tell you  
9 about his credibility and his believability.

10 Another point, as I said before -- well, another  
11 point. He says he doesn't know the location of the  
12 flower shop. And I again, I would ask you to apply  
13 your common sense and reason and ask you does that  
14 make sense. This, there was testimony about the  
15 changing nature of north Minneapolis, how Jerry's  
16 Flower Shop in the 42 years of its existence has seen  
17 the neighborhoods go from good to bad to worse.  
18 Businesses come and go, and yet this business on a  
19 busy street on Lyndale Avenue right on the corner  
20 just a block north of Lowry, very busy intersection,  
21 Lowry and Lyndale, he who has lived in north  
22 Minneapolis all his life didn't even know about the  
23 flower shop's existence.

24 Now do you believe that? Does your common sense  
25 and reason tell you that he is telling you the truth

1           when he swore before god that that was the truth,  
2           when he looked you in the eye and said he never knew  
3           of the existence or the location of the flower shop?

4           He tried to suggest that he only hung out at,  
5           was it 27th and Pen, and 29th and Oliver, but we  
6           showed you some situations where he was documented as  
7           being very near the flower shop. He wants you to  
8           believe that he spends his whole life right around in  
9           this area (indicates) when the flower shop is over  
10          here and we have these instances and other instances  
11          where he's not in this area, and you can see from the  
12          scale that this is, this area where he hangs out with  
13          his homies is less than two miles from the flower  
14          shop.

15          Do you think he's telling you the truth when he  
16          says he doesn't know about the existence of the  
17          flower shop? And that's important to him because  
18          that's what he told the police back after this  
19          incident. He has to stay consistent with that and  
20          you decide, ask you to apply your common sense and  
21          reason. Is he telling the truth on that.

22          And the other thing, another point, I mentioned  
23          this earlier. When he's brought in to talk to the  
24          police and he recites how that conversation went,  
25          first they talked about the warrant, then they talked

1 about his relationship with his girlfriend, then they  
2 talked about the flower shop. All during this he's,  
3 if he's an innocent man he's only down there for the  
4 purpose of addressing this curfew violation for  
5 having missed court the day before. A minor thing.  
6 No big deal.

7 Doesn't your common sense and reason tell you  
8 that if officers, detectives now, not patrol officers  
9 are asking you questions about a flower shop,  
10 wouldn't your curiosity peak a little bit? Wouldn't  
11 you being a little bit curious as to why these  
12 questions are being raised to you when your  
13 understanding is the only reason you are down there  
14 for is to address this curfew violation, failing to  
15 come to court for this curfew violation?

16 And this is, you know, the defendant wasn't shy  
17 about asking questions. Time and time again he would  
18 refuse to respond directly to my questions and  
19 continued to ramble on to get his story out. There  
20 were other times when he asked to see things. He  
21 wanted to see the records or the reports of where he  
22 was at certain times. He wanted to see the  
23 transcript that I had that he's seen of his  
24 testimony. He was not shy about asking for questions  
25 or asking for proof, and yet in this situation when

1       these officers are saying do you know where the  
2       flower shop is, here's a photograph of the flower  
3       shop and he says it looks like one on Penn, then they  
4       say explain -- if you don't know where it is, why is  
5       it your fingerprints are in the flower shop. And  
6       that was a technique that they used to see how he  
7       would react. Even after that he doesn't say why are  
8       you asking me questions about the flower shop. Why  
9       aren't you asking me questions about curfew  
10      violations? Why aren't you asking me why I didn't  
11      make it to court yesterday? He doesn't ask any of  
12      those questions. It's not until the officers say you  
13      know something, all during this time we've been  
14      talking about the flower shop I've noticed something,  
15      you have not asked us why we're questioning you about  
16      that. Only then -- and he agrees to this on  
17      cross-examination -- only then does he start, does he  
18      ask a question about why he was there, why he was  
19      even down there.

20             Now, apply your common sense and reason. You  
21      saw him on the stand. He was not shy about asking  
22      for proof. Don't you think if he truly is an  
23      innocent man and he's being questioned about a flower  
24      shop and if he is truly innocent, he knows the cops  
25      are lying to him about having fingerprints at the

1 flower shop, don't you think at some point in time  
2 before the cops pointed out he's going to say why are  
3 you asking me these questions. And guess what, he  
4 doesn't.

5 And you know why? Because he knows what  
6 happened at the flower shop. He didn't need to ask  
7 what happened at the flower shop because it was him  
8 that had that gun, that pointed it at Cynthia  
9 McDermid and put those two bullets into Randy Sherer.  
10 So that's the reason why he never bothered, never  
11 thought to ask what happened at the flower shop.

12 If you believe the defendant's version then  
13 everything the State has introduced is a lie. He's  
14 telling the truth, everything we introduced is a lie.

15 And as I said, basically our case is separate  
16 into two parts. We have the evidence of  
17 identification from Cynthia McDermid and Ravi Seeley,  
18 and the evidence of the statements and actions that  
19 were witnessed by Anthony Todd, Jessica Warfield,  
20 Jennifer Coleman, and his cousin Isiah Harper.

21 Now, in this situation he wasn't asked directly  
22 about the identification but it's pretty -- it would  
23 seem, using your common sense and reason, that  
24 there's no claim that with respect to the  
25 identifications that they were lying, that the

1 witnesses are lying. Rather it's just a suggestion  
2 that they are merely mistaken, not lying, just merely  
3 mistaken. Good faith mistakes. But it is  
4 the defendant -- but the defendant says as to these  
5 other witnesses, Anthony Todd, Jessica Warfield,  
6 Jennifer Coleman and Isiah Harper, their words, their  
7 testimony are bold faced lies.

8 So let's talk about, let's talk about the lying  
9 witnesses first. You know, and this again is a  
10 question of fact that you need to resolve. Did these  
11 witnesses lie. And as it relates to, to proving a  
12 case and proof beyond a reasonable doubt and deciding  
13 contested questions of fact and believability of  
14 witnesses, as the judge indicates you can decide to  
15 accept or reject all or part of any witness's  
16 testimony.

17 You can say that -- you can base your decision  
18 in this case simply on the testimony of Cynthia  
19 McDermid. If you believe that Cynthia McDermid  
20 correctly identified the defendant, then irrespective  
21 of -- you could say that the rest of the witnesses  
22 are bold faced liars and the State still hasn't met  
23 its burden of proof beyond a reasonable doubt, or you  
24 could take, you can accept and reject portions or all  
25 or none of a witness's statements or testimony, such



1 as, such as Isiah Harper. I mean one second he's  
2 against me and the next minute he's with me, the next  
3 second he's against me, the next second he's with me.  
4 You can accept or reject all or a part of any  
5 witness's testimony because you are the judges of the  
6 facts and that is exclusively within your power,  
7 within your province.

8 Let's first talk about what he says are the  
9 lying witnesses, Jessica, Jennifer, Anthony, and  
10 Poopey. Now, now question, these are some kids with  
11 issues. You saw Jessica came in with her homemade  
12 tattoos. You know about Jennifer having been on  
13 runaway status. Jessica and Jennifer were both on  
14 runaway status at the time of this offense. Jennifer  
15 has been on runaway status until she fortunately  
16 agreed to come in and give testimony provided she  
17 wasn't arrested on a probation violation for a  
18 juvenile probation. These are kids with issues and  
19 they are easy to cross-examination because of these  
20 issues, but applying your common sense and reason,  
21 whom do you think this defendant would make these  
22 kinds of admissions to? Do you think it would Mother  
23 Theresa, or do you think it would be --

24 MR. BENSON: Objection, Your Honor.  
25 Improper argument.

1 MR. FURNSTAHL: I'll withdraw that.

2 THE COURT: I'll order the jury to  
3 disregard Mother Theresa.

4 MR. FURNSTAHL: These are exactly the  
5 persons that the defendant would be hanging around  
6 with and would be making these kinds of statements  
7 to.

8 So ask yourself using your common sense and  
9 reason, is it a surprise that they have, that some of  
10 these witnesses have some of these issues? And are  
11 these issues really important in judging their  
12 credibility and believability? Jessica Coleman when  
13 she came in, and you judge this for yourself, I mean  
14 she could have looked at the defendant and said if  
15 she was just in our camp and didn't want to create  
16 any problems and wanted to make sure she did exactly  
17 what we wanted her to do, she would have looked at  
18 the defendant and said yeah, that's definitely the  
19 guy, the guy that I picked out. But she looked at  
20 him and she said I'm not sure as I sit there, as I  
21 see him sitting there, it's been so long I can't make  
22 an in court identification. I did make an accurate  
23 identification when I talked to Sergeant Keefe back  
24 in October 19, 2004, but it's been a long time since  
25 October 19, 2004, and now because of that I honestly

1 cannot say it's the same person but I'm certain of my  
2 identification back then.

3 So if she was motivated to lie, why wouldn't she  
4 have done a better job of it? I mean, if she was in  
5 our hip pocket, if you will, why would she just have  
6 pointed to him -- it would be obvious, wouldn't it?  
7 That he's the guy that's on trial, he's the guy that  
8 we wanted her to identify in court and yet she  
9 doesn't do that. She very honestly says I don't  
10 know. As a result I have to bring her back the next  
11 day and show her the photo lineup so we can connect  
12 up that very, very important point so that there is  
13 no confusion as to whether or not it's Marvin Miller  
14 or Marvin Haynes.

15 And it was pointed out on cross-examination --  
16 and we asked, we ask you to search for the truth and  
17 we asked Sergeant Mattson to take Jennifer out after  
18 court to try to locate this house where she had the  
19 second conversation with the defendant, and she went  
20 out and she picked out the house that was occupied by  
21 Marvin Miller and we brought that in in front of you.  
22 We brought it in. We asked that that I be dotted,  
23 that T be crossed and we brought that in and also a  
24 photograph of Marvin Miller and she said well yeah, I  
25 thought it was his house, that's where I saw him at,

1 he never represented it was his house. And she also  
2 was very, very clear and very specific that the  
3 person that she had these conversations with was not  
4 the other Marvin, but the Marvin that she picked out  
5 of the photo lineup.

6 So really while it might be a speed bump does it  
7 really mean that she's lying? That she's a liar,  
8 that she committed perjury in front of all you folks?  
9 That's your decision to make.

10 Same with Jessica. Does she have a motive to  
11 come in here and lie? She positively identified the  
12 photograph that we introduced this morning as the  
13 person that she heard bagging about shooting the guy  
14 at the flower shop. Both Jessica and Jennifer were  
15 there, memory's a little fuzzy on some points but  
16 remember that point even though they don't to get  
17 involved, even though they have these issues, they  
18 came in and they told you the truth, and that is for  
19 you decide. Is it the truth or is it a lie as the  
20 defendant says.

21 Same with Anthony Todd. Do you think he liked  
22 to be here? The first thing the judge had to do is  
23 to get his head straight, correct his behavior a  
24 little bit. And it just so happens that he  
25 corroborates the testimony or the statements of Isiah

1 Harper.

2 And then we get to Poopey. Isiah Harper.  
3 Remember in my opening statement I told you that Mr.  
4 Harper had a decision to make whether or not to come  
5 in here and tell the truth or not, and you saw how he  
6 behaved on the stand. You heard not just his  
7 testimony but you also saw his conduct. And didn't  
8 his conduct speak volumes to you? I mean, he had to  
9 leave a couple, what, three times. We had to have  
10 conferences with his attorney. We got him an  
11 attorney to protect his rights in this forum and he  
12 needed to and we allowed him to consult with his  
13 attorney so that he could bring the truth. And he  
14 was conflicted in doing that because on the one hand  
15 he knows that he could face some jeopardy himself,  
16 and on the other hand if he tells the truth -- and  
17 that would happen if he lies. On the other hand if  
18 he tells the truth he hurts his cousin, his own blood  
19 cousin and he has to go home and face his relatives  
20 and he did not like that, obviously. So didn't his  
21 conduct speak volumes to you?

22 Now, I said earlier, you are not aware of this  
23 but this was actually kind of a law school  
24 examination in hearsay and that applies to some of  
25 the, to the statements of Isiah Harper. You have

1 before you his testimony that has been inconsistent.  
2 When I first start he doesn't know nothing, he's  
3 asleep or he's at home or something like that. Then  
4 we break, and then we have a break after I ask him if  
5 he lied at the grand jury and he says yes, his  
6 attorney and myself have a conversation, we have to  
7 agree that his earlier lies, he won't be prosecuted  
8 for his earlier lies so long as he tells the truth,  
9 and then in response to my questions he tells it all.

10 And then on cross-examination he picks up the  
11 cues from defense counsel and he agrees that he  
12 doesn't know any of that stuff, that the cops put  
13 words in his mouth, that he was threatened and that's  
14 the only reason that he said those things, and he  
15 flipped again. And then I come back on redirect  
16 examination and I have him point out that the  
17 threats, the so-called threats that the cops made to  
18 them were exactly the same, was exactly the same kind  
19 of advice that his attorney was giving to him back in  
20 the hallway; that is that he was exposing himself to  
21 criminal liability if he did not tell the truth or if  
22 he lied to the cops. He didn't have to talk to the  
23 cops but if you talk to the cops and lie when you are  
24 assisting somebody that you know committed a crime,  
25 you could be charged and convicted of aiding an

1 offender after the fact. That was something that the  
2 police told him. That was something that his own  
3 attorney told him. That wasn't a threat.

4 He would like to, you know, in order to justify  
5 to his family and himself why he told the truth to  
6 the police when he spoke to them on May 28, 2004, he  
7 would like to say it was because of the threats but  
8 these weren't threats at all. This was advice.  
9 Advice that he was given, advice that he rejected.

10 Now, and you know it was, it wasn't a threat for  
11 this reason: Because if the cops were really  
12 threatening him as opposed to advising him, they  
13 wouldn't have told him you could get half of Marvin's  
14 time. They would have told him you could get all of  
15 Marvin's time. If they were trying to push words out  
16 of his mouth they would have just said you could get  
17 all of Marvin's time. But instead they said exactly  
18 what his attorney advised him, so what does your  
19 common sense and reason tell you about that? Was he  
20 really threatened?

21 And he's got a lot, a lot of information,  
22 information that could only come if he was either  
23 present or if he learned that information from  
24 someone with personal knowledge, someone who was  
25 there. That could only come from one of two sources.

1           Let me just say that there's no suggestion that Isiah  
2           Harper was present inside that flower shop at the  
3           time that this all went down, so the only alternative  
4           is that if he's lying is that he gained that  
5           information from someone with knowledge, and that  
6           could come from only one of two sources, either the  
7           cops or the defendant, because there's some pretty,  
8           pretty striking evidence in there.

9           He talked about how they were at Muffy's that  
10          morning. The defendant and Daquan Bradley were  
11          talking about hitting a lick. He described a gun  
12          that was in the possession of Daquan Bradley that  
13          just happens to be match the description that was  
14          given by Cynthia McDermid, a person that has no  
15          knowledge of handguns. He describes how his own  
16          cousin was acting as if he had a gun on him but  
17          didn't see one on him. He describes how Daquan and  
18          the defendant drive off in this white Chevy and that  
19          later on he gets a phone call from the defendant and  
20          the defendant tells him find Daquan because I shot an  
21          old white guy in the flower shop. He says he shot  
22          the old white guy because he wouldn't give up the  
23          money and he got scared and he shot the guy. He said  
24          he went into the flower shop alone while Daquan  
25          waited in the alleyway in back, and you remember the



1 testimony about the dog tracking and the evidence we  
2 had about that. I mean only -- he could only get  
3 that kind of information from either being there or  
4 from somebody with knowledge, either the cops or the  
5 defendant.

6 He testified -- and he said in his statement  
7 that Marvin said in this phone call that he didn't  
8 get any money.

9 Now, his statements to the police on, on  
10 April -- on May 28th of 2004 generally would fall  
11 within that category of what we with call hearsay,  
12 and as the Court instructed you as I said before this  
13 was a little bit of a law school exam on hearsay.  
14 This was one of the many exceptions to the hearsay  
15 rule that authorized the introduction of that  
16 evidence as substantive evidence. Evidence can be  
17 introduced for substantive reasons or for  
18 impeachment. It's introduced for substantive reasons  
19 when it is evidence of the act; evidence that the  
20 person committed or that the defendant committed the  
21 crimes that were charged. It could it be admitted  
22 for impeachment if it challenges the credibility of  
23 the witness.

24 So for example as to the evidence of impeachment  
25 if you have a prior inconsistent statement it goes

1           like this. A witness gives a statement outside of  
2           court that I saw the car go through the red light, it  
3           was a blue car that went through that red light. On  
4           the stand they say yeah I saw the car go through the  
5           red light, it was a green car that went through that  
6           red light. And then to introduce that in the past  
7           they said it was a blue car.

8                     Well, that particular prior inconsistent  
9           statement is not evidence that it was in fact a blue  
10          car as opposed to a green car that went through the  
11          red light, but is only used to challenge or to  
12          impeach the reliability or credibility of the  
13          testimony as to the color of the car.

14                    This is all legal stuff and it's a bit confusing  
15          but the bottom line is this. The statements, the May  
16          28th statement and the grand jury testimony of Isiah  
17          Harper is admissible as substantive evidence. You  
18          could reject, ignore everything that Isiah Harper did  
19          and said on the stand and just draw, rely only on the  
20          prior statements and the prior testimony and make a  
21          decision as to which, what is the truth as it relates  
22          to information that Isiah Harper had.

23                    So now the defense contends that he was  
24          pressured and -- or he was threatened and that he was  
25          pressured and that therefore obviously the cops

1 told -- those statements are not reliable because,  
2 not because he learned that information from the  
3 defendant but because the cops told him what to say.  
4 And if that's the truth, then why wasn't the officer  
5 even questioned about that? I mean, think about  
6 that. What that allegation is that this whole  
7 process here that I'm a part of and that we ask you  
8 to be a part of is to frame this defendant of those  
9 horrible crimes. We are asking -- if you believe the  
10 defense on that point, we are involved in a  
11 conspiracy and we are inviting you to be involved in  
12 this conspiracy to frame this defendant and violate  
13 his civil rights. Then that's what this whole trial  
14 is all about and you decide.

15 Use your common sense and reason. Do you think  
16 that that's what the police were doing? That that's  
17 what we're doing in this trial? What does your  
18 common sense and reason tell you about that?

19 Or is it just the opposite. Is it fact, is it  
20 truth that Isiah Harper knows so much detail because  
21 he gained that detail from these conversations and  
22 the witnessing the actions of his own cousin. You  
23 saw his conduct, you saw how he was conflicted. Why  
24 would he have those conflicts unless what he said to  
25 the police back then is the truth.

1           Let's now talk about the identification  
2 witnesses. First of all let's talk about Ravi  
3 Seeley. Ravi Seeley was a terrible witness, just as  
4 Isiah Harper was a terrible witness. Isiah Harper  
5 went back and forth and back and forth, but yet did  
6 you get, can you get the truth? Can you find the  
7 truth if you search for it in the testimony and the  
8 statements and actions of Isiah Harper? You can  
9 likewise do that from the statements and testimony of  
10 Ravi Seeley.

11           Now, Ravi Seeley said that he wasn't, he wasn't  
12 nervous up here. He wasn't afraid up here, and you  
13 decide using your common sense and reason if that was  
14 really, you know, a young kid trying to be, trying to  
15 be proud or if in fact he was scared to death. You  
16 can accept or reject all or part of a witness's  
17 testimony.

18           And what is really important about Ravi Seeley  
19 is not so much his testimony but about -- but his  
20 prior identification because when you frame the issue  
21 here, the issue here is who did it, did the defendant  
22 do it. So what's important about Ravi Seeley is that  
23 prior identification, and all that testimony, all  
24 those statements about his prior identifying of the  
25 defendant in that photo lineup and that live lineup,

1           that all again is admitted as substantive evidence,  
2           as evidence that the defendant committed these  
3           crimes. So you can disregard what he testified to  
4           and focus solely on his statements to the cops back  
5           on May 19th when he was shown the photo lineup and  
6           seeing the live lineup on May 20th or 21st, whenever  
7           that was. I don't recall.

8                     And this is, this is what he says. Sergeant  
9           Wehr testified to the sequential lineup that was  
10          shown to him on May 19th at about four o'clock in the  
11          afternoon. On the other side of the town Sergeants  
12          Mattson and Keefe are showing a similar lineup to  
13          Cynthia McDermid.

14                    How could it be that these two persons who have  
15          no connection to each other, who have no knowledge of  
16          even the existence of the other can come to the same  
17          conclusion unless it were true. Either it's true or  
18          it is an amazing outrageous coincidence because  
19          Sergeant Wehr, when he went to Ravi's house with  
20          those six photos, he had no idea which of the six was  
21          the suspect in this case. It was kind of a new  
22          experimental procedure or guideline where they would  
23          try to get someone who was not connected to the case  
24          to make sure that there were no subtle hints, no  
25          subtle suggestions and show the person the photos one

1 at a time, not all laid out six in a row so you can  
2 compare and match and things like that. One at a  
3 time.

4 And this is what Ravi Seeley does. He gets to  
5 number five which is the photograph of the defendant  
6 and he says hold on to that one. Then he goes to  
7 number six, he says that looks like the guy that was  
8 with him the week before, then he wants to see it a  
9 second time and this is, these are his words, "to be  
10 sure." To be sure. Then when Sergeant Wehr shows  
11 him the photo lineup the second time, he says that's  
12 the one I saw at the rose shop. That's the one I saw  
13 at the rose shop. At that point in time Sergeant  
14 Wehr had no idea that already Cynthia McDermid had  
15 picked out the same photograph.

16 Now how can that be unless it's the truth,  
17 unless he in fact did identify the right person, who  
18 according to the defendant, is asleep on his couch at  
19 the time this happens.

20 Then we go to the live lineup. And there can be  
21 no question. He never spoke, whispered in Sergeant  
22 Mattson's ear and said I'm not sure about my  
23 identification. Why he said that, I have no idea.  
24 You can decide if it's -- you can decide why he did  
25 it if you want or you can just ignore it if you want

1 because you can rely only on the prior statements  
2 that Sergeant Mattson gave you about what he said at  
3 the live lineup.

4 And this is what Sergeant Mattson said. When  
5 the defendant came in he gasped, he gasped first and  
6 said whoa, I recognize him, he looks like who I -- he  
7 looks like who I saw. He looks familiar -- on the  
8 next one he said he looks familiar but not from the  
9 flower shop. But even though the hair of the  
10 defendant is much different in the live lineup than  
11 it was during the photo lineup, this is the -- that's  
12 the only person that he reacts to when he sees this  
13 live lineup, so use your common sense and reason.  
14 Ask yourself is that prior identification reliable.

15 And Cynthia McDermid. One of the things that  
16 was pointed out about Ms. McDermid is that in the 911  
17 call she gave a description that clearly is not of  
18 the defendant. Five-ten, five-eleven, whatever it  
19 was, 180 pounds. But think about what was going  
20 through her mind at that time, and we played you that  
21 911 tape. You have a little bit better understanding  
22 of the fear, of the panic, of the emotions that that  
23 woman was experiencing at that point in time in her  
24 particular life.

25 Obviously the police have a different motive.

1           They want to make sure that they get that description  
2           out as quickly as possible no matter what it is in  
3           case they can catch somebody running away from the  
4           scene either on foot or in a car.

5                     But this is what Cynthia is focused on: On her  
6           brother. She doesn't know if he's dead or alive.  
7           She knows she's heard two shots. She knows he was  
8           left there with a gunman holding a gun. She knows  
9           she made a movement that might have caused that  
10          gunman to react, and all she's concerned about is not  
11          identifying the person, but her own brother. Is it  
12          really -- wouldn't it make sense that she would get  
13          some of these things wrong when she doesn't even  
14          remember doing these things now? I mean is that  
15          really challenging, the credibility or the  
16          reliability of the identification that she made a few  
17          days later?

18                    And when Sergeants Mattson and Keefe brought her  
19          those lineups, that photo lineup, this is what she  
20          said. Again they went through them one at a time  
21          holding it up, setting it down out of view, and when  
22          number five was placed down she gasped, just like  
23          Ravi Seeley, placed her right index finger on the  
24          photo and said oh my god, that's him. Oh my god,  
25          that's him.



1           And she described how his hair was different in  
2           that photo than when, what it was when she saw him on  
3           the 19th. She said the hairstyle was not the same.  
4           She said it was, it was a little bit longer, she said  
5           that -- she told Sergeant Mattson that when she saw  
6           the photo it gave her the willies. And she  
7           identified it by saying that's him.

8           And then in the live lineup, even though it was  
9           somewhat cruel to ask her to do this when she was  
10          going to her brother's wake that night, she was asked  
11          to sit through a lineup and the only person that she  
12          reacts to is the defendant. The only one of all  
13          those other people even though the hair is all wigged  
14          out at this point in time, and we would suggest the  
15          defendant is doing that to disguise his appearance.  
16          But out of all this, that's the only one that she  
17          identifies or she reacts to. She's asked for a chair  
18          so she can sit down because she's in a great deal of  
19          stress, but what the defendant comes in she bolts  
20          upright in her chair and gasps and focuses on him.  
21          She says he looks like him. Then they do it a second  
22          time, and you recall how long it took to get that  
23          going the second time and again she focuses only on  
24          the defendant, but then says because of the stress  
25          her mind is starting to shut down and she's starting

1 to blend everything and she doesn't want to make a  
2 mistake, but the, her emotions, her reactions speak  
3 volumes. It was only the defendant that she  
4 identified.

5 So how can this be? How can two different  
6 people from different parts of the Twin City area who  
7 have no connection to each other, who have no  
8 knowledge of the existence of the other, how can they  
9 possibly on two occasions identify the same person as  
10 that Jessica Warfield, Jennifer Coleman, Anthony  
11 Todd, and Isiah Harper say is connected to the flower  
12 shop murder? How can that be? Unless it's the  
13 truth.

14 Now, in a few minutes you are going to go back  
15 and decide this case. I would remind you again keep  
16 your eyes on the prize. The prize is justice. A  
17 just verdict is one that is a confirmation of the  
18 truth, so search for the truth in the evidence.

19 You'll get six verdict forms when you go back  
20 there. A guilty and not guilty for murder in the  
21 first degree, guilty and not guilty for murder in the  
22 second degree, guilty and not guilty for assault in  
23 the second degree. The murder relates to Harry  
24 Sherer obviously; the assault relates to Cynthia  
25 McDermid.

1           If you agree with the State, we ask you to sign  
2 the guilty verdict forms for murder in the first  
3 degree and assault in the second degree. Ignore the  
4 verdict forms for murder in the second degree. You  
5 will have made a determination that the actions were  
6 intentional and therefore the lesser offense does not  
7 apply. That's all we ask you to do is search for the  
8 truth and bring back a verdict or verdicts that is a  
9 confirmation of the truth. That is justice. That is  
10 guilty.

11           Thank you.

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

13           MR. BENSON: Thank you, Your Honor.

14           Marvin Haynes took this stand. He did look at  
15 you and he told you like he told those police  
16 officers last year that he did not commit this  
17 offense. He told you where he was. He got home  
18 early in the morning, he went to sleep, he woke up  
19 late in the afternoon, and he told you that as he  
20 told the police. And you know that's the case  
21 because if those details were wrong as far as where  
22 he was, what he was doing and that he wasn't at that  
23 flower shop, they would troop Detective Mattson back  
24 in here again as they did so often during this case.  
25 So you know that Marvin Haynes was consistent and you

1 know if he's consistent he's telling the truth.

2 And the prosecutor takes a little bit of time  
3 talking about searching for truth and, but it seems  
4 with their evidence as presented they want to make  
5 excuses for anyone that doesn't agree with their  
6 version of the truth.

7 You heard what he said about Isiah Harper.  
8 Isiah Harper came in here, we all saw Isiah Harper  
9 testify, and think about what Mr. Furnstahl just said  
10 to you. He said that Isiah Harper took cues from me,  
11 cues from me to say he was threatened. Remember the  
12 testimony. As I recall the testimony, your  
13 recollection will -- use that. But as I recall the  
14 testimony, Isiah Harper talked about these threats  
15 when Mr. Furnstahl was asking him questions. Mr.  
16 Furnstahl was asking him questions and Isiah Harper  
17 says you know what happened, they threatened me, they  
18 told me what to say, I ain't even gotten up at that  
19 point. Isiah Harper said that.

20 During the questioning by Mr. Furnstahl, by the  
21 State, Isiah Harper admits to committing perjury at  
22 the grand jury. Says I committed perjury. And  
23 that's when his attorney jumps up a couple questions  
24 after that, the attorney jumps up and they go to the  
25 hallway and they have a conversation. This is a

1 witness that the State wants to rely who says he  
2 committed perjury at the grand jury. Mr. Furnstahl  
3 or the State wants you to rely upon that grand jury  
4 testimony. The witness has said he committed  
5 perjury.

6 And that perjury was about the May 28th  
7 statement. And why is it important for the State to  
8 think, or to have you think that Isiah Harper was  
9 taking cues from me in my cross-examination? It's  
10 important because if Isiah Harper was threatened,  
11 which we believe he was, if he was threatened then  
12 that's the reason he gave that May 28th statement.

13 Now, we do know that he had contacts with  
14 sergeant Mattson. According to Sergeant Mattson one  
15 contact before May 28th. According to Isiah Harper,  
16 it was three or four contacts before May 28th. And  
17 Isiah Harper told you that during those contacts he  
18 was threatened, he was threatened with 15 years. He  
19 was told that he would get is 15 years in prison.

20 Now, he was 16 when he testified here. If a  
21 15 year old kid is sitting talking to one or at least  
22 one detective and they are accusing him of things,  
23 and remember you heard evidence that there's  
24 information that Isiah Harper may have been involved  
25 in this, so these police officers have him in a room

1 and they are saying we think you are involved, we  
2 have information that you are involved, we think you  
3 know something, you can get 15 years. Does Isiah  
4 Harper, does he have a lawyer at that point? Does he  
5 know what is going on? He knows he's looking at 15  
6 years. His whole life. He's been on this earth  
7 15 years already. Do you think that would motivate  
8 you to say what the police want you to say?

9 And Detective Mattson comes in here and he says  
10 on his word alone that I don't know, you know, I  
11 don't recall that, I don't recall exactly what those  
12 words were, I don't recall exactly what was spoken.  
13 But we do know he didn't take notes mor he took notes  
14 and destroyed those notes. Didn't do a report, and  
15 we spent a great deal of time during this case  
16 talking about reports. The reason for doing these  
17 reports, to write down what witnesses tell you.

18 And this is the lead investigator, so the lead  
19 investigator in a homicide case talking to someone  
20 who has been possibly who may or could have been  
21 involved in the case and there's no report or record  
22 of that conversation? When you use your common sense  
23 and your reason ask yourself why isn't there a  
24 report. Why isn't there a report. If he destroyed  
25 notes, who knows, there could have been a recording

1 and that could have been destroyed as well.

2 The point is that this issue of these threats  
3 came out during the State's questioning. It wasn't  
4 some great scheme that we put together, and you know  
5 that because when Isiah Harper is testifying he's  
6 telling them, as he told the grand jury in that,  
7 beginning of the grand jury if you can remember  
8 through my questioning and also when you heard the  
9 grand jury, he was asked the question, you talked to  
10 the Minneapolis police and gave them a statement. He  
11 gave the answer, yeah, what they told me to say. And  
12 then the prosecutor asked him more questions during  
13 the grand jury and after that it just flowed from  
14 there, a repetition of the May 28th statement.

15 So Isiah Harper, as you saw his demeanor in here  
16 he was -- he seemed conflicted, he seemed -- he  
17 seemed scared. But he wasn't scared of me. He  
18 wasn't scared of Marvin Haynes. He was scared of  
19 going to prison for 15 years. He had to the break --  
20 he was scared of possibly being charged with perjury,  
21 and once he admits that the State goes back and makes  
22 a deal with him.

23 And if the State is really concerned with  
24 searching for the truth, do you make a deal with a  
25 person that's already got up on the stand and told

1           you, told you, told everybody in this courtroom that  
2           they lied to the grand jury? Is that getting you the  
3           truth? No, it's not.

4           The State of Minnesota makes a deal with this  
5           person that anything he says that day, anything he  
6           says, anything he says up to that point they are  
7           going to give him a pass on that. He's not getting  
8           charged with perjury. And not only do they do that,  
9           and this isn't a quest for the truth. What the State  
10          proceeds to do is question in this manner. Mr.  
11          Harper, it seems that you had a bad memory or didn't  
12          remember some details. Did your attorney go out  
13          there and read your statement to you? Yes. Your  
14          attorney read that statement to you, isn't it true  
15          that you have ADHD? Isn't it true that you have ADHD  
16          and maybe that's why you didn't remember things when  
17          you first started testifying? Does that sound like  
18          the truth? That sounds like an excuse.

19          So after that Isiah Harper falls in line, starts  
20          reciting the May 28th conversation. He goes through  
21          that, adopts what the prosecutor asks him, then I ask  
22          him some questions and one of the first questions I  
23          ask him is about him admitting to committing perjury,  
24          about his understanding of what this deal was, and  
25          about the fact that he volunteered on direct



1 examination that he was threatened and felt  
2 threatened. And I asked him, and you all will  
3 recall, what was that threat, I don't want to put  
4 words in your mouth, what was that threat. And  
5 that's when he starts talking about the 15 years and  
6 getting half the sentence of what Marvin Haynes would  
7 get and these police officers putting words into his  
8 mouth.

9 Then after that, after that cross-examination  
10 Mr. Furnstahl gets up and you all recall he says I'm  
11 confused, what is the truth. Tell us, what's the  
12 truth? And Isiah Harper still sitting there, the  
13 State's witness, says the truth is they threatened me  
14 and they made me say this. They told me what to say.

15 Now, that wasn't good enough for the State and  
16 they started to ask question after question after  
17 question of Isiah Harper until he broke down crying.  
18 He breaks down crying and then he falls in line with  
19 this May 28th statement again. Is that a search for  
20 truth?

21 No, that's a such for confirming what your truth  
22 is. That's what the State was doing. And that's the  
23 witness that now they say you can disregard  
24 everything he says in court, you can disregard all  
25 these circumstances and you can believe the grand

1 jury testimony, you can believe the May 28th  
2 statement.

3 You can't believe that May 28th statement. One,  
4 because of what happened in court, two, because of  
5 his motivation in giving that statement, his  
6 motivations in testifying at the grand jury to not go  
7 to prison to satisfy the State. For those reasons.

8 But you can also not believe May 28th statement  
9 because when you look at the details, there's one  
10 detail that the State didn't talk about. In those  
11 details of that statement he says that, according to  
12 Isiah Harper in that statement, Marvin Haynes told  
13 him that he shot this guy once in the head. That's  
14 not true. We know from the evidence from Dr. Kathy  
15 Berg, Kathy Berg tells you, and you saw from the  
16 autopsy photos, Harry Sherer was shot in the chest.  
17 Maybe Isiah Harper didn't remember that well enough  
18 when they turned on that tape recorder, but that's a  
19 detail, an important detail in this case in that May  
20 28th statement that the State wants you to accept as  
21 true that is simply wrong.

22 Another thing the State talked about briefly  
23 with respect to Isiah Harper is he talked about this  
24 white truck. And at the beginning of this trial --  
25 or the white, white Chevy that he says Marvin Haynes

1 and Daquan Bradley left in. At the beginning of the  
2 trial I told you in listening to these civilian  
3 witnesses, these kids that come in here, to listen to  
4 each and every one of their testimony and also  
5 compare the testimony to each other to look at those  
6 details and look for those inconsistencies. And  
7 Anthony Todd, who as we know from his testimony,  
8 Anthony Todd is in here and in his first statement to  
9 the police he doesn't know anything, he didn't hear  
10 anybody talk about anything, didn't see any gun but  
11 he gets locked up into the St. Croix boys camp. They  
12 go talk to him again and he gives a whole statement  
13 about everything that he knows because he's locked up  
14 and he's likely looking for a way to get out of being  
15 locked up in the St. Croix boys camp.

16 But what does he say when you look at the  
17 details of his testimony and his statement? What he  
18 says is that on that day Marvin Haynes was there,  
19 Daquan was there, they got into a green truck. Now,  
20 you have heard the State earlier this morning talking  
21 about that's not an element of the case whether it's  
22 a white Chevy or a green truck. No, it's not an  
23 element of the case. But what it is is an  
24 inconsistency, an important inconsistency because the  
25 State's witnesses have contradicted themselves. They

1 have talked about whether this was this white Chevy  
2 or a green struck.

3 The reality is Marvin Haynes wasn't there. He  
4 was home sleeping on his couch, and these witnesses  
5 that the State puts before you to try to prove this  
6 case are inconsistent and contradict each other.

7 Continue with these witnesses, the State talks  
8 about Jennifer Coleman and Jessica Warfield. We'll  
9 just keep them together. Jennifer Coleman -- and  
10 this is, this is very important, because the State's  
11 evidence I think we've talked about the prior  
12 statements of Isiah Harper, but the State's evidence  
13 comes down to this. There is the identification  
14 evidence, then there's evidence of somebody going  
15 around the north side bragging about doing this  
16 crime. And with Jennifer Coleman and Jessica  
17 Warfield that's the witnesses that the State wants  
18 you to believe heard Marvin Haynes bragging about  
19 this crime.

20 But you know that's not the case. You know that  
21 it was Marvin Miller who was doing this bragging, and  
22 you know this because of the testimony of Jennifer  
23 Coleman, her first day of testimony. I asked her the  
24 question, she comes in, she doesn't really recognize  
25 Marvin Haynes, she looks at him and says I don't

1 really recognize him, I don't know. But the person I  
2 identified, that was the person that did the  
3 bragging. So we explore that and I ask her the  
4 question, I ask her about you know two Marvins. She  
5 said yes. And then I ask her the Marvin that did  
6 this bragging, the Marvin that was talking about  
7 doing this robbery, shooting the old man, that  
8 Marvin, that was the person who lived in that house  
9 you went to. You heard her testimony on day one.  
10 She says yes, it's at that house, he lived at that  
11 house.

12 And I'm sure as you are sitting there you are  
13 thinking okay, well, two Marvins, you know, what's  
14 this case coming to as you are sitting there. Then  
15 you find out then the police take -- Sergeant Mattson  
16 takes her around and it turns out it is that house  
17 where Marvin Miller lives, the Marvin Miller who made  
18 these statements, because Jessica Coleman on her  
19 first day of testimony says that the person that  
20 lived at that house was the Marvin she was talking  
21 about. That's what Jennifer Coleman says, the person  
22 that lived at that house.

23 And then we find out the next day, we come back  
24 and they put her back up on the stand. She says she  
25 went to the house and it was a house on Queen Avenue,

1 2126 Queen Avenue North. Not 3343 Russell Avenue  
2 North where Marvin Haynes lives, and you know he  
3 lives there not only because he told you he lives  
4 there but because David Mattson confirmed that that  
5 is where he lives from the investigation. They know  
6 that Marvin Haynes lives at 3343 Russell Avenue  
7 North. They also know that Marvin Miller lived at  
8 2126 Queen Avenue north. Marvin Miller is the person  
9 that was going around bragging about doing this,  
10 doing this killing at the flower shop.

11 And also what's important about that is once  
12 again we're back to Detective Mattson, and you will  
13 remember on the first day of Jennifer Coleman's  
14 testimony they brought Sergeant Mattson up next.  
15 Bring Sergeant Mattson up, and I ask him I said  
16 during your investigation as lead investigator did  
17 you talk to Marvin Miller? I don't really recall, I  
18 don't recall, I don't recall. I don't recall. Comes  
19 back the next day oh yes, that house, that house on  
20 2126 Queen Avenue where this person was admitting to  
21 robbing the flower shop, yes that reminds me we did  
22 talk to Marvin Miller earlier.

23 Want to talk about credibility, does anybody  
24 believe that, that all of a sudden he just remembers  
25 Marvin Miller? Marvin Miller's name is in the

1 statement that they want -- from Isiah Harper that  
2 they want you to accept as true. Once again with  
3 that Marvin Miller, he doesn't have any notes about  
4 that conversation, doesn't have notes about the  
5 conversation, doesn't know what Marvin Miller told  
6 him, what information he may have gotten about that.  
7 But because it was pointed out that there were these  
8 two Marvins, that somebody else lived in a house  
9 close to Jennifer Coleman, they had to go and they  
10 had to go and take her there and check that out.  
11 That was not something they volunteered to do. That  
12 was something they had to do.

13 But we do know this, that Jennifer Coleman says  
14 it was that one occasion that, occasion at the house,  
15 it was that one person, that Marvin that lived at  
16 that house, and then Jessica Warfield comes in this  
17 morning and she says she's with Jennifer Coleman that  
18 day or she's with Jennifer Coleman when this person  
19 is bragging about this incident.

20 And I think you know, I'm going to tell you  
21 anyway, the importance of this bragging, the  
22 importance of this Marvin Miller and who is doing  
23 this bragging, I'm not standing here, you've seen the  
24 booking photo of Marvin Miller, I'm not standing here  
25 saying Marvin committed this. I don't know if Marvin

1 Miller committed this or not. Could be Marvin Miller  
2 is just out there bragging to these girls trying to  
3 get lucky with them or whatever, bragging to them  
4 about something that he didn't do. That could be the  
5 case. I don't know.

6 But we do know from the evidence that Marvin  
7 Haynes on 33rd and Russell was not the person who was  
8 doing that bragging. I don't know how many person  
9 they tried to troop in here to say this bragging was  
10 going on. One Marvin lived at that house on Queen  
11 Avenue, it was Marvin Miller, and these people knew  
12 him as well and that was the person who was doing  
13 this bragging.

14 Now, what we're left with is the, is the  
15 identification. Before we get into dealing with  
16 that, I do want to talk to you about the proof beyond  
17 a reasonable doubt that you've heard about and  
18 everything because with these statements, the  
19 problems with these statements and these  
20 inconsistencies, the fact that we know it's Marvin  
21 Miller, all of this goes into whether the State has  
22 proven its case beyond a reasonable doubt.

23 Yes, you search, you look at this evidence, you  
24 look and you'll find the truth and I know what the  
25 truth is and you look at the evidence, you know the



1 truth that Marvin Haynes didn't do this. But the  
2 State has the burden of proof in any criminal case to  
3 prove to you beyond a reasonable doubt. You  
4 shouldn't be searching for this. They should sit  
5 here and give you evidence to prove that's the case,  
6 and they haven't done that. They have made excuses.  
7 They have made excuses about why this witness would  
8 have done that, and I'm going to talk about that with  
9 Ravi Seeley in a moment, but they haven't presented  
10 proof, and the level of proof that they need under  
11 the instruction that you are going to be given or  
12 you've been given by Judge Blaeser is the proof upon  
13 which you would act in your most important affairs.  
14 And I asked you those questions in jury selection  
15 about your important decisions. Obviously a lot of  
16 people talked about marriage. A lot of people talked  
17 about having children. Those are important  
18 decisions, but I submit to you the decision that you  
19 make in this case, the decision you make here in a  
20 criminal case is higher than that. And the reason  
21 for that is you are making irrevocable decision --

22 MR. FURNSTAHL: I'm going to object to  
23 that. It's improper argument.

24 THE COURT: Counsel approach one minute.

25 (Off-the-record discussion at

1 the bench out of hearing of the jurors.)

2 MR. BENSON: It's a decision that you have  
3 to make, unlike buying a house where if the house  
4 doesn't work out you can sell it. You may have to go  
5 to court, do a lawsuit or whatever, unlike getting  
6 married unfortunately divorces happen, you can get  
7 divorced. But this is a decision, an important  
8 decision that you have to make and as the prosecutor  
9 indicated earlier and as you know during jury  
10 selection it affects someone and it affects someone  
11 else other than you.

12 MR. FURNSTAHL: I'm going to object to that  
13 as improper.

14 MR. BENSON: Your Honor --

15 THE COURT: Just for purposes of -- the  
16 jury will not consider any possible penalties or how  
17 they affect the decision will be made, just the  
18 instruction as I gave you with regard to the  
19 definition of reasonable doubt.

20 You may continue, Mr. Benson.

21 MR. BENSON: Thank you, Your Honor.

22 In any event, when we talk about the important  
23 decisions that you make, that you have to make, think  
24 about this in the context of the criminal justice  
25 system. You are making a decision on whether the

1 State of Minnesota has presented enough evidence to  
2 find someone guilty of first degree murder. And in  
3 that you consider those witnesses we just talked  
4 about, the problems, the inconsistencies in their  
5 testimony, their motivations to shape their testimony  
6 or give these statements.

7 Now, when we talk about the identification  
8 evidence in this case, you hear or you've heard about  
9 Cynthia McDermid and Ravi Seeley. We are going to  
10 talk a little bit about way these identification  
11 procedures were made up, but in looking at this and  
12 here's how you will know that what Marvin Haynes told  
13 you is true, how you will know that these other  
14 people were suffering from other motivations when  
15 they made these statements of what they say Marvin  
16 said, because you can look at the initial description  
17 that Cynthia McDermid gave.

18 And this wasn't a case where the person who  
19 robbed her in that store just came out, pulled out a  
20 gun, she was really surprised and she didn't know  
21 what was going. Pulled out a gun right away as soon  
22 as they entered the store and tried to rob the place.  
23 She had an opportunity to observe this person.  
24 You'll be given an instruction from the Court about  
25 the opportunities to observe the individual, the time

1 in which they had to look at this person. And that's  
2 important because that initial description, while she  
3 was obviously concerned about her brother, she was  
4 obviously concerned about those two shots, the  
5 initial description she gave on the 911 call and then  
6 later in the day or early the next morning to  
7 Sergeant Mattson, that initial description was a  
8 five-foot-ten, five-foot-eleven person, 180 pounds.

9 And you know from your observations, you know  
10 from the evidence in this case, Marvin Haynes does  
11 fit that description. He's not five-foot-ten, he's  
12 not five-foot-eleven, he's not 180 pounds. He's  
13 substantially shorter, and Ms. McDermid is  
14 five-foot-six according to her testimony. You saw  
15 her when she walked in. You saw Mr. Haynes when he  
16 walked up to the -- at best they are the same height.

17 He could actually be he's actually shorter than  
18 she is. But the five-foot-ten, 180 pounds, black  
19 male, that's the 911 description. Early 20s. That's  
20 the shooter. That's the description she gave after  
21 having an opportunity to observe this person as he  
22 walked around the building into the store. She  
23 observed this person. She had conversation with this  
24 person about the price of the flowers, about the fact  
25 of this Visa card which I'll get to in a moment. The

1 fact they were going to pay by Visa. The fact that  
2 this person spoke with clarity, didn't use any,  
3 according to her words, hip-hop type language or  
4 hip-hop type style. It seemed as if he had an  
5 education.

6 These are all details she was able to glean  
7 during the time she's observing this person, and then  
8 after about five to six minutes, according to her  
9 testimony, this person pulls out a gun, and yes, it's  
10 traumatic. And there's nothing in anything I've  
11 argued or anything that I'm suggesting that she's at  
12 fault for this. But her description does not match  
13 Marvin Haynes. That's the truth.

14 And her description came from observing this  
15 individual for a period of time. In fact she saw  
16 this individual as she's at the fence or she's  
17 contemplating which fence she's going to climb over,  
18 she sees this person again. And I asked her, I said  
19 you were able to see this person's whole body. It  
20 means she can see the height of this person. And  
21 she's running, she's running, she turns, she gets  
22 over the fence and she gets to house to call 911 and  
23 they ask her for a physical description and she gives  
24 them one.

25 When she talks to the first officer on the scene

1 she doesn't give a large detailed description but she  
2 says age 22, which is consistent with early 20s. She  
3 says that this individual was a black male and had  
4 short cropped hair. These are details that she's  
5 able to provide on the day of the incident which is  
6 the best information, the best information that we  
7 have about the shooter in that case.

8 That description, she doesn't say braids, she  
9 doesn't say afro, she says short hair. She talks to  
10 Sergeant Mattson early in the morning the next day,  
11 says this person had a natural close cropped  
12 hairstyle. She doesn't say braids, doesn't say an  
13 afro. Close cropped hairstyle.

14 These are details where we can get a picture of  
15 who the shooter is. We get a picture of who robbed  
16 the store. And at this point -- and this picture  
17 does not fit Marvin Haynes.

18 When you think about what Ms. McDermid, the  
19 conversation she had with this person, she talks  
20 about the Visa card, and I asked her, I said so  
21 there's nothing about the way your observations of  
22 this person, there's nothing that indicated to you  
23 this person shouldn't have a Visa card, this person  
24 wasn't old enough to have a Visa card. She talked  
25 about this person might have been in school and she

1        said that this person was at the university. Her  
2        impressions were from the conversation that he was at  
3        the university.

4                Now what does that mean? One, she had enough  
5        conversation with this person to be able to get that  
6        information and observe this individual, but more  
7        importantly the person that was in that store and  
8        also the thing about the mother being a chiropractor,  
9        now all of that may or may not be true about the  
10       shooter. Most likely the shooter comes in here and  
11       he's not going to give all that information. He's  
12       not going to give all that information about himself.

13               But the point is this: This person was older  
14       individual, an adult, someone who could speak to Ms.  
15       McDermid and tell her that I'm at the university.  
16       Have a conversation about that. I have a Visa card  
17       and talk about that. And have Ms. McDermid not have  
18       any signals go on.

19               If Marvin Haynes, all five-foot-six of him  
20       looking as young as he does comes into that store and  
21       says, you know, I'm going to pay for this 45 or \$50  
22       arrangement with my Visa card, you are going to think  
23       about it and this looks like -- if you are going to  
24       think about it you are going to say how is a young  
25       guy like that going to have a Visa card. Where did

1 he get a Visa card from? Let me see some money, how  
2 are you going to pay for that. That would be the  
3 reaction.

4 If a young guy like Marvin Haynes, as young as  
5 he is, comes into that store and says, starts talking  
6 about I'm at the university, you are going to look at  
7 him and say you are not at the university, you don't  
8 look like you are out of high school. That's a fact  
9 in this case.

10 You want the truth, start thinking about what  
11 the shooter looks like. Who the shooter is. And  
12 when you do that, if you want to throw out anything  
13 in this case, you can throw out the rest when you  
14 look at the shooter and the description and the  
15 details from Ms. McDermid and there's no way that you  
16 can fit Marvin Haynes into those descriptions.

17 But we get to the -- and also Ravi Seeley talks  
18 about the short hair as well.

19 We get to the lineup procedures. We know from  
20 the case that at some point the police develop Marvin  
21 Haynes as a suspect. Could be because, as I said,  
22 before they heard some guy named Marvin is going  
23 around bragging about doing this case.

24 MR. FURNSTAHL: Objection. Facts in  
25 evidence.



1 THE COURT: Well, that is overruled. There  
2 was evidence that somebody named Marvin was bragging  
3 about it.

4 MR. FURNSTAHL: All right.

5 MR. BENSON: So they hear that. They put a  
6 lineup together. They take it to Cynthia McDermid  
7 but they take a 2002 photograph, and we've talked  
8 about that and Sergeant Mattson says well, we got  
9 into that computer and we took a 2002 photograph  
10 because, you know, that's what we had. Don't know if  
11 we had the time to get a current photo, don't know of  
12 a booking photo, don't know what time he was  
13 arrested. They did know that he was being arrested,  
14 though.

15 There is two things that could have been done by  
16 Sergeant Mattson. One, you have in evidence, you'll  
17 see in evidence there is another photo of Marvin  
18 Haynes from 2004 which is the most current photo of  
19 Marvin Haynes. But they didn't take that one because  
20 he didn't have short hair in that photograph. The  
21 2002 he had short hair which is consistent with the  
22 shooter in this case, had short hair. So they take  
23 the 2002 photograph.

24 And the other thing that they could have done  
25 instead of using that 2002 photograph is take that

1 information they had, they know they were arresting  
2 Marvin Haynes, they could have waited and got the  
3 current photo. They could have done a fair photo  
4 lineup, fair for Ms. McDermid, fair for everybody  
5 involved in this case because what would you want if  
6 you are looking for an identification. You want the  
7 most current, the most available photograph that you  
8 have. That's what you would want if you are  
9 searching for the truth. The most current photograph  
10 of your suspect, because we are talking about a  
11 period of three days from the incident. But no,  
12 Sergeant Mattson chose to take the 2002 photo with  
13 the short hair.

14 And then Sergeant Mattson, and there's been  
15 quite a bit of talk about the first two  
16 identifications and I'm going to get to that in a  
17 moment, but the first two identifications, and  
18 Sergeant Mattson decided in this case with the third  
19 identification with the photo lineup with Cynthia  
20 McDermid, to do that himself which before Sergeant  
21 Mattson testified, we heard about this great new  
22 policy and procedures that the Minneapolis police  
23 department is going to to ensure to prevent poisoning  
24 of the process to ensure reliability. But Sergeant  
25 Mattson chose to do the lineup procedure himself.

1 He's an investigator involved in the case and then  
2 all of a sudden, you know, when these officers are  
3 being asked about this it becomes a guideline and not  
4 a new policy. In any event, Sergeant Mattson chose  
5 that photo, Sergeant Mattson decided to participate  
6 in that.

7 The thing that we talked about with the other  
8 officers, Folkens and I believe Wehr as well, is that  
9 the reason you don't have an investigating officer  
10 involved in that procedure if at all possible is  
11 because you don't want to even have subtle cues  
12 tipping off a person as to who the suspect may be.  
13 That's what was talked about and then it got to  
14 Sergeant Mattson who actually interjected himself in  
15 the process and it became a guideline.

16 But Cynthia McDermid, when she made her  
17 identification, then the next day she is shown the  
18 live lineup and we are another day, yet another day  
19 removed and she doesn't know when she's looking at  
20 these pictures on paper she says -- and she sees  
21 these people come in, she doesn't know that Marvin  
22 Haynes is inconsistent with the description of the  
23 shooter. She didn't know all that. But she sees  
24 that picture and then the next day she sees him walk  
25 into the lineup, and I submit to all of you that she

1 is very likely, she's identified Marvin Haynes in  
2 that live lineup from that picture she saw the day  
3 before rather than the shooter. And that makes sense  
4 and that's based on common sense and your reason  
5 because as we've already talked about Marvin Haynes  
6 does not fit everything we know about the shooter in  
7 this case.

8 But Ravi Seeley, and Ravi Seeley, he sees this  
9 lineup, he goes through the identification procedure.  
10 He gets to the live lineup as well. And we get to  
11 the live lineup, two things that are consistent with  
12 Cynthia McDermid and Ravi Seeley is that they both  
13 use words to the effect that Marvin lines looked like  
14 the guy. They didn't say that's him. They might  
15 have gasped and said whoa, but they didn't say that's  
16 him. They said that looks like the guy. Given  
17 everything else we know with the initial description  
18 of the shooter, it wasn't the guy.

19 And more importantly, Ravi Seeley, the State,  
20 you remember in opening statements the State came in  
21 here and they talked about how Ravi Seeley has  
22 nothing to gain, nothing to lose, he's in here, he's  
23 just kind going to tell the truth, he's kind of a  
24 quiet guy. All those things seem to be true.  
25 However now, now the State once Ravi Seeley testifies

1 and Ravi Seeley talks about I'm not too sure, Ravi  
2 Seeley has doubts. He says I have doubts. Those  
3 were his words, and those words came out when Mr.  
4 Furnstahl was asking him questions. He says I have  
5 doubts. And if Ravi Seeley has doubts, I tell you  
6 you should have doubts as well.

7 But Ravi Seeley, he says I have doubts but more  
8 importantly he says, not only does he say whoa, that  
9 looks like the guy, but then I whispered to the  
10 officer there, I whispered to the officer but I'm not  
11 too sure about that. I'm not too sure about that.  
12 That's Ravi Seeley. That's what he says.

13 Now, obviously that doesn't help the State's  
14 case and they come here and they stand up and they  
15 tell you you can disregard that. We are talking  
16 about whether the person that's identified, the  
17 person that they want to use these prior  
18 identifications, they want to tell you right here  
19 this morning that if you want to you can disregard  
20 the fact that Ravi Seeley says he told this officer  
21 I'm not too sure about that though.

22 You can't disregard that. We are talking about  
23 whether somebody did or did not rob that flower shop,  
24 whether Marvin Haynes did or did not rob that flower  
25 shop. And there is a witness that comes in here and

1 he comes in here and he is being candid and he says I  
2 told this officer but I'm not sure about that. And  
3 that was back last year. More importantly he's in  
4 here today and he says I'm not too sure about that.  
5 And the State says you can disregard that and just  
6 rely on the prior identification? And who did he  
7 tell that to? It was Sergeant Mattson. Because Ravi  
8 Seeley said the same person I said oh it looks like  
9 the guy, however his words were, looks like the guy,  
10 that's the same person that I whispered in his ear  
11 right afterwards, I whispered in his ear but I'm not  
12 too sure about that though. That was Sergeant  
13 Mattson.

14 And Sergeant Mattson comes in of course and he  
15 says no, he never told me that. So now the State is  
16 calling Ravi Seeley a liar and they want to have you  
17 accept his identification but not that point. Why is  
18 Ravi Seeley going to lie about that? Why is Ravi  
19 Seeley going to lie about that. He's not.

20 And Detective Mattson, talk about a stake in the  
21 outcome and interest of this case, we already have  
22 he's destroyed notes, he didn't take notes. He's the  
23 lead investigator in this case, doesn't recall a lot  
24 of things, and if he put the wrong person on trial by  
25 either his investigation or lack of investigation, he

1 has a stake and an interest in that. People get  
2 fired over things like that. So he has a stake and  
3 an interest and there is no way he's coming in here  
4 when it's not in the report and saying oh yeah, that  
5 kid did tell me that, the kid did whisper that in my  
6 ear. That's something that they can't say well, Ravi  
7 Seeley didn't want me to write that down, Ravi Seeley  
8 didn't want me, you know, Isiah Harper didn't want to  
9 have this thing recorded. Can't do it. It's too  
10 important, and it's too important for you to  
11 disregard. That's something you all need to  
12 consider.

13 Now, you also know that Marvin Haynes, how you  
14 can believe what Marvin Haynes says when he tells you  
15 that he didn't do this, you can believe that the  
16 prosecutor talks about these, you know, he may have  
17 -- he was in these different areas or within blocks  
18 of the flower shop and that there's no way he could  
19 know about the flower shop, he's never been in that  
20 flower shop, he's never purchased flowers. He's  
21 16 years old and he doesn't purchase flowers or he  
22 hasn't purchased flowers before. There's no reason  
23 for him to know that flower shop.

24 So as far as all these little stops on other  
25 occasions that's -- I submit to you that's not

1 important because when you look at the details of  
2 where he was, when he told you where he was, what he  
3 was doing, who was there, if that was inconsistent  
4 with what he said before, the State would have had  
5 somebody in here to tell you that. And they didn't  
6 do it.

7 But you can believe what he says. One, because  
8 you can judge his demeanor. You heard his speech  
9 pattern. You heard the way he answered questions.  
10 You can tell all that and you can tell that he was  
11 telling the truth, but you can also, other than the  
12 fact that he doesn't fit this description of the  
13 shooter that we've talked about, there's no physical  
14 evidence whatsoever linking him to this case.  
15 There's no fingerprints, there's no blood evidence,  
16 there's no DNA, there is no clothing, there's nothing  
17 linking him to this case because he wasn't there.

18 And Rod Timmerman came in here, they put him on  
19 as the first witness and he says well, we didn't find  
20 any fingerprints that matched but found they found  
21 some fingerprints on that card stand. They compared  
22 it to Marvin Haynes's prints and they didn't match.  
23 And what that means is, you know, they went through  
24 this whole thing about well, you know, we don't  
25 expect to find fingerprints a lot of times. That may



1 be the case, that may be the case, but they had  
2 fingerprints, they tested them, they didn't match  
3 Marvin Haynes and that means that they have no proof  
4 that Marvin Haynes was in that store. Because he  
5 wasn't. They obviously had some prints. And to this  
6 date they haven't matched anybody in their data base.

7 But don't be fooled when they say we don't  
8 expect to find prints. That's why they do  
9 fingerprint tests and they haven't brought any  
10 evidence in to show that. Because of that you can  
11 know that what Marvin Haynes tells you is true.

12 Now, at this point I'm going to be finished  
13 speaking to you in a few minutes and the prosecutor  
14 has had an opportunity to get back up here and tell  
15 you some more things, and that's because they have  
16 the burden of proof. However, it used to be said  
17 that the prosecutor has the last word in these  
18 matters.

19 The reality is you all have the last word, and  
20 what I want you to do is listen to what he has to say  
21 this next time then go back, deliberate and go  
22 through each and every piece of this evidence.  
23 Consider what I've told you and when you come back  
24 you'll deliver a verdict of not guilty because the  
25 not guilty verdict is what the evidence calls for.

1           Mr. Haynes is not guilty. In fact he's innocent  
2 of these charges and everything you've heard tells  
3 you that.

4           Thank you.

5           THE COURT: Mr. Furnstahl, rebuttal.

6           MR. FURNSTAHL: Thank you, Judge.

7           Okay, folks. You've just about got it. I'm  
8 going to try to be brief. There's a couple points  
9 I'm going to try to make and I'm going to try not to  
10 be repetitious. I apologize in advance if I do but I  
11 am a lawyer, you know, so we get paid by word.

12           One thing, the first thing I'm going to point  
13 out is that it's very clear from counsel's argument  
14 what the issue is, and when I suggested how you frame  
15 the issue, the issue is clearly did the defendant do  
16 it. You know, based upon the argument it's clear  
17 that's the question that you have to resolve when you  
18 go back there to deliberate.

19           Another point I want to make is to not let, not  
20 let anybody suggest that the law is something other  
21 than what it was. What it is. We talked about the  
22 burden of proof, beyond a reasonable doubt. I told  
23 you that you have to use the judge's definition and  
24 if you've conceptualized your own or if anybody gives  
25 you an illustration of what they say proof beyond a

1 reasonable doubt means and it differs from the  
2 judge's, then you have to follow the judge's.  
3 Nothing about it's more than or more important than  
4 making than deciding to get married or buying a house  
5 or things like that. That's an argument as to what  
6 proof beyond a reasonable doubt means, but it's the  
7 judge's instruction that counts, not counsel's  
8 argument so don't go by that.

9 Don't let, there are a couple of statements  
10 regarding the facts that I wanted to address, one of  
11 which is Ms. McDermid's testimony about the education  
12 of the perp that came in, the defendant when he came  
13 in before he bought -- purchased the flowers and shot  
14 her brother.

15 You recall during the course of the trial, Mr.  
16 Benson is a very good attorney and I don't mean to  
17 criticize him in any way, shape or form, but there  
18 were a lot of times when he would ask questions if he  
19 didn't get the answer he wanted. He would ask it  
20 over and over and over again, and this is a situation  
21 as it relates to the question to what Ms. McDermid  
22 said about the education. You recall, you go by your  
23 recollection of what the evidence is, but when asked  
24 on cross-examination she told him that she had the  
25 impression that the defendant was talking about going

1 to the university and then he asked her some more  
2 because it wasn't good enough and she said I'm not so  
3 sure about the school. Then he asked another  
4 question because that wasn't good enough and she said  
5 I can't recall anything about school, and he asked  
6 another question and she said if he said something  
7 about that it went over my head. It wasn't this hard  
8 and fast -- counsel said that's a fact in this case.  
9 That's a fact, you know, no disrespect, that's a fact  
10 in counsels's head.

11 MR. BENSON: Objection, Your Honor.  
12 Improper argument.

13 THE COURT: Jury will remember my  
14 definition of what the facts are and that you are the  
15 ones to decide what the facts are based on your own  
16 memory and that's the memory you go by.

17 MR. FURNSTAHL: Right. So when counsel  
18 says that's a fact in this case, you look back at the  
19 testimony of Cynthia McDermid on that particular  
20 point and you'll see that it wasn't a fact as counsel  
21 said. She was waffling and waving on that particular  
22 point.

23 There was another reference to, another  
24 reference to the cops get a tip or the cops direct  
25 their attention to Marvin Haynes because someone is

1           bragging about this, and that's a misstatement of the  
2           evidence in this case. The only evidence that the  
3           police had about somebody bragging came from Jennifer  
4           Coleman on -- and that came for the first time on  
5           October 19, 2004, a long time after an arrest was  
6           made of the defendant. But you recall when I was  
7           talking to Sergeant Mattson about this and I was very  
8           specific and I asked him this question, I said and  
9           this was on May 18th I said is it correct that on May  
10          18th you got information that led you to investigate  
11          Marvin Haynes. There wasn't any reference to  
12          somebody who was out there bragging about this, just  
13          a statement that they got information that led them  
14          to look at Marvin Haynes.

15                 As a result the photo lineups -- as a result he  
16          found out that the defendant had to be in court that  
17          day at 3:15 for the curfew violation. He found out  
18          that the defendant did not appear at that juvenile  
19          court appearance, that a bench warrant was issued for  
20          his arrest, and then he asked that the defendant be  
21          arrested on that bench warrant. That was at 12:40  
22          the next day. No reference about counsel's mixing  
23          things up here when he says that the cops went in  
24          that direction because of the bragging. That's  
25          something that came a long time after.

1           Now, regarding the statements of Isiah Harper  
2           and whether or not we put words or the cops put words  
3           in his mouth, I would remind you of a couple of  
4           things, and this was in the statement.

5           The police asked Isiah Harper's mother to speak  
6           to, had her permission to speak to that boy, had her  
7           permission to take him down to the homicide office  
8           both times and the second time to take the statement.  
9           Sergeant Mattson said they only had two contacts with  
10          him and Harper said it was three or four times, and  
11          during these three or four times he is being told  
12          what to say. He's being threatened.

13          Now, you can see from some of the experiences  
14          you've had during this trial it's a real close  
15          family. Do you think that Isiah Harper's mother  
16          really would have let him go with the police a third  
17          or fourth time on May 28th if her son is telling her  
18          that they are putting words in his mouth, they are  
19          threatening him?

20          And as I said -- and according to counsel's  
21          arguments they told him we have information that you  
22          are involved and that's not -- there's no evidence  
23          that's not true and this is the reason why. If they  
24          had evidence that he was involved, then they wouldn't  
25          be telling you you could get half the time for aiding

1 an offender after the fact which would be for lying  
2 to the police. If they had evidence he was involved,  
3 then he would be looking at all the time.

4 In addition, one of the things, one of the  
5 instructions on the hearsay that you are going to get  
6 relates to the information, that they had information  
7 that Isiah Harper was involved. That information and  
8 that question, that evidence was offered not for the  
9 truth of the matter asserted in the statement, in  
10 other words that they had information that Isiah  
11 Harper was involved, but rather to show the potential  
12 affect that it had on somebody. So therefore it is  
13 not substantive evidence. It is not evidence that  
14 the defendant did or did not do these crimes.  
15 Counsel wants to misuse the evidence.

16 MR. BENSON: Objection. Improper argument,  
17 Your Honor.

18 THE COURT: Attorneys are allowed to give  
19 their interpretation to you of the evidence and  
20 argument is their interpretation of the evidence, and  
21 as I instructed you before to the extent it does go  
22 with your recollection of the evidence you are to use  
23 your recollection of the evidence.

24 MR. FURNSTAHL: And I'm not saying that  
25 counsel is acting in bad faith or anything like that.

1 He's a good lawyer, he's doing a good job for his  
2 client.

3 MR. BENSON: Objection, Your Honor.

4 THE COURT: Overruled. That's allowable  
5 argument.

6 MR. FURNSTAHL: It's when he says that  
7 that's evidence in this case. It is not evidence in  
8 this case.

9 Now, he says in his argument, he said that the  
10 cops put words in Isiah Harper's mouth, but if they  
11 in fact did that why did they make it so difficult?  
12 I mean, they knew Sergeant Mattson, it was bought  
13 brought out on cross-examination that he was at the  
14 autopsy. He knew that Randy Sherer was struck twice.  
15 Why did they have -- I mean, if it's true that they  
16 put words in Isiah Harper's mouth, why did they have  
17 him say that Marvin told him he shot him once in the  
18 head and fired two times. Why do that if they are  
19 putting words in his mouth?

20 In addition, if they are putting words in his  
21 mouth, if they are pressuring him and telling him  
22 what to say, why make it so difficult to prove the  
23 voracity of those statements? Remember, Isiah Harper  
24 said and in his statement he says that at Muffy's  
25 house where the defendant was talking about hitting a



1           lick with Daquan Bradley where Daquan Bradley was  
2           showing off this gun that matched the description  
3           that Cynthia McDermid said was used in this case,  
4           there were other witnesses there besides Anthony  
5           Todd. He says there was Little John who he agreed  
6           was Jeremy Davenport. There was a kid named Justin.  
7           There was another kid named Charles.

8                     Now, if these cops are putting words in this  
9           kid's mouth, why do they have him name so many  
10          witnesses that could come in that could say that no,  
11          no, we weren't there, there was no meeting at Muffy's  
12          house that night. I mean doesn't it strike you a  
13          little odd that if these cops are ramming words down  
14          Isiah Harper's mouth that they would include these  
15          names of these other people?

16                    It would seem to me common sense would suggest  
17          if you are setting a person up, if you are putting  
18          words in his mouth you would include all these other  
19          people because that could expose what you are doing.  
20          That could expose you are in a conspiracy to violate  
21          someone's civil rights, which it has to be if you  
22          believe the defense arguments.

23                    Now, regarding Jennifer Coleman. Counsel wants  
24          to suggest that Jennifer Coleman was talking, really  
25          spoke to Marvin Miller. Remember one of the things

1       that Jennifer Coleman said in the second conversation  
2       with the defendant admittedly at Marvin Miller's  
3       house, the defendant tells her he's on the down low.  
4       She said, she estimates this is a couple of days  
5       after the flower shop murder.

6               Now, we know the defendant is arrested at 12:40  
7       on May 19th, so it couldn't have been on that date.  
8       But on May 18th at 3:15 he's supposed to be in court.  
9       Isn't it -- one of these subtle coincidences that  
10      that -- and he doesn't show up for court. He's  
11      supposed to be someplace and yet he doesn't show up  
12      and a warrant for his arrest is issued.

13             He knows it's important, he knows he's supposed  
14      to be there, but the important thing about it is  
15      this: I mean, isn't it an amazing coincidence that  
16      that couple of days after the murder when Jennifer  
17      speaks to the defendant and he says he's hiding from  
18      the cops, he's on the down low, he just happens to  
19      miss a court appearance? And had he not missed that  
20      court appearance then the things that Jennifer  
21      Coleman was saying could clearly be proved as being  
22      inaccurate or false. But it just so happens the way  
23      things worked out that we know that, we know that he  
24      didn't show up and that corroborates what she says.  
25      He's on the down low, he's hiding from the cops, and

1 he just happens to miss an appearance which could  
2 have, which could have destroyed everything that she  
3 was saying regarding that second conversation about  
4 Marvin Haynes.

5 There was a lot of efforts made at the  
6 description that Cynthia McDermid gave right after it  
7 happened. Very traumatic. I suppose if you know --  
8 well, very traumatic incident. I'll let you judge  
9 and decide whether or not how credible or how  
10 reliable that initial description that she gave, but  
11 even in spite of that description when she saw the  
12 defendant on the 19th in person and she can see then  
13 that he wasn't five-ten five-eleven, six feet or  
14 180 pounds, it was him that she reacted to. No one  
15 else, just him.

16 Counsel said that suggested that that  
17 description is reliable because she had a long time  
18 to view her assailant. But recognize that that's  
19 something that you look at in a vacuum. At the time  
20 Cynthia McDermid is seeing this defendant, is hearing  
21 him, is waiting on him, she's not thinking geez, 16,  
22 17 months from now I bet I have to be in court  
23 testifying about this description of this guy because  
24 he's going to shoot my brother. No. She's not  
25 thinking about a description at that point in time.

1 She's just merely waiting on him not knowing that 16,  
2 17 months later that time period that is so critical  
3 in viewing that person is going to be brought in and  
4 she's going to be questioned so she should have  
5 prepared.

6 So what does your common sense and reason tell  
7 you about that? When you, I mean that's looking at  
8 things in a vacuum and at the time when that's  
9 happened with her she's not thinking that she's going  
10 to have to come in and testify a long time later.

11 Remember too that she said that when she saw the  
12 defendant come in the store this was someone that she  
13 had recognized. She might have waited on him in the  
14 past or had seen him in the area in the past. And  
15 remember Ravi Seeley said the same thing. The week  
16 before he said he saw the defendant in the area.

17 What a remarkable, amazing coincidence this must  
18 be. Here we have again two people from different  
19 walks of life, different parts of the city, they  
20 don't even know the existence of the other, couldn't  
21 possibly have known that their words are going to  
22 corroborate the words of the other and they just both  
23 happened to have had prior contacts with the  
24 defendant. What does that tell you? What does your  
25 common sense and reason tell you about that?

1           There were complaints about not using a current  
2 photograph of the defendant when the photo lineup was  
3 put together and I quite frankly don't understand  
4 that argument. The photograph was on January 20,  
5 2004. It had longer hair. Yes, it was current but  
6 there was no way of saying, I mean they were  
7 operating under the description that Cynthia McDermid  
8 gave of shorter hair. Even if someone had longer  
9 hair on January 2004, one has plenty of time to put  
10 that hair in braids or cut it before May 16, 2004.

11           Counsel directed your attention to Ravi Seeley's  
12 testimony about him having doubts about the picture,  
13 the photograph that he identified, but remember the  
14 complete sentence on that. Ravi Seeley said the  
15 reason he's having doubts when he was on the stand  
16 was because so much time has passed and he hadn't  
17 seen that photo lineup since that time, and we  
18 explained through Sergeant Mattson why we don't show  
19 him that lineup a second time.

20           Couple more points and then I'm done, folks.

21           Counsel, I pointed out in my closing of  
22 inconsistent statements or the inconsistencies the  
23 defendant had in his testimony as compared to his  
24 statements. Counsel said if they really were  
25 inconsistencies then we would have brought Sergeant

1 Mattson in, and I would suggest that merely would  
2 have been redundant because I was able to get the  
3 defendant to admit that there were inconsistencies so  
4 what sense would it be to bring Sergeant Mattson in.

5 You saw that I had the ammunition to do that, I  
6 mean when he wouldn't agree with me about lying to  
7 the cops I would march those reports up in front of  
8 him and I showed them to him. When I pointed out  
9 that, that he was in that area, in the area long  
10 before on occasions I marched those reports up and  
11 showed them to him. He knew I had the transcript of  
12 the statements because he asked me for it. He asked  
13 me to see things and I wouldn't show it to him  
14 because I wanted to get his statements out of it.  
15 And do you think if he wasn't being inconsistent I  
16 wouldn't have marched that transcript up and shown  
17 him and had him read the transcript?

18 The last point about the fingerprints, yeah, the  
19 fact that there was no fingerprints really is no  
20 surprise. Five fingerprints on that stand, partial  
21 fingerprint on that card. Not enough, not enough  
22 points to say if that belongs to the defendant.  
23 Those fingerprints on the stand could come from any  
24 other customer or any other employer, and you heard  
25 the testimony about the explanations as to why

1 fingerprints are not left on a surface. So yeah, no  
2 question. No fingerprint, no DNA, nothing like that.

3 This is not a circumstantial evidence case.

4 This is purely and completely a direct evidence case  
5 and all the evidence points directly to one thing, to  
6 the truth, to guilty.

7 Thank you.

8 THE COURT: Members of the jury, you will  
9 review my instructions when you go back into the jury  
10 room with regard to what the evidence is and what  
11 your determinations of the evidence is and my  
12 descriptions of the law in this case, and as I  
13 indicated if either counsel has given a different  
14 recollection of the facts you are to use your own  
15 recollection and if they have given a different  
16 definition of the law you are to use my definition,  
17 and if anybody has suggested anything that is  
18 different from my definition on reasonable doubt,  
19 then you are to use my definition of reasonable  
20 doubt.

21 In your determination of the facts, you are not  
22 to consider any possible penalties which may attach.  
23 This consideration is solely and exclusively the  
24 responsibility of the judge. Your sole duty is to  
25 determine whether the defendant is guilty or not

1 guilty of the offenses charged without reference to  
2 any possible penalties which may thereafter accrue.

3 All of you must agree on your verdict. Both  
4 guilty and not guilty forms have been prepared for  
5 your use. These forms are complete in themselves.  
6 There is nothing for you to add or subtract as there  
7 might be in a civil case.

8 When you reach your verdict have the proper  
9 verdict forms signed and dated by your foreperson and  
10 then report back to this Court.

11 I will now read the verdict forms to you as they  
12 have been handed to me by the clerk. The order in  
13 which the verdict forms appear are of no  
14 significance. The verdict forms read as follows.

15 On count one: We, the jury, find the defendant  
16 not guilty of the charge of murder in the first  
17 degree. We, the jury, find the defendant guilty of  
18 the charge of murder in the first degree.

19 On count -- or on the lesser included offense:  
20 We, the jury, find the defendant guilty of the charge  
21 of murder in the second degree. We, the jury, find  
22 the defendant not guilty of the charge of murder in  
23 the second degree.

24 On count two: We, the jury, find the defendant  
25 not guilty of the charge of assault in the second



1 degree. Or we, the jury, find the defendant guilty  
2 of the charge of assault in the second degree.

3 There's a place on each verdict form for the  
4 signature of the foreperson. The verdict that you  
5 choose, that is the one that reflects your verdict,  
6 should be signed and the other one should be left  
7 blank. You should return both verdict forms and all  
8 written copies of these instructions to the Court.

9 A deputy will be sworn to care for you as the  
10 jury. You will be taken to the jury room and there  
11 you should first select your foreperson then proceed  
12 with your deliberations to arrive at a true and a  
13 just verdict.

14 When you have arrived at a verdict, you can call  
15 that to the attention of the deputy and he or she  
16 will call all of us back to the courtroom for your  
17 decision.

18 Now, Mr. Ristoe and Ms. Lee, you are the  
19 alternate jurors and you are now going to be excused  
20 from this jury and you may gather your things and  
21 leave, but I want you to understand I thank you for  
22 your service and your patience and I hope that you  
23 understand that you have in fact contributed to the  
24 trial of this case even though you are not going to  
25 deliberate. So you may gather your things and check

1 in with the jury office downstairs and tell them  
2 you've sat through this entire case and you now have  
3 been, as alternate jurors, excused then you'll be  
4 given leave to go home. Thank you very much.

5 (Alternates exit courtroom.)

6 THE COURT: Deputy, step forward to be  
7 sworn, please.

8 (Deputy is duly sworn.)

9 THE COURT: Counsel may now examine the  
10 exhibits and other items that will be taken to the  
11 deliberation room if you wish. The deputy and the  
12 clerk will ensure that all exhibits are taken to the  
13 deliberation room and the clerk will now note the  
14 time and the jury may retire.

15 (Jurors start deliberations  
16 at 12:06 p.m.)

17 MR. BENSON: Your Honor, may we approach?

18 THE COURT: You may.

19 MR. BENSON: And make a record?

20 Your Honor, I just want to get -- with respect  
21 to my objection during Mr. Furnstahl's rebuttal, the  
22 basis of my objection was there was a comment about  
23 Mr. Benson or defense counsel doing a good job for  
24 his client. The objection was based upon, it was a  
25 comment, I think improper comment on defense

1 functions. That was one that Your Honor overruled.  
2 I think other objections I believe were dealt with or  
3 sustained or moved on or something.

4 THE COURT: I think I sustained and gave an  
5 instruction.

6 MR. BENSON: Exactly. The other ones you  
7 did, and that particular one I believe is a comment  
8 on the defense function which was inappropriate and  
9 that's why I made the objection.

10 MR. FURNSTAHL: I think the context of the  
11 comment was to make sure that the jurors understood  
12 that I was not making a personal attack on Mr. Benson  
13 and that was it, so I don't think it was a comment on  
14 his --

15 THE COURT: The Court's instruction to the  
16 jury was just once again to repeat and clarify the  
17 role of the attorneys in this case and I think that's  
18 why I did that because I did feel one of the first  
19 objections was appropriate.

20 Counsel, you may examine the exhibits and we  
21 have to deal with this. This is an Exhibit 50,  
22 however as you recall it was played without the  
23 sound.

24 MR. FURNSTAHL: It goes to them but they  
25 don't get any --

1 THE COURT: They don't get this.

2 MR. FURNSTAHL: Right. I'll leave it down  
3 here.

4 MR. BENSON: Your Honor, I believe that  
5 would be the case with Isiah Harper's statement as  
6 well. The 911 tape as well.

7 THE COURT: They are not getting the  
8 material to use to play it?

9 MR. BENSON: Right.

10 MR. FURNSTAHL: Will you make sure that the  
11 bailiff knows that because there have been times when  
12 unbeknownst to them the jury asks for something and  
13 they will see a boom box and give it to them.

14 THE COURT: With regard to questions, if we  
15 have a question from the jury we will use the numbers  
16 you gave us, call you and you'll come back down here  
17 to do that, right?

18 MR. BENSON: Right. For your clerk the  
19 cell phone will be best for me.

20 THE COURT: Deputy?

21 THE DEPUTY: Yes, sir.

22 THE COURT: Just so we are clear we are  
23 going to give them a number -- all the exhibits, some  
24 of them need a VCR and disc player but they are not  
25 allowed to play this equipment.

1 (Off-the-record discussion.)

2 THE COURT: I should just tell counsel too  
3 I've changed my mind with regard -- I think what I'm  
4 going to do, obviously you'll take them to lunch  
5 after they've selected a foreperson then come back  
6 and deliberate today, I think they go to dinner about  
7 6:30, I intend to keep them here until about ten  
8 tonight.

9 MR. FURNSTAHL: Okay.

10 THE COURT: I'm sorry, I know that isn't  
11 good for the deputies but I think that the jury would  
12 rather deliberate than go back and sit around a hotel  
13 three hours after dinner.

14 THE DEPUTY: In regards if they ask for the  
15 tape player am I allowed to tell them that they can't  
16 have it?

17 THE COURT: You guys want to come back for  
18 that question? Or should we have it in advance?  
19 Because they could come back and say we have to play  
20 the whole thing.

21 MR. FURNSTAHL: If they ask you should say  
22 put it in the form of a question and I'll give it to  
23 the judge.

24 THE COURT: Any questions they have should  
25 be written down and you bring it out to the clerk and

1 we'll deal with it. We have to call them back to  
2 deal with any question.

3 (Court adjourns at 12:11 p.m.)

4 The following occurs at 4:02 p.m.)

5 THE COURT: The record will reflect that  
6 it's four o'clock p.m. We are back on the record  
7 outside the presence of the jury. I have let counsel  
8 look at a question we received from the jury which is  
9 may we please have a boom box to listen to the taped  
10 conversations and the 911 tape, and counsel have  
11 given me their opinions on it, and you want to put  
12 that on the record, Mr. Benson?

13 MR. BENSON: Yes. Can we approach a  
14 little?

15 THE COURT: Yes.

16 MR. BENSON: Your Honor, it's my position  
17 that you just you make the response that they have  
18 everything they need, that they have everything they  
19 need, they can proceed with their deliberations. I  
20 believe that playing the tapes in this case, in  
21 particular the Isiah Harper statement, highlights  
22 that piece of evidence above everything else.

23 The objection is also based upon the fact that  
24 that is an out-of-court statement, while this Court  
25 finds that it's reliable to be admitted as

1 substantive evidence, it is an out-of-court statement  
2 so it will also highlight that statement rather than  
3 the testimony from Isiah Harper and the consideration  
4 of all that together. That's my objection.

5 MR. FURNSTAHL: I think it's a fair request  
6 by the jurors and I provided you with a case that  
7 deals with this. I can't remember the name of it but  
8 it indicates that it's in the Court's discretion and  
9 there are three factors for the Court to consider and  
10 I think, I think under all three factors the Court  
11 should exercise its discretion and allow the  
12 replaying of the exhibits for jurors.

13 THE COURT: Just for the record I've looked  
14 briefly at this case and the case is State of  
15 Minnesota v. David Russell Croucher, 1991 Supreme  
16 Court case, and the factors the court says the Court  
17 should look at which were whether the material in  
18 this case would aid the jury in proper consideration  
19 of the case, and obviously in this case both the  
20 tape -- the tapes they were referring to are the 911  
21 tape of victim's sister describing the initial  
22 description of the shooter and the taped conversation  
23 of Isiah Harper, both of those would and have been  
24 received and heard by the jury and certainly would  
25 aid them in consideration of the case.

1           Whether any party would be unduly prejudiced by  
2           the submission of the materials, and Mr. Benson's  
3           position that this may highlight these materials is  
4           the only concern the Court really had. They have  
5           already heard the materials once during the course of  
6           the trial and at least based on the defense in the  
7           case the 911 tape may be legitimately said to be  
8           something that more favors the defendant's version of  
9           the case and the description of the person not  
10          fitting the defendant, and the tape of Mr. Harper,  
11          depending on which version is believed by the jury  
12          when he testified at court, may legitimately be  
13          considered more favorable to the prosecutor. I don't  
14          think there is undue prejudice by both of these  
15          matters being heard by the jury.

16                 And lastly whether potentially the jury could  
17                 use this material improperly, and since we are going  
18                 to play it in open court we are not going to allow  
19                 them to have anything to play in the jury room, I  
20                 don't see that it could be used in an improper way so  
21                 we will allow them just to listen in our presence to  
22                 the 911 tape first and then the tape of Isiah Harper.

23                         MR. FURNSTAHL: Okay.

24                                 (The following is in the  
25                                 presence of the jury.)



1 THE COURT: Members of the jury, in  
2 response to your question we are back in the  
3 courtroom and we are going to replay for you the 911  
4 tape and the statement of Isiah Harper. First the  
5 911 tape. You may start it.

6 (911 taped is played to the  
7 jury in the courtroom and not transcribed by this  
8 Court Reporter.)

9 THE COURT: Now you can put in the  
10 statement.

11 We'll go off the record. Members of the jury,  
12 we'll excuse you for a few minutes. As soon as we  
13 get somebody that knows how to operate that one we'll  
14 play the tape for you.

15 (The following is in the  
16 presence of the jury.)

17 THE COURT: Okay, Mr. Furnstahl, we are  
18 back on the record at 4:20. Go ahead and play the  
19 disc.

20 (Harper statement is played  
21 to the jury.)

22 THE COURT: Members of the jury, you may  
23 retire.

24 (Jurors leave the courtroom  
25 at 4:40 p.m.)

1 MR. FURNSTAHL: Do we give them back these  
2 exhibits?

3 THE COURT: Yes.

4 (Recess. The following  
5 occurs at 7:23 p.m.)

6 THE COURT: Members of the jury, have you  
7 selected a foreperson?

8 JURORS: Yes, we have.

9 THE COURT: And have you reached a verdict?

10 JURORS: Yes, we have.

11 THE COURT: Will you please hand the  
12 verdict to the deputy?

13 Defendant please rise. The clerk will now read  
14 the verdict.

15 THE CLERK: We, the jury, find the  
16 defendant guilty of the charge of murder in the first  
17 degree.

18 We, the jury, find the defendant guilty of the  
19 charge of assault in the second degree.

20 THE COURT: Would the defendant request the  
21 jury be polled?

22 MR. BENSON: Yes, Your Honor.

23 THE CLERK: Mr. Smith, to the charge of --  
24 is this your verdict?

25 MR. SMITH: Yes.

1 THE CLERK: Mr. Sorenson, is this your  
2 verdict?  
3 MR. SORENSON: Yes.  
4 THE CLERK: Ms. Harrison, is this your  
5 verdict?  
6 MS. HARRISON: Yes.  
7 THE CLERK: Ms. Mach, is this your verdict?  
8 MS. MACH: Yes.  
9 THE CLERK: Mr. Spector, is this your  
10 verdict.  
11 MR. SPECTOR: Yes.  
12 THE CLERK: Mr. Dockter, is this your  
13 verdict?  
14 MR. DOCKTER: Yes.  
15 THE CLERK: Mr. Steinmetz, is this your  
16 verdict?  
17 MR. STEINMETZ: Yes.  
18 THE CLERK: Ms. Gruesner, is this your  
19 verdict?  
20 MS. GRUESNER: Yes.  
21 THE CLERK: Ms. Cassidy, is this your  
22 verdict?  
23 MS. CASSIDY: Yes.  
24 THE CLERK: Ms. Boeser, is this your  
25 verdict?

1 MS. BOESER: Yes.

2 THE CLERK: Mr. Gerling, is this your  
3 verdict?

4 MR. GERLING: Yes.

5 THE CLERK: Mr. Oelberg, is this your  
6 verdict?

7 MR. OELBERG: Yes.

8 THE COURT: Members of the jury, I thank  
9 you for your service and you are excused at this  
10 time.

11 THE DEFENDANT: Man, I didn't kill that  
12 man. Man. They all going to burn in hell for that,  
13 I swear.

14 THE COURT: Court will set sentencing for  
15 September 27th, nine o'clock.

16 THE DEFENDANT: They can all burn in hell  
17 for this right here.

18 (Whereupon, the proceedings  
19 conclude at 7:25 p.m.)

20 \* \* \*

21 STATE OF MINNESOTA)

22 ) ss.

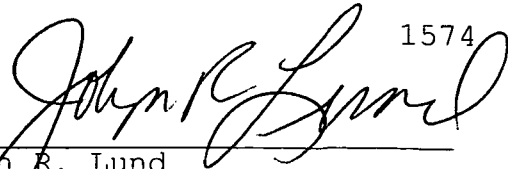
COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

23 I, Jolyn R. Lund, Official Court Reporter, do  
24 hereby certify that the above and foregoing is a true and  
25 accurate transcription of my original stenographic notes  
in said matter.

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Date: March 3, 2006

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Jolyn R. Lund  
Official Court Reporter  
1029-C Government Center  
Minneapolis, MN 55487  
(612) 348-3206