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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,  
Plaintiff,

CASE NO. 02CR00013

TRIAL

JMR / FLW

vs.

TRANSCRIPT

VOLUME I

KEITH BERNARD CRENSHAW, (01) #02-4084  
TIMOTHY KEVIN MCGRUDER, (02) #03-1067  
KAMIL HAKEEM JOHNSON, (03) #02-4085

ORIGINAL

Defendants.

The above-entitled matter came on for jury trial before Chief Judge James M. Rosenbaum, reconvening on May 28th, 2002, at the United States District Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, commencing at approximately 9:30 a.m.

CALIFORNIA CSR NO.: 8674

ILLINOIS CSR NO.: 084-004202

IOWA CSR

RMR NO.: 065111

FILED JAN 13 2003  
RICHARD D. SLETTEN, CLERK  
JUDGMENT ENTD  
DEPUTY CLERK

(176)

APPEARANCES

1  
2 JEFFREY S. PAULSEN, Assistant United States  
3 Attorney, United States District Courthouse, Suite 600, 300  
4 South Fourth Street, Minneapolis, Minnesota 55415, appeared  
5 as counsel on behalf of Plaintiff.

6 MAHONEY LAW OFFICE, 215 Dunlap Street, Suite  
7 8, St. Paul, Minnesota 55116, by SEAMUS ROBERT MAHONEY,  
8 Attorney at Law; and

9 OSTGARD LAW OFFICE, P.O. Box 80324,  
10 Minneapolis, Minnesota 55408-8324, by JAMES ERWIN OSTGARD,  
11 II, Attorney at Law, appeared as counsel for Defendant,  
12 Keith Bernard Crenshaw.

13 HASSAN & REED, 2000 Plymouth Avenue North,  
14 Minneapolis, Minnesota 55411, by KEITH M. ELLISON, Attorney  
15 at Law, appeared as counsel on behalf of Defendant,  
16 Timothy Kevin McGruder.

17 BRYANT-WOLF LAW OFFICE, Barrister Trust  
18 Building, 247 Third Avenue South, Minneapolis, Minnesota  
19 55415, by GARY R. BRYANT-WOLF, Attorney at Law, appeared as  
20 counsel on behalf of Defendant, Kamil Hakeem Johnson.

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1 (The following in-camera proceedings were had  
2 outside the hearing and presence of the jury, commencing at  
3 approximately 9:30 a.m.)

4 MR. BRYANT-WOLF: Good morning, your Honor.

5 THE COURT: Gentlemen, please be seated. The  
6 record will indicate it is 9:41. Mr. Ellison has not yet  
7 chosen to join us and I'll deal with that later.

8 There's some motions in limine and I thought  
9 we ought to take care of them real quick. The motion to  
10 disclose the informant's identity -- did you have some more,  
11 or did you want to talk about that?

12 MR. BRYANT-WOLF: I did, your Honor. Thank  
13 you. Going through the discovery over the weekend, I saw a  
14 statement by Jayne, J-a-y-n-e, Sommerfeld, and she was one  
15 of the five individuals in the black pick-up truck driven by  
16 Mike Biebl that was parked in the northwest corner of the  
17 lot, kind of behind the gas station, almost. Anyway --

18 THE COURT: Okay. Get going. I've got a  
19 trial to start.

20 MR. BRYANT-WOLF: Yep. Sorry, judge. Anyway,  
21 she picked out a mugshot in a photographic lineup and she  
22 said that this person was present, she thought. That  
23 individual's name is Michael Odell Johnson.

24 MR. PAULSEN: I think she picked out Shelby.  
25 But that's okay.

1 MR. BRYANT-WOLF: well, I think she might have  
2 picked out two. Or Michael Biebl may have picked out  
3 Michael Odell Johnson. I think it was Michael Biebl. That  
4 becomes important because four days later, on July 24th, at  
5 the meeting where Rico told Robert "Buster" Jefferson who  
6 was there -- who was the shooter, this "OD," or Michael  
7 Odell Johnson, was seen driving the get-away car and it was  
8 this informant who saw that. The informant says, "I saw  
9 'OD' driving the blue Buick Regal," the same one that the  
10 neighbors on Sherburne will say was the get-away car. You  
11 add that to the fact that Mr. Biebl identified Michael Odell  
12 Johnson as being there as one of the possible shooters, and  
13 that would be more of an argument that we need to interview,  
14 and possibly call as a witness, this confidential, reliable  
15 informant.

16 THE COURT: Okay. Anything else from you,  
17 counsel?

18 MR. MAHONEY: No, your Honor. I would just  
19 second counsel's motion.

20 THE COURT: Mr. Paulsen.

21 MR. PAULSEN: well, I don't think it changes  
22 anything. If they think Michael Odell Johnson was the  
23 get-away car driver, they can go interview him. They've had  
24 his name since Day 1 in this case.

25 THE COURT: Right. Counsel, so far you have

1 not given me, in my view, any reason to disclose the  
2 identity of the informant. The issue will remain open and  
3 available. But Mr. Johnson has been available. People who  
4 have testified, whose names you know, said that he was  
5 involved, in any fashion that he may have been involved, and  
6 he's available for whatever examination is necessary.

7 with regard to the 404(B), it seems to me that  
8 McGruder's '96 and '95 convictions are both in the game; I  
9 think Johnson's 1998 conviction is at least at some  
10 distance; and Crenshaw, '94, '95 and '96, I think, are all  
11 available at this point.

12 with respect to the 911 calls, they seem to me  
13 that they would be classified as present-sense impressions  
14 and are, in fact, the best evidence as to what was said.

15 sounds like you've got the people who are the  
16 declarants; is that correct?

17 MR. PAULSEN: Yes.

18 THE COURT: Then I think that takes care of  
19 the matters that we need to take care of prefatory to  
20 opening statements.

21 MR. BRYANT-WOLF: Your Honor, I would like to  
22 object to the government having, as their case agents at  
23 counsel table, anyone who is going to be a witness under  
24 615.

25 THE COURT: Okay. That objection is noted and

1 it's overruled. I think there's a lot of law on that  
2 subject.

3 MR. BRYANT-WOLF: In the comments to Rule 615,  
4 it would seem -- what it states is: "Yet, it would not seem  
5 that the government could often meet the burden under Rule  
6 615 of showing that the agent's presence is essential..."  
7 They go on to talk about the fact that maybe the government  
8 does need someone to assist, but it should not be a witness.

9 In any event, your Honor, I would object to  
10 the government having more than one, because both --

11 THE COURT: There are more than one agency  
12 involved and, therefore, your motion's overruled. All  
13 right. Everything else pretty much copacetic?

14 MR. PAULSEN: I wanted to note a couple of  
15 things. Counsel, the ones who are here, have given me  
16 permission to use certain photographs and diagrams during my  
17 opening. I would request that Shalla Gillum, the victim's  
18 mother, be allowed to be in the courtroom during openings.  
19 If they want, we can --

20 THE COURT: Is she going to be testifying?

21 MR. PAULSEN: Yes. Only during openings.

22 THE COURT: If they wish to invoke 615, I'll  
23 have to exclude her.

24 MR. BRYANT-WOLF: I won't object to that, your  
25 Honor.

1 MR. PAULSEN: You will not?

2 MR. BRYANT-WOLF: I will not object to that.

3 THE COURT: All right. Counsel, are you  
4 willing to allow the victim's mother to be present during  
5 the openings?

6 MR. MAHONEY: No objection, your Honor.

7 THE COURT: All right.

8 MR. PAULSEN: I handed out a revised exhibit  
9 and witness list this morning. I have alibi notices from  
10 two of the defendants. Normally I don't address potential  
11 defenses in my opening, but since I've been given alibi  
12 notices, I intend to address that, unless there's some  
13 reason not to.

14 THE COURT: I can't see any particular reason  
15 not to. Nobody seems to be saying anything. All right.  
16 How long do you expect your opening statement  
17 will take?

18 MR. PAULSEN: I think it came in at about 40  
19 minutes.

20 THE COURT: All right. And do we have an  
21 order for the defense opening arguments?

22 MR. BRYANT-WOLF: We'll go the order as on the  
23 Indictment, your Honor.

24 THE COURT: All right. So you go number two?

25 MR. BRYANT-WOLF: Last.



1 THE COURT: Okay. You go --?

2 MR. MAHONEY: Well, your Honor, we would -- we  
3 were -- I guess Gary has decided that he wants to go last,  
4 and he has the right to do that because I'm the first -- my  
5 client is the first on the list. So that's fine, we'll go  
6 first. I just had one quick question about the 404(B)  
7 issue.

8 THE COURT: Yes, sir.

9 MR. MAHONEY: Now, that's going to be used in  
10 opening statement?

11 MR. PAULSEN: Probably not, your Honor.

12 MR. MAHONEY: Okay. And when that comes in --

13 THE COURT: It would be helpful to just let me  
14 know.

15 MR. MAHONEY: -- to give you a head's up about  
16 that. Okay.

17 THE COURT: Okay.

18 MR. BRYANT-WOLF: Your Honor, I made a motion  
19 to exclude, on a hearsay basis and, also, a Sixth Amendment  
20 basis, the admissions of co-defendants.

21 THE COURT: Yeah, I saw that. If it appears  
22 that there's a conspiracy, I think you've got a problem.

23 MR. BRYANT-WOLF: Conspiracy was not charged  
24 and, in fact, the statute has run.

25 MR. PAULSEN: Well, I've explained why it

1 wasn't charged. It doesn't negate the existence of a  
2 conspiracy. There clearly was one.

3 THE COURT: I'll consider that. But my sense  
4 is that I'm likely to permit it.

5 MR. BRYANT-WOLF: Your Honor, I have a new  
6 witness to disclose, it's one that's been listed in the  
7 government's discovery, Latanya, L-a-t-a-n-y-a, Ferrell,  
8 F-e-r-r-e-l-l.

9 THE COURT: I don't see any particular reason  
10 to make a point of that with the jury at this point, unless  
11 you have an issue. I'll be glad to do it if you want me to.

12 MR. BRYANT-WOLF: No, your Honor.

13 THE COURT: All right, gentlemen.

14 MR. BRYANT-WOLF: Thank you, your Honor.

15 (The in-camera proceedings concluded at  
16 approximately 9:47 a.m.)

17 (The following in-camera proceedings were had  
18 commencing at approximately 9:49 a.m.)

19 THE COURT: The record will indicate this is a  
20 motion considered and heard under seal. The United States  
21 has obtained additional information concerning the firearm  
22 that was used. It is the contention of the defense that  
23 this firearm was disclosed in a proffer and, therefore, it  
24 ought not to be permitted to be introduced or referred to in  
25 evidence. The government's position is that it was referred

1 to in a proffer, but under the terms of the proffer, a  
2 letter, there was a particular waiver of either a Castigar  
3 hearing or of any objection to any evidence that would be  
4 found which, arguably, could have been derived from the  
5 proffer. That letter was signed by the defendant and agreed  
6 to when the proffer was made.

7 The government also is of a mind that it has,  
8 and has argued that it has, an independent source for the  
9 information, basically a statement given by --

10 MR. PAULSEN: Maalik Harut.

11 THE COURT: Maalik Harut. And they then  
12 chased that down. The defense is of a mind that, to the  
13 extent that they got a statement from Harut, the suggestions  
14 were either planted or encompassed in their original  
15 proffer. I think I've summarized pretty much everybody's  
16 positions here.

17 Is that fair, counsel?

18 MR. BRYANT-WOLF: Your Honor, my motion also  
19 covers the witnesses Mike David Johnson, and the ammunition,  
20 and, then, finally, Patricia Banks.

21 THE COURT: All right. The court is of a mind  
22 that the defendant knowingly waived his right to even raise  
23 this question. But even were he to have raised it, the  
24 government's independent source -- it is not at all unlikely  
25 that the government would have continued to proceed to

1 examine its witnesses further on these areas, the firearm or  
2 the weapon involved, particularly being a distinctive one,  
3 is one that could have been, and would have been, recalled.  
4 Under those circumstances, the motion to suppress it is  
5 denied.

6 MR. BRYANT-WOLF: Thank you, judge.

7 (The in-camera proceedings concluded at  
8 approximately 9:51 a.m.)

9 (The following proceedings were had in open  
10 court, commencing at approximately 10:00 a.m.)

11 THE CLERK: The United States District Court  
12 for the District of Minnesota is now in session. The  
13 Honorable James M. Rosenbaum presiding.

14 THE COURT: Thank you. Would those of you who  
15 are to be jurors, please raise your right hands and take  
16 your oath as jurors.

17 THE CALENDAR CLERK: You and each of you do  
18 swear that you will well and truly try the issues joined in  
19 this case a true verdict render according to the evidence  
20 and the law as given by the court, so help you God?

21 THE JURY: I do (in unison).

22 THE COURT: Thank you. Please be seated.  
23 Good morning, members of the jury.

24 THE JURY: Good morning (in unison).

25 THE COURT: Counsel.

1 MR. PAULSEN: Good morning, your Honor.

2 MR. ELLISON: Good morning, your Honor.

3 MR. BRYANT-WOLF: Good morning, your Honor.

4 MR. MAHONEY: Good morning, your Honor.

5 THE COURT: Members of the jury, something  
6 extremely important happened, as I suspect you probably  
7 know. You just raised your hands and you took on the  
8 responsibility as jurors in a federal court. I will tell  
9 you, if you do not know, that there was an article  
10 concerning this matter in the morning paper in, I think, the  
11 Minneapolis paper. Did any of you read it or see it this  
12 morning? All right. Now, I will tell you that it would be  
13 in your interest not to do so and I instruct you that you  
14 may not. If it is of interest to you, and you have a friend  
15 or a buddy who would be willing to do it, you might engage  
16 -- and one of the interesting things that happens -- I don't  
17 know if we have any reporters here present, and they're  
18 certainly welcome any time they come -- but I will tell you  
19 that -- have somebody clip these things out and put them in  
20 an envelope, and then you can read some day, when the case  
21 is over, what reporters think is interesting as opposed to  
22 what you find interesting or useful in a trial. I think  
23 you'll find it an interesting experience. But for the  
24 moment, you are not the ones to make that inquiry. Okay.

25 Also, let me tell you that -- I think you may

1 have note pads; and if you don't, you'll be able to get  
2 them. Let me talk to you a little bit about note-taking in  
3 a trial. First of all, as you know, up until now you've had  
4 no evidence. In a moment, we will proceed to opening  
5 statements. You will note, and I will go over this in a  
6 moment, that the lawyers will speak to you; but, of course,  
7 they're not under oath, so that's not part of the evidence.  
8 But once the evidence comes in, you may find it useful to  
9 take notes. I will take notes, the lawyers take notes. And  
10 everybody is permitted. But I want to tell you how you  
11 might use them. If you find -- and it's your own decision  
12 -- having notes or taking notes is of interest or helpful to  
13 you in recalling the evidence, well, then, take them. But I  
14 remind you again that your notes are not evidence. If they  
15 help you remember if Mr. Jones wore a blue sport coat on  
16 Tuesday and the question should come up in the trial, did  
17 Mr. Jones have a blue sport coat on, and one of you has it  
18 in your notes, well, you can't say, "well, I've got it right  
19 here in my notes," because, remember, that's not evidence,  
20 but if it encourages you to remember what you heard, well,  
21 that helps you. Okay? So your notes are for you, they're  
22 not to be shared with your colleagues. And what I would  
23 suggest you probably do is just put a little mark on the  
24 front page so that each of you only pick up your own notes  
25 as you proceed through the hearing. Okay? Now, we will

1 leave them -- they'll be locked and secured in the space  
2 that you're in -- or -- that you are in for your  
3 deliberations.

4 Now I thought I would give you a little  
5 background and let you know a little bit about where we're  
6 going so you'll have a sense of where we are as we proceed  
7 through the trial. And you will note, I think on the screen  
8 in front of you, it says: "The trial of a criminal case."  
9 So let me tell you that this is, in fact, a case of United  
10 States versus Keith Bernard Crenshaw, Timothy Kevin  
11 McGruder, and Kamil Hakeem Johnson. And you will note --  
12 and you've already met the attorneys -- the United States  
13 has one lawyer and his name is Jeffrey Paulsen. You met  
14 Mr. Paulsen before. As a matter of fact, I think in the  
15 next couple of days I'll probably arrange to have a little  
16 kind of a photo gallery put together for you. I'll have  
17 some pictures of the lawyers and the clients that they have  
18 and you'll have that available if it's of any help to you.  
19 We may also do the same with witnesses.

20 And, Larry, maybe you can chase that down.

21 THE CALENDAR CLERK: Yes, sir.

22 THE COURT: On behalf of Mr. Crenshaw, we have  
23 Seamus Mahoney, and I think you met Mr. Mahoney before.  
24 He's the gentleman there. And I'm color blind, but that  
25 might be a brown suit. Or not. And Mr. Ostgard is seated

1 with him. He's wearing, I think, a blue shirt over  
2 there. Mr. McGruder is represented by Mr. Ellison.  
3 Mr. Ellison is wearing a darker shirt, which I cannot guess  
4 what color it is. Okay.

5 MR. ELLISON: Burgundy.

6 THE COURT: Pardon?

7 MR. ELLISON: I believe it's a burgundy shirt.

8 THE COURT: It's a burgundy shirt. That's  
9 what happens when you're color blind. It's a darker shirt.  
10 Mr. Johnson is represented by Gary Bryant-Wolf, and I think  
11 you met Mr. Bryant-Wolf before. All right. Now we know who  
12 the parties are and we've got them identified.

13 We've already gone through the witnesses, and  
14 I'm just going to run that down real quick because I've got  
15 to skip over all this. This is what happens when technology  
16 gets one step ahead of you. We went through all those names  
17 as we were selecting and making sure that we didn't know any  
18 of them. As a matter of fact, there was a new name given.

19 Counsel, can you give me that name again?

20 MR. BRYANT-WOLF: Latanya Ferrell.

21 THE COURT: Do any of you know, or are any of  
22 you familiar with, the name Latanya Ferrell? The record  
23 should indicate that I see only nods in the negative and no  
24 hands raised. All right.

25 Now, then, in a moment you will hear opening



1 statements. There is an order for the way things go. You  
2 will hear first from the United States. That means  
3 Mr. Paulsen will tell you what he thinks he can show you,  
4 then -- let me back up a little bit about what that means.  
5 The opening statement, as I remind you, is not evidence. It  
6 is the government trying to lay out for you what they think  
7 the overall picture will look like. And part of the reason  
8 is, is if you hear from a witness -- well, Mr. "A" might  
9 have seen something at a certain time, Mrs. "B" might have  
10 heard something at another. It's kind of like putting  
11 together a mosaic. This is to kind of give you a framework  
12 to see where all the pieces might appropriately go. It is  
13 pretty much straightforward. I think he'll say something  
14 like, "The evidence will show you this"; or, "witness 'X'  
15 will tell you that," that kind of a discussion.

16 Now, with respect to the defense, once he's  
17 concluded his argument (sic), the defense -- I do not know  
18 if any of the defense lawyers is going to give an opening  
19 statement at all. They have a free choice. They can either  
20 give an opening statement when the government concludes its  
21 opening statement ;or they can wait until the government  
22 puts in the government's whole case; or they can decline to  
23 give an opening statement at all. I have not asked, and do  
24 not know, which election will be made by any of the defense  
25 lawyers, because that's a free choice and its theirs. They

1 can, as I said, give it now; give it at the close of the  
2 government's case; or decline altogether to give an opening  
3 statement.

4 You will then hear evidence. I want to tell  
5 you what evidence is. There are three things in the whole  
6 world that are evidence. They are, first of all, witness  
7 statements given before you understand oath. That's called  
8 "testimony" most of the time; secondly, there are physical  
9 items or objects admitted, usually called "exhibits"; and  
10 the third are agreements by the parties, or the lawyers on  
11 behalf of their clients, and those are called  
12 "stipulations." Everything else is not evidence. So then  
13 you can draw from that a few other things. What isn't  
14 evidence? The lawyers' arguments, because they are not  
15 testimony, they are not exhibits, they're not stipulations.  
16 They are their arguments. Their opening statements and, in  
17 fact, their closing statements are not evidence. Today's  
18 newspaper is not evidence, neither is yesterday's, nor is  
19 tomorrow's. Things that you hear, see, read, learn outside  
20 of the courtroom, because it doesn't fall in those three  
21 categories, is not evidence. And the lawyers' objections,  
22 the objections that they will make in this courtroom, are  
23 not part of the evidence, either. In that same regard, I  
24 will rule on their evidence -- on their objections and those  
25 are also not part of the evidence.

1           Let me focus with you, if I can, for a second  
2 on objections. Lawyers are officers of the court. They  
3 have learned the rules of the way information is presented  
4 in a courtroom. But they are a form of an argument.  
5 They're basically saying, "Judge, there's a problem with the  
6 format here," and I will make a decision whether that format  
7 is appropriate. Those arguments are directed to me.  
8 They're not part of the evidence for you. The lawyers'  
9 objections -- and I think they will be properly made -- will  
10 either be by giving me a number or by a statement. They may  
11 say "801"; they may say "Hearsay"; they may say "Relevance";  
12 they may say "611." But they're not going to give a big  
13 discussion about it because that's not part of the evidence  
14 and that would simply clutter up the record.

15           Now, I will tell you that my decisions -- if I  
16 say an objection is overruled and the evidence comes in,  
17 that doesn't mean it's great evidence, it doesn't mean it's  
18 particularly persuasive. It just says, in my role as  
19 traffic cop, it's permitted. And if I rule against and I  
20 say "Sustained," that doesn't mean "If only the jury could  
21 hear that, it's going to make the case come out." It  
22 doesn't mean anything other than I'm making decisions based  
23 on a set of rules. You will get all the information that  
24 you need to decide the case. It is possible that either a  
25 witness may say something that was not expected or go beyond

1 the scope or something will fall in a way that you ought not  
2 to have heard it. And I will tell you, members of the jury,  
3 you ought to disregard it. I used to think I should just  
4 get a can of spray paint and write up on the wall the words  
5 that I tell you not to think about, but I think you will  
6 discover when we start to proceed that that works rather  
7 simply. That's just not material that should have happened.  
8 Life is complicated. Forget about it, you're going to have  
9 plenty more to work with, and that will not be a problem, I  
10 think you'll discover. The same way I told you if something  
11 happened in a place you know where it is, and I said, "Don't  
12 go there." Don't regard what you heard. Just forget about  
13 it. Okay.

14 In this case there is an Indictment and the  
15 Indictment charges the defendants with a particular set of  
16 crimes. Now, I told you before, but I remind you, that it  
17 is not evidence, it doesn't prove itself. It defines the  
18 charges that the defendants will have to face. And it is a  
19 fact, it is an occurrence, but it doesn't go further than  
20 that. Okay.

21 How does the case proceed? It proceeds in the  
22 following fashion: After the opening arguments, the United  
23 States will call each and all of its witnesses and each of  
24 them will be cross-examined by the defense lawyers, then the  
25 government will go back over things that have been opened

1 up. They'll go back and forth until everybody has had their  
2 say. After that, the United States will rest, or close its  
3 case. That will kind of be like a book end, closing off the  
4 government's part of the evidence. Now, I told you that the  
5 defense can then make an opening statement or not, if they  
6 haven't made it before. I would also like you then in a  
7 moment, because you're going to see, that then the defense  
8 may or may not choose to call or present its case.

9 Remember, they don't have to put in a case, because in a  
10 criminal case, they don't have the burden to prove anything.  
11 That burden lies with the government. Once the United  
12 States has rested, if you think about it, the government  
13 will have put in all of its case. The defendants yet either  
14 haven't or may or may not decide to put one in. But I would  
15 suggest to you, it would be useful for you to not think  
16 about whether you've decided the case until you've heard  
17 both sides' evidence, if the defense wishes to present any.  
18 So you might think of yourself in the earlier parts of the  
19 case as evidence-gatherers rather than decision-makers, so  
20 that each side gets a fair chance, if they choose to put in  
21 a case, to have their case heard. After the defense rests,  
22 if new issues have developed there may be a bit more  
23 evidence introduced by the United States in a part of the  
24 case sometimes called "rebuttal." Then comes the end of the  
25 case and, at that time, you will hear a closing argument by

1 the AUSA , that's Assistant United States Attorney. That's  
2 Mr. Paulsen. Then each of the closing arguments -- each  
3 defendant gives a closing argument and, then, the United  
4 States gets a reply argument, because they do have this  
5 responsibility to try and prove the case. After that, I  
6 will tell you the rules that you are to apply, I will give  
7 you your instructions, and then you will go about your  
8 deliberations. Members of the jury, that's how we do our  
9 work. And I think that takes care of it.

10 And with that in mind, Mr. Paulsen, are you  
11 ready for opening statement?

12 MR. PAULSEN: Yes, your Honor.

13 THE COURT: Counsel, you may proceed.

14 MR. PAULSEN: On July 20th, 1996, a Saturday  
15 night, at about 10:45 p.m., three men went to this Amoco gas  
16 station located at Hamline and University Avenues, in  
17 St. Paul. They went to the back of the gas station and they  
18 stood behind this fence, which is about six feet high. It  
19 separates the gas station from an alley. All three of those  
20 men had guns. All three of them were there for a purpose.  
21 They were on a mission. Their mission was to ambush and  
22 kill members of a rival gang. At about this same time, a  
23 blue Cadillac drove into the Amoco station and had nine  
24 people in it. All of them were women and children. That  
25 car needed air in the front tire, so it parked over here,

1 about 30 feet from the fence separating the Amoco from the  
2 alley. It was parked by the air pump, and the driver,  
3 Lashawn Slayden, got out to fill her tire. At least two,  
4 maybe three, other cars had been following this blue  
5 Cadillac. They came into the station. I'm going to remove  
6 this canopy so you can see better. And this yellow car  
7 parked about here, at a gas pump, and this red, with a white  
8 top, car parked about here, at a gas pump; and this third  
9 car, this white one, seemed to have been about over here.  
10 Bogus Boys occupied those cars, at least seven or so of them  
11 were there. They were the members of the rival gang. At  
12 about 10:45 p.m., those three men behind the fence got up on  
13 this guardrail -- it's a highway-style guardrail, it's about  
14 two feet off the ground. Those three men got up on the  
15 fence right about here, right about where this light post  
16 is, and all three of them pulled the triggers on their guns.  
17 At least 20 shots rang out. At least two different guns  
18 fired those shots, a third gun possibly jammed, but all  
19 three men pulled their triggers with the intent to commit  
20 murder. And when the shooting stopped, three women from  
21 this blue Cadillac lay wounded, and a child who had been  
22 sitting in the backseat, four-year-old Davisha Brantly  
23 Gillum, lay dying with a bullet in the head fired from  
24 behind that fence. After the ambush, these three men got  
25 down off this guardrail and they ran -- and if we could

1 switch to the ELMO. This is an aerial photograph of the  
2 scene. This is the back of the Amoco station here. There's  
3 the fence, there's the alley. They ran down the alley --

4 THE COURT: Mr. Paulsen, you might select a  
5 different color. Probably work.

6 MR. PAULSEN: They ran down the alley, cut  
7 through some houses. I'm not drawing that very well, but  
8 you get the point. They came out right about here, and they  
9 got into awaiting get-away car, where the fourth accomplice,  
10 to get-away driver, was waiting for them. Even then they  
11 weren't done with their mission. There was another part to  
12 this mission and that was to go report what they'd done to  
13 the leader of their gang -- the leaders of their gang. And  
14 that's what they did. They went to find the leaders of the  
15 Rolling 60's Crips gang to brag to them about what they had  
16 just done. Make no mistake about it. This was an  
17 intentional premeditated murder. This was not a stray  
18 bullet that accidentally ricocheted off something and hit  
19 Davisha Gillum in the head and killed her. That blue  
20 Cadillac was targeted. At least eight rounds were fired at  
21 that car containing women and children, and bullets from two  
22 different guns hit that car. The three men who  
23 intentionally murdered Davisha Gillum that night are in this  
24 courtroom: Keith Bernard Crenshaw, the second one from the  
25 end of the table, known on the streets as "Chumley." He was



1 one of the people behind the fence that night. Timothy  
2 Kevin McGruder, second from this end, in the green shirt,  
3 known on the streets as "Handyman," was one of the people  
4 behind the fence that night, and Kamil Hakeem Johnson, in  
5 the short-sleeve shirt, known on the streets as "Little  
6 T-Bone," was also one of the shooters behind the fence. The  
7 fourth person who was involved, the get-away driver, Maalik  
8 Harut, he's not in this courtroom today, but he will be  
9 soon. He's pled guilty, he's confessed, and he will testify  
10 against the three shooters.

11 Now, what led up to all this.

12 THE COURT: Mr. Paulsen, you might clear the  
13 marks off of the screen.

14 MR. PAULSEN: What caused it was a gang war  
15 between the Rolling 60's Crips and the Bogus Boys. All four  
16 of the people that were involved in that shooting were  
17 either full-fledged members of the Rolling 60's Crips or  
18 close associates of that street gang.

19 The Rolling 60's Crips, by way of background,  
20 is a criminal organization. It's a street gang that  
21 originated out in Los Angeles years and years ago. The  
22 "60," the 6-0, refers to a street out in Los Angeles, 60th  
23 Street. But the Minnesota faction of that Los Angeles-based  
24 gang was formed here in the Twin Cities in the late 1980s.  
25 And that street gang, the Minnesota faction of the Rolling

1 60's Crips, is an enterprise under federal law for purposes  
2 of this federal Indictment. The purpose of the Rolling 60's  
3 Crips gang was basically to make money for its members by  
4 selling illegal drugs, primarily cocaine, crack cocaine and,  
5 also, marijuana. The cocaine typically would be brought in  
6 from out-of-state. The members and the leaders had sources  
7 of supply out in California, they also had sources of supply  
8 in Louisiana. This cocaine would be brought in across state  
9 lines, either by mailing it in packages a few grams at a  
10 time or they'd use human couriers to transport it from state  
11 to state. Oftentimes the cocaine came in in the powder form  
12 -- that's the kind that people snort -- but usually before  
13 it was sold on the streets by the members of the Rolling  
14 60's Crips gang, it would be converted into crack cocaine,  
15 which is the addictive, smokeable form of cocaine. This  
16 gang also made money -- some of its members made money by  
17 engaging in armed robberies. You'll hear at least one armed  
18 robbery of a convenience store.

19 The Rolling 60's Crips gang, as you can see,  
20 had a structure and an hierarchy. The leader was Terron  
21 williams. He'll be referred to as "Rico" williams. Other  
22 leaders at various times were "Rat," Jonathan Livingston, a  
23 guy named "Crazy," Greg Hymes, who was Terron williams' half  
24 brother, he went by the street name "G." Kevin Snead went  
25 by the street name "6-6" or "6"; that refers to his height.

1 He's very tall. He's 6-foot-6. Now, underneath the leader  
2 you have the members. Timothy McGruder, in the green shirt.  
3 As I said, his street name was "Handyman." Kamil Johnson,  
4 "Little T-Bone," in the short-sleeve shirt, and various  
5 other members. We haven't listed them all. We don't have a  
6 board big enough to list them all. This gang grew at some  
7 point to be about 200 members. We've listed the names of  
8 the people you'll hear about during this trial. The gang  
9 also had associates, people that hung around with the gang.  
10 They might have been members of other gangs, but they were  
11 hanging around with this gang, trying to get into this gang,  
12 and those included Keith Bernard Crenshaw, the man in the  
13 blue suit. His nickname on the street was "Chumley." And  
14 also the get-away driver, Maalik Harut. That's one of the  
15 reasons he did it that night.

16 This was an organized gang. There was an  
17 initiation procedure. New members had to prove themselves.  
18 That's how you get into a gang like this, you prove yourself  
19 either by being jumped in. That's a procedure where they  
20 have a gang meeting and somebody who wants to get into the  
21 gang has to go in a circle of other gang members, and he has  
22 to fight those people for two or three minutes, or however  
23 long it takes to prove himself, to prove he's a fighter.  
24 That's one way of proving yourself, by being jumped in.  
25 Another way of proving yourself, committing acts of violence

1 for the benefit of the gang. They were organized. They had  
2 meetings. At the meetings, various things were on the  
3 agenda, such as the gang's drug sales, their drug territory,  
4 problems they were having with other gangs infiltrating  
5 their drug territory -- which was a large part of St. Paul  
6 back in the mid-1990s -- problems they were having with  
7 other gangs. All these issues were on the table. These  
8 meetings would be held at various places. One place you'll  
9 hear about is a residence called "910 Edmund" over in  
10 St. Paul. In the days when the gang was smaller and there  
11 were only smaller amounts of members there, these meetings  
12 would be held at 910 Edmund. But you'll hear by the summer  
13 of 1996, this gang had gotten so large that they had to hold  
14 their meetings at Central High School, in St. Paul, in the  
15 stadium on the football field. And sometimes they would try  
16 to disguise those meetings by having some guys playing  
17 football in case anybody came by, just pretend it was just a  
18 sports event.

19 This gang was organized, it had a structure,  
20 and it had a system of discipline. If somebody did  
21 something against the gang's rules -- and I'll cover those  
22 rules in a minute -- if somebody didn't pay their drug debt  
23 to Rico or one of the other leaders on time, if somebody  
24 violated some other rules, there was a discipline for that.  
25 And at these gang members, if you had to be disciplined, you

1 would go in that circle and you'd have to fight. And that  
2 was your discipline. It's called a "violation" in the gang  
3 world. If you do something wrong, you get violated and you  
4 get punished.

5 what were the rules of this gang? There were  
6 two main rules of the Rolling 60's Crips, and the first rule  
7 was the rule of mandatory retaliation. That was a rule that  
8 said if anybody on the outside does something to a member of  
9 the Rolling 60's -- any member -- someone on the outside  
10 hurts one of our people, everybody in the gang is obligated  
11 to retaliate against that person. All for one and one for  
12 all. If you do something to my gang, everybody in my gang  
13 is going to retaliate. And if you do retaliate, you get  
14 what they call "stripes." You get stripes for doing that.  
15 If you don't retaliate when you're supposed to, you get  
16 violated. And retaliation could include shooting at people,  
17 it could include murdering people. The second rule of the  
18 gang was the Code of Silence. This was a criminal  
19 organization. The way they made money was criminal, the  
20 way they carried out violations against other people was  
21 criminal and, so, they had a rigidly enforced Code of  
22 Silence, which meant no member could ever talk to the  
23 police. That would be the biggest violation of all. And  
24 that Code of Silence is one of the main reasons it took six  
25 years to solve this case.

1                   They were in a gang war with the Bogus Boys  
2 during the summer of 1996 -- and that gang war actually  
3 started probably a year earlier and these are the pictures  
4 and names of some of the Bogus Boys you're going to hear  
5 about during this trial. The feud started probably a year  
6 prior to this. There are various explanations for how it  
7 started, but some people say it had something to do with  
8 some stolen cars.

9                   The Bogus Boys were a Minneapolis-based gang.  
10 They would come over to St. Paul and they'd look for other  
11 gang members to hassle, including the Rolling 60's, they'd  
12 steal their cars. And eventually this escalated into a  
13 shooting war between the Rolling 60's Crips and the Bogus  
14 Boys. And when I say "shooting war," I mean shootings on  
15 almost a weekly basis. One shooting that you'll hear about  
16 in particular occurred on May 17, 1996, when Richard Smaller  
17 -- his street name was "Little Richard" -- he got shot in a  
18 drive-by shooting over at his house in St. Paul by some  
19 Bogus Boys. Well, that's only two months before the Amoco  
20 shooting. And Richard Smaller, who was a Rolling 60, got  
21 wounded pretty bad, although he recovered. And the Rolling  
22 60's had an idea of who did it -- they knew it was the Bogus  
23 Boys -- and they thought it was "Stoney," Robert Williams,  
24 and "Snipes," Caylon Williams. And they were right. Caylon  
25 Williams eventually was convicted of that. And the car that

1 those Bogus Boys used when they shot and wounded 60's member  
2 smaller two months before this Amoco, was a blue Cadillac  
3 that looked very much like this one.

4 Now, on July 20, 1996, Shalla Gillum,  
5 the mother of Davisha Gillum, decided to go to Rondo Days.  
6 And she lived, Shalla Gillum did, over in north Minneapolis  
7 in a building where a woman named Lashawn Slayden also  
8 lived. Lashawn Slayden, you'll see, is up here on this  
9 Bogus Boys chart because she was closely aligned with them.  
10 Lashawn Slayden had dated some of the Bogus Boys, and she'd  
11 done something else for the Bogus Boys. Lashawn Slayden had  
12 bought them guns. Over the previous year leading up to this  
13 murder, Lashawn Slayden had bought a total of 22 guns as a  
14 straw purchaser. What that means is -- a straw purchaser is  
15 someone who can legally buy a gun because they don't have  
16 any prior felony convictions. These Bogus Boys, as you  
17 might expect, had prior felony convictions. They couldn't  
18 go into a gun store and buy a gun, so they have to get  
19 someone to go into the gun store and buy guns for them. And  
20 Lashawn Slayden was their straw purchaser. As I said, over  
21 the year -- the year previous to this incident, she bought a  
22 total of 22 guns and a lot of them ended up in the hands of  
23 the Bogus Boys. One of them for sure ended up in the hands  
24 of Kawassi Blanch, street name "Cool," because he was caught  
25 with it and prosecuted federally and convicted of having

1 that gun he wasn't supposed to have. And in that same case,  
2 Lashawn Slayden was prosecuted and convicted federally for  
3 getting all these guns as a straw purchaser for Bogus Boys  
4 and others, and she went to federal prison. But, of course,  
5 all that happened later. Back on July 20th, Shalla Gillum,  
6 who is right there in the front row in the light-colored  
7 suit, didn't know all that about Lashawn Slayden. All she  
8 knew on July 20th, 1996 was that it was Rondo Days, and  
9 Lashawn Slayden says, "Shalla, you're eight months pregnant,  
10 you got a couple little kids. Let's go to Rondo Days, it's  
11 a neighborhood festival over in St. Paul; there's some food,  
12 music, there's a drill team competition later that night.  
13 Let's go." And Shalla agreed to go. And they were in the  
14 front seat, Lashawn Slayden, Slayden's four year-old son,  
15 Shalla Gillum, in the blue Cadillac that Lashawn Slayden  
16 had. And in the back there was more women and children. At  
17 some point they picked up a friend of Slayden's named  
18 Yovondi Peavey, who goes by "Shay," Davisha Gillum. These  
19 four were back there. Shalla Gillum's four-year-old niece  
20 was back there, Shalla Gillum's two-year-old daughter was  
21 back there, another woman name Alice Forrest was back there  
22 and had a five-month-old baby on her lap. That was the  
23 seating position when they pulled in to get air at the gas  
24 station. They had just come from the drill team competition.  
25 The drill team competition was held over at that same



1 Central High School stadium. And that ended at about 9:30.  
2 And as Shalla Gillum and the rest of these people were  
3 leaving the drill team competition, they heard some shots in  
4 the area over by the high school. And Ms. Gillum was  
5 scared. She wanted to go home, she wanted to go back to  
6 Minneapolis. So, Lashawn Slayden agreed to drive her home,  
7 but the left front tire was low and needed air to get all  
8 the way back to Minneapolis. So first they had to get some  
9 air in the tire. They went to a different gas station  
10 first. There's an Amoco station on Lexington and I-94.  
11 It's about a mile from this one. They went there first, but  
12 when they got there, they couldn't get in. And the reason  
13 they couldn't get in is because there had been a different  
14 shooting at that Amoco moments before -- a few minutes  
15 before. At about 10:15, that shooting occurred at that  
16 Amoco at Lexington and University. And the police were  
17 there, and they had it roped off. So they had to go to a  
18 different gas station and that's how they ended up at the  
19 Hamline and University gas station a mile away. And they  
20 were followed over there by these Bogus Boys' cars. And  
21 this one, this red one, "Stoney" was in that one, the same  
22 guy the Rolling 60's suspected of shooting their fellow  
23 member Richard Smaller a couple of months earlier and the  
24 yellow one, I believe it was either Marvin Robinson or  
25 Harris Bloodsaw, one of those folks. Several of these

1 people were there. As I said, seven or eight Bogus Boys  
2 were at that gas station, milling about. And at a quarter  
3 to eleven, those three defendants got up on that rail and  
4 they pulled their triggers and those shots rang out. And as  
5 eight or more of them were aimed at that blue Cadillac, it  
6 had nothing in it but women and children. Lashawn Slayden  
7 was out getting -- down by the tire here, filling the tire  
8 with the air hose. She got hit in the back of the ankle by  
9 a bullet. Shalla Gillum, she was seated up here in the  
10 right front passenger seat. When the shots rang out, she did  
11 what any mother would do, she apparently turned to look back  
12 in the backseat to protect her child, and as she rose up,  
13 she got hit in the back of the right leg by a bullet fired  
14 from behind that fence. And Davisha Gillum was hit by a  
15 bullet that apparently went in an open window and it struck  
16 her just above the left eye and it exited out the back of  
17 her head. And Yovondi Peavey, "Shay," she got grazed by a  
18 bullet on the arm and it was probably the bullet that went  
19 through Davisha.

20 There were some eyewitnesses at the scene.  
21 There was a pick-up truck that had pulled into the gas  
22 station before all this happened, and it was parked right  
23 about here, by this light. And this is the front of the  
24 truck pointing this way, and the bed of the truck -- open  
25 bed of the pick-up truck was parked, was facing that way

1 toward the fence. And there were about five people in it,  
2 and one of them we'll hear from could see the people behind  
3 the fence. And he described them. There were three of  
4 them, there were two black males for sure and the third  
5 person was either a light-skinned black male or possibly a  
6 caucasian.

7 There's a couple of other eyewitnesses who  
8 lived in the neighborhood where the get-away car was parked,  
9 and they heard shots being fired. And one of them, a man  
10 named Crooms, will probably be our first witness -- Randy  
11 Crooms -- heard these shots. He looked out the window and  
12 he saw what he described as three black males, one of whom  
13 was very light skinned, come from between the houses and  
14 come out onto Sherburne. Sherburne would be the street over  
15 here. He saw them come from the direction of the Amoco  
16 between the houses, three black males, one who was light  
17 skinned, as is Mr. Crenshaw, and get into a waiting get-away  
18 car. He didn't see the driver of the get-away car, but he  
19 knew there had to be a fourth person. And as those three  
20 males were coming between the houses and getting into that  
21 car, he saw each one of them tucking a gun into the  
22 waistband of his pants. He called 911 right away. And  
23 you'll hear his 911 tape when he testifies. Another woman  
24 over here on Sherburne, an elderly woman named Alice  
25 Erickson, even before the shots, she saw the get-away car

1 drive up, it was a dark blue Regal -- Maalik Harut's dark  
2 blue Regal. She saw it drive up, she saw three black males  
3 get out, go down the street toward the Amoco. A short while  
4 later, she heard the shots. She looked out again and she  
5 saw three black males get back into the waiting get-away car  
6 and speed off.

7 The police arrived, of course, after the 911  
8 calls, and one of the first things they did, after roping  
9 off the area with yellow tape, is they set about collecting  
10 the cartridge casings from the guns. If any of you know  
11 about guns, you know that when you shoot a gun, the bullet  
12 goes out the barrel of the gun, and the casing, the part  
13 that holds the gunpowder initially, that gets ejected out  
14 the side of the gun. And these casings were lying by the  
15 fence. There were a total of 19 that were found initially  
16 and, then, a 20th one was found later on. They were kind of  
17 in two distinct groups, there was a group of 12 copper  
18 casings right about here; some on this side of the fence,  
19 some on the backside of the fence, and then a ways away  
20 there was a distinctive group of silver-colored casings.  
21 So you had about 12 copper casings and about seven silver  
22 casings. They were all nine-millimeter ammunition. And the  
23 ballistics expert is going to tell you that all the coppers  
24 were fired from the same gun, all the silvers were fired  
25 from the same gun, and he's also going to tell you that

1 bullets from both guns hit the blue Cadillac. Those silver  
2 casings, the expert will tell you, were fired from a gun  
3 with very unique rifling characteristics, and the bullets  
4 that came out of that gun -- bullet fragments were recovered  
5 from the car and from other places. The bullets that came  
6 out of that gun had marks on them made by a gun with a very  
7 distinctive rifling pattern. If any of you know guns, when  
8 the bullet comes out of the barrel there are things in the  
9 barrel called "lands" and "grooves," and they're twisted one  
10 way or another, and they're designed to make the bullet spin  
11 as it comes out of the barrel. That makes the bullet fly  
12 straight and not flop. And each barrel is a little bit  
13 different. And this particular gun that was used had unique  
14 rifling characteristics that show up on the bullet fragments  
15 and show up on those silver casings. And the expert's going  
16 to tell you that the most likely gun that was used was a  
17 nine-millimeter Heckler & Koch firearm. It's not a very  
18 common gun. It's a little bit expensive and you don't see  
19 too many of them, a nine millimeter Heckler & Koch, or  
20 H & K. Remember that name, H & K. And they also found --  
21 the crime lab people found on the backseat of the blue  
22 Cadillac a bloody bullet, a bullet that in fact had DNA on  
23 it from two different people, which leads us to believe that  
24 it was the bullet that passed through Davisha's head and  
25 struck the other lady in the arm. It's probably the murder

1 bullet. There weren't any other bloody bullets found. And  
2 it was a Black Talon hollow-point bullet. Now, a  
3 hollow-point bullet is the type of bullet that is created  
4 with a hollow point, designed intentionally to expand and  
5 mushroom when it hits something to inflict the maximum  
6 amount of damage. And the expert's going to tell you that  
7 that Black Talon bloody bullet from the backseat was, in all  
8 likelihood, fired from an H & K firearm. By the way, there  
9 were no signs of any return fire. No casings over here,  
10 where the Bogus Boys were, no bullet holes in the front side  
11 of the fence. No signs of any return fire. All the firing  
12 came from behind that fence.

13 The case initially was investigated by the  
14 St. Paul Homicide Unit, the St. Paul Police Department. And  
15 they did everything they could. They wanted to solve this.  
16 And they did everything they could. They tried and they  
17 tried, but the early leads did not pan out. They had early  
18 leads actually looking at a different gang altogether, a  
19 gang called the "Shotgun Crips," because Lashawn Slayden had  
20 told them that among other people she'd had trouble with in  
21 the past were some Shotgun Crips. And, so, they got the  
22 names of those people that she'd had trouble with, and they  
23 put their pictures in a photo lineup and they showed it to  
24 some of these eyewitnesses, and those people said, "well,  
25 the ones that look the closest are 'X' and 'Y,'" Shelby and

1 Odell Johnson. The eyewitnesses picked those people out.  
2 Those were Shotgun Crips. Well, they were wrong. We now  
3 know those weren't the people. But when you see the  
4 pictures, you'll see that the people that were picked out  
5 that night bear a strong resemblance to a couple of the  
6 defendants in this case. And the police eventually ruled  
7 out the Shotgun Crips altogether. And they also explored  
8 other leads, but a lot of the leads were false. I'll tell  
9 you right now they got a lot of false leads because,  
10 remember, there was a shooting at another Amoco station a  
11 mile away a half hour earlier so there were two shootings at  
12 Amoco stations that same night. And when it's in the papers  
13 that some girl got killed at the Amoco station, you get a  
14 lot of leads that turn out to be false. Somebody was at the  
15 other Amoco and they called in and they say, "I think it was  
16 so and so and so and so." And they don't know it, but  
17 they're talking about the wrong Amoco. So there was some  
18 confusion. But eventually, and it wasn't very long, the  
19 focus of the investigation came to bear on the Rolling 60's  
20 Crips. Because these St. Paul officers, they'd known about  
21 this gang war between the Bogus Boys and the Rolling 60's  
22 all summer and from way back. And the focus was on the  
23 Rolling 60's, and they knew who the leader of the gang was,  
24 Rico Williams, and he was the suspect, and his gang members  
25 were a suspect, but they couldn't put it together. Why?

1 Because of the Code of Silence. The people with the  
2 information, the gang members, are not going to talk to the  
3 police. And after a couple of years, the case became cold.  
4 It was a cold case, but it was not forgotten. No one would  
5 ever forget Davisha. And, so, in the fall of 1999, it  
6 became a federal investigation and the people who took it  
7 over were Sergeant Tom Dunaski, who's had over 30 years  
8 experience as a sergeant with the St. Paul Police  
9 Department, and his partner, Special Agent Grant Beise, who  
10 had over 30 years with the FBI. He recently retired. And  
11 they've been partners for a decade, and they've done these  
12 types of cases before. In fact, the reason they got this  
13 case in the fall of 1998 is because they had just finished a  
14 different gang-related murder case, the Coppage fire-bombing  
15 case, over in St. Paul. The trial had just finished, that  
16 one was done. That was another gang retaliation where some  
17 gang members burned down a house and killed five kids.

18 MR. ELLISON: Your Honor, I'll object.

19 THE COURT: That is not the charge in this  
20 case. You will proceed.

21 MR. PAULSEN: When it became a federal  
22 investigation, these two experienced investigators realized  
23 that they were going to have to approach it in such a way as  
24 to break the Code of Silence. And what they set about doing  
25 was to build a drug case against the top echelon of the



1 Rolling 60's and they did it by conducting surveillance on  
2 them, making drug buys from some of these people, talking to  
3 former Rolling 60's members, immunizing some of those  
4 people, putting them in the grand jury to learn about the  
5 structure and organization of this gang and to make a solid  
6 drug case on the upper echelon. And it took three years to  
7 do it, but they did it. And about a year ago that  
8 Indictment came down and it named, among others, Terron  
9 Williams, the leader of the gang, and Greg Hymes, "G," that  
10 charged them in a large scale drug trafficking conspiracy  
11 going back about ten years and encompassing all the drugs  
12 they sold in the Twin Cities area over the past decade.  
13 On August 23rd of last year, they went out to arrest Rico  
14 Williams, the head of the gang, and they let him know he was  
15 under a federal Indictment. And on Day 1, he confessed.  
16 Rico Williams, the head of the gang, confessed to the drug  
17 charges in that Indictment, and he agreed to cooperate, and  
18 he agreed to tell who the shooters were behind that fence.  
19 And he'll tell you, when he testifies, who the shooters  
20 were. He knows them as "Chumley," Keith Crenshaw,  
21 "Handyman," Tim McGruder, and "Little T-Bone," Kamil  
22 Johnson. And he'll tell you it was a gang hit. He knows  
23 because he ordered it. He told his gang members, "we're at  
24 war with the Bogus Boys. When you see them, you shoot at  
25 them." Now, he made a plea agreement with the government,

1 and the plea agreement involves him pleading guilty to a  
2 decade's worth of drug dealing, and the plea agreement has  
3 him looking at a penalty starting at 30 years imprisonment  
4 all the way up to life. He basically pled to life.

5 The guideline range is 30 years to life. And in return for  
6 his cooperation and in return for his truthful testimony in  
7 this case, the government had said in the plea agreement  
8 that "we'll make a motion at the time of your sentencing.  
9 we'll make a motion to the sentencing judge," which would  
10 allow the judge to go below 30 years to life. How much?  
11 How much time off has he been promised? None. He's been  
12 told it's totally up to the judge. "You're pleading to 30  
13 to life. You should assume you're starting at life. we'll  
14 make a motion. The judge will do what the judge will do.  
15 No promises beyond that." And when Rico Williams told the  
16 investigators who was involved in the shooting, he named not  
17 only the three shooters but also the get-away driver.

18 These investigators went next to the get-away  
19 driver, Maalik Harut. There was no indication that he was  
20 the shooter. He was the get-away driver. That's what the  
21 eyewitnesses have said. He never got out of the car. So  
22 they went to him and they asked him about it. And Maalik  
23 Harut on Day 1 confessed, and he said, "Yeah, I drove that  
24 car. 'Chumley,' 'Handyman,' and Kamil" -- Kamil is one his  
25 best friends -- "they were the shooters. I waited in the

1 car. They ran to the Amoco. I heard the shots. They came  
2 running back, and three were all excited, and they were  
3 talking about having just dumped on the Bogus Boys from over  
4 the fence at the gas station." And they didn't know  
5 initially --

6 THE COURT: Madam, would you please be quiet.  
7 I apologize, counsel.

8 MR. PAULSEN: And they were bragging. They  
9 thought they'd done a good thing. They didn't know  
10 initially that a four-year-old girl had been killed. They  
11 didn't know that until the next day. But they wanted to go  
12 tell all the leaders of the gang because that's how you get  
13 stripes in the gang. And, so, Maalik Harut drove them to  
14 where they thought the leaders were, Rico Williams was and  
15 where Greg Williams was and, sure enough, they were there.  
16 And they all told, and they all bragged about how they  
17 dumped on the Bogus Boys, and here we are to get our  
18 stripes. And "Handyman" kept claiming -- "Handyman," right  
19 there in the green -- kept claiming that his gun jammed.  
20 His gun jammed and he was mad about it. "The gun jammed. I  
21 didn't get any shots off."

22 The next person investigators talked to was  
23 Greg Hymes, "G," Rico's half-brother. He was indicted in  
24 that drug case. And he, too, confessed, and he corroborated  
25 what everybody else was saying, because he was one of the

1 people to whom these guys came running to right after the  
2 shooting and bragged. They all came running over to Greg's  
3 apartment, where he lived with his girlfriend, Lavern  
4 Christopher. And they came into that apartment and they  
5 were all talking about having shot at the Bogus Boys, and  
6 "Handyman" was claiming his gun jammed, and Kamil was  
7 saying, "I heard that lady say, 'My baby.'" And Greg  
8 actually believed that all four of them had shot. Unlike  
9 everybody else, he thought Maalik had shot too. It turns  
10 out that's not the case. That's what Greg Hymes thought he  
11 heard at first.

12 Now, Greg Hymes has a plea agreement with the  
13 government as well. He's starting at 15 to 20 years. It's  
14 the same type of plea agreement. "We'll make a motion if  
15 you testify truthfully. It's up to the judge to give you  
16 some time off, if any."

17 I forgot to mention Maalik Harut. He has a  
18 plea agreement. I said he confessed to being the get-away  
19 driver. And he confessed in court too. He pled guilty to  
20 that. He was charged with conspiracy to commit murder. He  
21 was the get-away driver, so he got to plead to a lesser  
22 offense, conspiracy to commit murder, rather than the actual  
23 murder. He's looking at ten years. And, again, if the  
24 judge wants to depart and the government makes the motion,  
25 the judge can take time off. No guarantees. No promises.

1                   There will be other witnesses you'll hear from  
2 that corroborate what these fellows are telling you. Other  
3 people heard these guys bragging that night; some of them  
4 were in that same apartment, where Greg Williams was, when  
5 they came running over to brag, and they'll tell you  
6 basically the same thing. Some of them heard McGruder  
7 complaining that his gun jammed and he didn't get any shots  
8 off and he was mad about it. Now, let me talk about that  
9 for a minute. You know, he claims his gun jammed. And  
10 maybe it did. There were only two sets of casings there.  
11 Three guns, two sets of casings. Maybe it did jam. It  
12 doesn't matter, because we're going to prove that Tim  
13 McGruder and the other two all went to that fence for the  
14 purpose of committing murder, and we're going to prove that  
15 a murder resulted. And it doesn't matter whose bullet  
16 killed the little girl. They're all guilty of murder. It's  
17 like if three people get together and decide "we're going to  
18 go kill so and so, one of our enemies," and they go over  
19 there and they get him and two of them hold him down and the  
20 third one beats the guy with a baseball bat. Guess what,  
21 they're all guilty of murder, even though only one of them  
22 inflicted the fatal blow. And that's the same in this case.  
23                   the judge is going to tell you about a concept  
24 called "aiding and abetting." That means helping each  
25 other. Three people get together to go commit a murder.

1 They help each other, there's safety in numbers. They all  
2 go over there to do it, it doesn't matter which one actually  
3 kills the girl. He's also going to tell you about the  
4 doctrine of transferred intent. Sure, they went there  
5 probably trying to kill these Bogus Boys, they thought this  
6 was a Bogus Boys car, and maybe even "Stoney" was in that  
7 car. They shot into the car and they killed the wrong  
8 person. It doesn't matter that the wrong person got killed.

9 MR. BRYANT-WOLF: Your Honor, at this point  
10 I'm going to object. This is argument.

11 THE COURT: Sustained.

12 MR. PAULSEN: The judge will tell you about  
13 transferred intent.

14 How are we going to proceed? We're going to  
15 start off this trial by bringing in the eyewitnesses, some  
16 people that were either at the scene or the people that were  
17 in the neighborhood where the get-away car was parked.  
18 We'll play some 911 calls. Later, maybe tomorrow, maybe  
19 next week, you'll hear from Maalik Harut, the get-away  
20 driver. You'll hear from Terron Rico Williams, the gang  
21 leader, his brother, Greg. You'll hear from other people  
22 who heard these guys bragging about it after the fact. And  
23 I should mention some of them have known this for years and  
24 they didn't tell, either. Even though some of these women  
25 that were in that apartment aren't members of the gang

1 themselves, they knew what the gang lifestyle was, and they  
2 knew about the code of silence, and they didn't tell. A  
3 couple of them had a chance to tell a year after. The  
4 police heard they might have information and asked them to  
5 come down and give a statement. And even then they didn't  
6 tell everything. They gave little bits and pieces.

7 The Code of Silence. And it was fear. You'll hear from  
8 crime lab people who came and picked up the casings, and  
9 examined the car, and photographed all the bullet holes in  
10 the blue Cadillac. You'll hear from the ballistic's expert  
11 who will remind you about that H & K gun, the H & K gun that  
12 was used that left those silver casings and that probably  
13 fired that bloody bullet. And there's one defendant in this  
14 courtroom who we will prove had access to just such a gun.  
15 He had an H & K gun, a nine millimeter, and that's defendant  
16 Kamil Johnson, "Little T-Bone," in the short-sleeve shirt.  
17 Back in 1996, he was living with a woman named Patricia  
18 Banks, his girlfriend, and she had this type of gun in her  
19 house. She's going to testify that Kamil Johnson had access  
20 to it, and I believe she's going to testify that the last  
21 time she saw that gun was the fall of 1996. And that's the  
22 first time she noticed it missing was the fall of 1996,  
23 sometime after this fatal shooting. She hasn't seen the gun  
24 since. And neither have we. But the investigators went to  
25 her house recently to search it, and they found in her house

1 a box, still there, a box of Black Talon ammunition. It was  
2 still there, almost six years later.

3 And I'll tell you right now you're not going  
4 to like some of our witnesses. I don't expect you'll like  
5 Rico, I don't expect you'll like Greg, probably won't even  
6 like Maalik Harut, even though he's cleaned up his act quite  
7 a bit over the years, and has a family now, and working a  
8 job at a hospital. Still, these guys were gang members;  
9 some of them had prior convictions, mostly drug convictions,  
10 some of them were involved in violent acts themselves. I  
11 expect Rico Williams and his brother, Greg, are both going  
12 to admit to you they shot at the Bogus Boys themselves  
13 during this gang war. Greg Williams even shot at them that  
14 night at a different location. I believe they'll admit all  
15 of that to you. But they're the witnesses with the  
16 information, because that's who these guys ran to to brag to  
17 impress that night. And I'm told that one or more of the  
18 defendants is going to have an alibi defense. Mr. Crenshaw,  
19 for example, "Chumley," is going to say, "I wasn't at that  
20 Amoco that night. I was home with my girlfriend in  
21 Minneapolis. I wasn't anywhere near the place." I'm told  
22 by his lawyer that's what the defense will be. Well, if  
23 that is the defense, I can tell you that Mr. Crenshaw has  
24 tried that once before in a different case and he used the  
25 same alibi witness then, a girlfriend. And I believe we're



1 going to be able to prove to you that that alibi is no truer  
2 this time than it was last time.

3 And after you've heard all of the evidence in  
4 the case, then I'll be able to address you one more time in  
5 my closing argument and that's when I'm going to be asking  
6 you for a verdict of guilty as to all three defendants.

7 THE COURT: Thank you, Mr. Paulsen.

8 Mr. Ellison, are you of a mind to give an  
9 opening statement at this time?

10 MR. ELLISON: Absolutely, your Honor.

11 THE COURT: Counsel, you may proceed.

12 Mr. Ellison, could I ask you to step up here  
13 for just one second?

14 MR. ELLISON: Certainly.

15 THE COURT: Counsel, come to side bar for a  
16 second.

17 (At this time a discussion was had off the  
18 record).

19 (The following side-bar record was made out of  
20 the hearing of the jury).

21 THE COURT: There's an objection raised to a  
22 claimed violation of Rule 615. Mr. Ellison was of a mind to  
23 have Ms. Gillum excluded. I indicated that we met at 9:30  
24 in my chambers, on the record, and each counsel who was  
25 present waived an objection to Ms. Gillum's presence.

1 Mr. Ellison indicated that he was under the impression that  
2 I had previously stated that ten o'clock was the time to  
3 begin the case. I indicated that, on the record, and  
4 publicly I had indicated the last time we were here, we were  
5 going to begin at 9:30, which everyone else was apparently  
6 aware of. That having been noted, his objection is  
7 overruled. But more than that, I asked whether he wished to  
8 have Ms. Gillum excluded at this point and he indicated that  
9 would be his pleasure. And that will be done.

10 (At this time the side-bar record made out of  
11 the hearing of the jury concluded).

12 MR. ELLISON: Good morning, counsel,  
13 Mr. McGruder, fellow counsel, and ladies and gentlemen of  
14 the jury. My name is Keith Ellison, and I am the attorney  
15 for Mr. Timothy McGruder, who is seated at counsel table.  
16 We met a little earlier, but because this case is a case  
17 where there are three separate trials going on at the same  
18 time, I really want to make the effort to help you identify  
19 myself and Mr. McGruder separately from everyone else  
20 because, in fact, that is what's going on.

21 The theme of this case is Chapter 2, "How I  
22 Got Away with It." The "I" being Mr. Terron Williams, who  
23 you've already heard about.

24 Ladies and gentlemen, let me assure you, and  
25 the evidence will show, that Mr. McGruder played no part in

1 the death of Davisha Gillum. He played no part in it.  
2 There will be people who are not gang bangers, not  
3 criminals, not people who do the kinds of things that the  
4 government's witnesses do, who will come before you and tell  
5 you exactly where Mr. McGruder was at 10:46 on July 20th,  
6 1996.

7 Ladies and gentlemen, the evidence in this  
8 case is going to show that Mr. Rico Williams, a criminal  
9 master mind, a very prolific and expert criminal person, got  
10 caught for his ten years of drug dealing and pouring crack  
11 cocaine into St. Paul and other parts of Minneapolis. When  
12 he got caught, he told the law-enforcement authorities, who  
13 are always on the watch to solve crime, "That, hey, I got  
14 something to tell you," and he told what he had to tell  
15 them. This whole community has been devastated by this  
16 horrible tragedy. The law-enforcement officials in this  
17 case listened to what he had to say, and he struck a deal  
18 for himself, and that is why Mr. McGruder is here today.  
19 Mr. Williams, the evidence will show, had to pick out some  
20 people that he did not fear, that he did not need, and that  
21 he didn't particularly care for. And in the course of this  
22 case, you will find that all these men fit that description.  
23 But I'm here for Mr. McGruder.

24 Ladies and gentlemen, the evidence will show  
25 in this case that Mr. Terron Williams had not only one

1 criminal enterprise, in fact, he had two, the other being  
2 the williams family. The fact of the matter is, ladies and  
3 gentlemen, is that Terron williams, after this tragic event  
4 happened in 1996 during the summertime, never said a word  
5 until he was arrested and being held accountable for very  
6 serious crimes. Life imprisonment, in fact. And he gave  
7 his first statement on August 25th, 2001, a little more than  
8 six months ago. He's a suspect in the murder himself. He's  
9 charged in a drug Indictment, and he stands to reduce his  
10 sentence from life to perhaps as low as ten years. The  
11 evidence will show this. You may be surprised to know that  
12 Keith williams, or Greg Hymes, is his brother. His brother.  
13 And Mr. Hymes is another one charged in this Indictment, who  
14 had nothing to say until September 20th, after Mr. Terron  
15 williams had already said, "Here's who I'm going to name to  
16 get my deal." Mr. Keith williams somehow got the message  
17 about a month later and he did nothing more than echo what  
18 his brother, the boss, said. He also stands to receive a  
19 significant reduction in exchange for his decade long  
20 pollution and poisoning of this community.

21 The fact is, ladies and gentlemen -- you'll  
22 also hear from a woman name Diane williams. Who is she?  
23 Well, she happens to be the sister of Terron and Greg Hymes.  
24 The sister. She's going to say she heard my client say  
25 something about being involved in this mess but, strangely,

1 her comments come out September 12, 2001, a few weeks after  
2 her brother is busted on a major drug case.

3 Ms. Lanesha Bailey, you may hear from her.  
4 who is she? She's Diane's daughter and she's Keith and  
5 Terron's niece. What was she told? "Hey, we've got to get  
6 Terron out of this, we've got to get Rico out of this."  
7 Here's what you say. Her statement was made well after  
8 Ms. Terron Williams had already put in and identified who he  
9 was going to blame this on to get his deal.

10 Mr. Maalik Harut, what's his connection to the  
11 Williams family? Well, he happens to be the brother of a  
12 woman who bore the child of Terron Williams. Interesting.  
13 When did he have his come-to-Jesus meeting with law  
14 enforcement? Well, that wasn't until October 25, almost two  
15 months after the boss, Rico, had already said, "Here's the  
16 play."

17 Lavern Christopher, another one who gave a  
18 statement way longer. Well, you're going to hear from her.  
19 She's going to make some accusations, which are startling  
20 similar to the other ones. But ladies and gentlemen, who is  
21 she? The long-term girlfriend, even referred to as "wife"  
22 on some occasions, of Keith Williams, also known as Greg  
23 Hymes, who happens to be the mother of Keith Hymes' children  
24 and she is the -- her children and Terron Williams' children  
25 are cousins.

1                   Finally, you'll hear from Roosevelt Sanders, a  
2 man who was a suspect in this case himself suspected of  
3 doing the shooting himself. When did he have his  
4 revelation, his opportunity to come tell the truth? His  
5 conscience comes to bother him. Oh, well that was only  
6 February 21st, 2001.

7                   Ladies and gentlemen, a man who has wreaked  
8 havoc on this community for over ten years, got busted, and  
9 did the very thing, did the very thing that counsel for the  
10 government has said he would never do and would never allow  
11 anyone to do, which is to talk to the police. This Code of  
12 Silence is so strong that the very perpetrator of it, as  
13 soon as he is in a little trouble, identifies some people so  
14 that he can get himself out of it. You will see evidence  
15 that none of these people came forward before, and that no  
16 Code of Silence is what prevented them, it's just that the  
17 boss man had not gotten in trouble. So watch out.  
18 Anything.

19                   Ladies and gentlemen, you will see a lot about  
20 Mr. Williams. You will see that he is a man who is  
21 absolutely not worthy of your belief, and you will see that  
22 he controls the lives of everyone who is going to make  
23 accusations against my client. Every one of them. You will  
24 find, ladies and gentlemen, that none of them are worthy of  
25 belief, that they are lying, and that this phase of the case

1 that you're participating in is Mr. Williams' effort to get  
2 away with all of the evil he has perpetuated on this  
3 community.

4 The fact is, ladies and gentlemen, that  
5 Mr. McGruder was in a place where he can be accounted for on  
6 that night. Yes, he did go to Rondo days. He had too much  
7 to drink. You'll hear from people -- decent people that he  
8 had too much to drink and that they escorted him to his  
9 aunt's house, several people walking down the street with  
10 him, no more than a block or so away, after the end of this  
11 step show competition -- drill team competition, that when  
12 he got to his aunt's house, he was let in by Kevin Foote.  
13 Mr. Foote escorted him downstairs, where he promptly vomited  
14 on the floor. You'll hear from his aunt, whose home it was,  
15 who will tell you that she never saw him, that she knew that  
16 it was him based on certain characteristics that he has.  
17 And they'll remember it because this was the night of Rondo  
18 Days and this was when he vomited on the floor, and that  
19 Mr. Foote remembers that in exchange for cleaning up that  
20 vomit Mr. McGruder gave him 20 bucks. It will stick in his  
21 mind -- stuck in his mind because of those things, as it  
22 would for any person.

23 Now, ladies and gentlemen, you will also hear  
24 that the Bogus Boys -- you saw their pictures -- they were  
25 waging war on the 6-0 Crips. You might even hear that they

1 are known for being particularly reckless, fearless and  
2 aggressive. I'm talking in terms of the Bogus Boys right  
3 now. And you will hear that the person who had the "beef"  
4 -- that's a term for conflict or dispute -- was actually  
5 Terron Williams and his brother. That is who had the  
6 conflict with the Bogus Boys. And you will find that over  
7 the course of the years that it took to bring this case to  
8 trial that there were numerous names identified as  
9 particular suspects in this case, some of them identified by  
10 Mr. Williams himself -- I'm speaking of Terron Williams --  
11 who never mentioned Mr. Timothy McGruder.

12 Ladies and gentlemen, at the end of this case,  
13 I'm going to come before you and I'm going to ask you to  
14 deliver the only just verdict that can be delivered with  
15 respect to Mr. McGruder, that is a verdict of not guilty.  
16 Not guilty. Don't let Terron Williams do it again. Not  
17 guilty. Mr. McGruder is not guilty.

18 Thank you very much.

19 THE COURT: I thank you, counsel.

20 Mr. Mahoney, are you of a mind to give an  
21 opening statement?

22 MR. MAHONEY: Yes, your Honor.

23 THE COURT: Counsel, you may proceed.

24 MR. MAHONEY: Ladies and gentlemen, my name is  
25 Seamus Mahoney, I'm the attorney for Keith Crenshaw. This



1 is a terrible reason we're here today. This young girl died  
2 and sympathy goes out to the mother of the victim. Now,  
3 we've gotten that, no question about that. But what we need  
4 to focus on in this case is who were the people who carried  
5 out this act. The state's (sic) had six years to bring this  
6 case to trial, and they have had numerous suspects. There's  
7 a lot of discussion in the reports about who was there, who  
8 wasn't there. Keith Crenshaw wasn't there on that day at  
9 the Amoco. Now, like a lot of people in the black community  
10 that day, he was at Rondo Days, which is a community  
11 festival, celebration with parades, drill team, which is  
12 some dance steps and drill steps that the children do. It's  
13 a community setting. At that time he was there with his  
14 fiance, Twanda McCoy, and his son Keith, Jr. He's dressed  
15 in a light silk shirt, beige in color, he's got some beige  
16 shorts on, he's got some beige boots on. He's not dressed  
17 as a gangster. He's not packing a weapon. They arrive  
18 sometime in the early morning -- well, late morning, 12  
19 o'clock, 12:30, and are there most of the day. And they're  
20 at the drill team competition at a certain point in time,  
21 probably with several other people there. This is a big  
22 celebration in St. Paul for the black community. So he was  
23 there. That's no coincidence because most people of that  
24 community were there that day. There is gunplay going on,  
25 there's shootings happening around the neighborhood. The

1 police don't seem to have control of it. Apparently a  
2 caravan of Bogus Boys came to St. Paul that day to have some  
3 of the people that they were in this war with targeted by  
4 some of the other females who know the area, and they're  
5 blasting away at people, beating them up. There's a war  
6 going on here. But Keith Crenshaw is not a member of this  
7 gang. There's going to be no real evidence by any credible  
8 witness that Keith Crenshaw is a member of the 6-0 Crips.  
9 He's never been initiated. Even the leader of the 6-0  
10 Crips, Terron Williams, will say he wasn't a member. I  
11 think, if pressed, he would probably say, "I hardly know the  
12 man."

13 Keith Crenshaw comes from a large family, six  
14 people -- six boys, anyway -- seven boys. Now, he's no  
15 angel, and he's done some things that he's not proud of.  
16 This is a rough neighborhood, and these are rough kids and  
17 they're rough adults. But he was there that day with his  
18 fiance and his son, trying to celebrate Rondo Days like  
19 everybody else was, but these maniacs are driving around  
20 shooting wildly, scaring the heck out of everybody. That  
21 made him and his fiance want to leave. And they came back  
22 to Minneapolis. He was at home with his girlfriend and his  
23 son the rest of the evening. They probably left -- we're  
24 not sure exactly -- 7:30, 8:00, way before this was  
25 completed, that this act took place, and that the end of the

1       festivities took place. They left sometime after the first  
2       drill show took place and sometime shortly after another  
3       shootout -- or -- another shooting took place. There's  
4       gunfire at play. I'm not used to it in my community. I  
5       wouldn't know what it was. I would assume it's  
6       firecrackers. Mr. Crenshaw and his family know what this is  
7       and they want to get out. And they leave. At some point,  
8       Mr. Crenshaw is asleep on the couch. His wife comes in --  
9       or -- his fiance comes in and wakes him up and says, "Hey,  
10      there's been a shooting. Some little girl has been shot."  
11      Now, she will tell you that she'd gone to her mother's to go  
12      get a video, I believe is what she'll tell you. She wasn't  
13      gone long. She was there. She came back, Keith is still on  
14      the couch, wakes him up. "There's been a shooting."  
15      So that's what Mr. Crenshaw was doing. Mr. Crenshaw --  
16      again, he's no swan in the sewer here. He's been in trouble  
17      with the law before. But in this case, this is a shooting  
18      of a little girl by gang members. He's not a gang member.  
19      He's a convenient scapegoat for the real perpetrators of  
20      this crime, the Williams gang, or the 6-0 gang -- 6-0 Crips,  
21      who are the people who are terrorizing St. Paul.

22                   I believe Mr. Williams, it will show, pled  
23      guilty to having brought in at some point a kilo and a half  
24      of cocaine to distribute. He pled guilty to that. With his  
25      criminal history, he could have gotten life in imprisonment.

1 Now, counsel for the state -- or -- for the government, the  
2 prosecutor says that he's still facing that. The low end of  
3 his sentence is 30 years. He's going to make a motion, if  
4 he pleases -- Mr. Williams pleases Mr. Paulsen with his  
5 testimony, he'll make a motion to reduce that to even a  
6 lesser amount. I think the minimum is ten years.

7 This man will testify that he's done numerous shooting,  
8 assaulted numerous people, and if I can steal a quote of  
9 counsel, he's flooded St. Paul with cocaine and terrorized  
10 this area. He is the evil one in this case. And his  
11 brother and his sister and his niece and his nephew, that  
12 they all come together and concoct this story. The police  
13 say that's not really possible. But of course it's  
14 possible. This is an organized gang. Mr. Paulsen said  
15 they're very organized. They ran a major drug conspiracy  
16 for ten years. You don't do that by being an idiot. That  
17 takes brazen disregard for anybody else and selfish  
18 self-centeredness, that you don't care about anybody else,  
19 all you care about is you and yours.

20 Now, there's some mention about the gang  
21 rules, and I think it's kind of interesting that you -- I  
22 want you to keep this in mind during the course of the  
23 testimony that you're going to hear. The gang rules require  
24 that, one, that you retaliate; and, two, you keep your mouth  
25 shut. Terron Williams, his brother, Greg Hymes, they're the

1 leaders of this group. And what do they do? They  
2 supposedly run -- they supposedly leave the scene in the  
3 midst of this shootout, basically, in St. Paul on that day,  
4 because he's worried about the rain coming in on his  
5 convertible. This is the man who has people beaten for  
6 leaving a fistfight. If you run, you've broken one of the  
7 primary rules. And there are sanctions for that. But, no,  
8 he's got to go park his convertible out in Woodbury,  
9 conveniently, with his chief enforcer. His brother sees a  
10 young girl being beaten and conveniently takes her home to  
11 comfort her. It's not even his fiancée. He just happens to  
12 be out of the area too. Of course, the rule is that you've  
13 got to respond. But not these guys. It doesn't apply to  
14 these guys. And the rule is that you don't talk. Who's  
15 doing the talking here? These are the leaders of this gang.  
16 These are the people who have the most interest to be there  
17 to enforce their rights in this area. But they're  
18 conveniently gone.

19 Now, Terron Williams is going to be  
20 testifying, and counsel has pointed out that -- for the  
21 government -- that counsel has pointed out that he has had a  
22 ten-year conspiracy to deal drugs. Well, not only that,  
23 some minor things too. He's twice been convicted for lying  
24 to the police. So he's a convicted liar.

25 Another of the people who will be called on to

1 testify for the government is Maalik Harut. He is facing,  
2 with his plea, a maximum of ten years in prison. He could  
3 get nothing if he pleases the government with his testimony.  
4 This is a man who's admitted that he was there. And if it  
5 was for any other reason than his cooperation and his guilty  
6 plea, he would be facing life imprisonment.

7 The other half brother, Greg Hymes, Keith  
8 Williams, again, when the government offers you such a sweet  
9 deal, for lack of a better word -- it's not a good cliché,  
10 because this isn't sweet at all. This is disgusting.  
11 You're going to take advantage of it. Any self-centered,  
12 selfish person would. So he's facing a minimum of ten years  
13 himself also.

14 Now, the plea agreements that these people  
15 have pled to are open ended. And counsel is right, they  
16 could go the full 20, 30 years for Mr. Hymes, I believe.  
17 But they could also go below that, and below the ten years.  
18 So, these people are risking something by having entered  
19 these deals, but did they really risk anything beyond that  
20 they were going to be convicted for the crimes that they had  
21 been charged with in the first place. And now they're  
22 getting this opportunity for a reduced sentence if they just  
23 focus on somebody, anybody who can take the blame for this  
24 killing. This killing has been a chief focus of the  
25 government and the city of St. Paul since it happened. It's

1 a terrible, terrible crime, but you must keep in mind that  
2 Mr. Keith Crenshaw is innocent until the state (sic) can  
3 prove that he was there. And who can they rely on but  
4 people who are admitted gang bangers, gunslingers, liars.

5 I would ask you at the end of this trial --  
6 keep in mind that my client, Keith Crenshaw, is a separate  
7 individual from the other two. And, so, when you apply the  
8 facts of this case to him -- whatever evidence involves  
9 other defendants doesn't involve him. The evidence against  
10 Mr. Crenshaw is what you need to focus on for Mr. Crenshaw,  
11 and the lack of evidence against Mr. Crenshaw, the basis of  
12 that evidence and the evidence you hear in his favor for  
13 Mr. Crenshaw, I'll ask you at the end of this trial to come  
14 back with a guilty of -- a verdict of not guilty for  
15 Mr. Crenshaw, because he is not guilty of this crime. And  
16 the government -- and I'll ask you to keep in mind the  
17 presumption of innocence. Despite all the horrific  
18 testimony you're going to hear about this young child being  
19 killed -- and it is horrific -- you need to separate that  
20 and focus on the facts, and keep in mind the presumption of  
21 innocence.

22 Thank you very much.

23 THE COURT: Thank you. I think we will take  
24 about 15 minutes, members of the jury, before we -- before I  
25 even find out if we're going to have another argument (sic),

1 why don't I find out.

2 Mr. Bryant-Wolf, will you be of a mind to give  
3 an argument (sic)?

4 MR. BRYANT-WOLF: Yes, your Honor. Thank you.

5 THE COURT: All right. Members of the jury,  
6 we will be in recess for about 15 minutes.

7 (A recess was had commencing at approximately  
8 11:30 a.m., and court reconvened at approximately 11:45  
9 a.m.)

10 THE COURT: Mr. Bryant-Wolf.

11 MR. BRYANT-WOLF: Thank you, judge. May it  
12 please the court, counsel, Mr. Johnson.

13 Ladies and gentlemen, I'm here to speak on  
14 behalf of Kamil Johnson and nobody else. I have not spoken  
15 to, and do I not know, the other men who are accused in this  
16 case. I do know, but I have no association with, their  
17 lawyers. Kamil Johnson asked me to speak for him, I'm proud  
18 to do it, and I hope I do an adequate job for him. I stress  
19 that because we have, in reality, three trials going on  
20 before you at one time. Kamil Johnson is separate from the  
21 other men. As you critically examine the evidence, question  
22 whether it applies to Kamil Johnson or not.

23 Now, what I'm holding up here is a hand, and  
24 when the government was giving its opening statement, I was  
25 thinking "He's describing a hand. He's telling me about the



1 knuckles, about the fingernails, but that's all he's telling  
2 me about." And if you didn't know what a hand looked like,  
3 you might think that's an accurate description of a hand,  
4 but we all know that it's not. We all know that a hand has  
5 another side and it's my job in this opening statement to  
6 show you the other side of the hand; the side that is  
7 useful; the side of the hand that is real; the side of the  
8 hand that we use to greet people, to hug people, to feed  
9 ourselves; the side of the hand that means something.  
10 There's a lot more than the backside of the hand, as the  
11 government presented its opening statement to you.

12 I'm going to take some time to tell you about  
13 the other side of the hand, the important side of the hand,  
14 because I think the job of an American jury is very, very  
15 challenging and very, very important; and that's especially  
16 the case in these types of cases, the most serious types of  
17 cases. And you need to know about the other side of the  
18 hand so that you can fulfill your function and follow your  
19 oath as an American jury.

20 For myself, I'm going to tell you as much as I  
21 can about what I know about this case, because I want you to  
22 know. I want you to have as many facts as you can get, so  
23 that, in the end, you can decide that Kamil Johnson is not  
24 guilty and the government failed to carry its heavy burden  
25 of proof. As I go through this opening statement of mine,

1 I'm going to tell you what I believe the evidence will be,  
2 what the fact will be but, as you know, trials are not  
3 rehearsed. All I know is what I've read in all the reports.  
4 And what comes to you in the form of evidence from the  
5 witness stand behind me will always be different than what I  
6 believe I've read and how I've processed that in my brain  
7 and, therefore, what I tell you in my opening statement. If  
8 the evidence from the witness stand behind me is different  
9 than what I'm telling you now, I've made a mistake. But  
10 that's what it is, it's a mistake. I will not intentionally  
11 try to mislead you. And please don't take a mistake that I  
12 may make and hold it against Kamil Johnson.

13 July 20th, 1996, almost six years ago, at  
14 10:26 p.m., shots are fired at the Amoco station located in  
15 St. Paul at University and Hamline. Nineteen or 20 shots  
16 are fired, a four-year-old girl is shot dead. Her mother,  
17 Shalla Gillum, is shot but survives. The driver of the 1980  
18 Fleetwood Cadillac, blue in color, in which Davisha Gillum,  
19 the four-year-old, was seated and her mother was seated, her  
20 name is Lashawn Slayden. She is shot in the ankle as she  
21 attempts to put air in the left-front tire of the blue  
22 Cadillac. And another woman sitting in the backseat has  
23 an arm or a shoulder grazed by a bullet. No suspects are  
24 identified. On July 20th, right after the shooting,  
25 Ms. Slayden tells the police she did not see who fired the

1 shots. However, a mere two days later she tells the police  
2 about two men who had threatened her a few days before this  
3 shooting. On July 22nd, two days after the shooting at the  
4 Amoco, Ms. Slayden tells Sergeant Neil Nelson of the  
5 St. Paul Homicide Division that she had been threatened by a  
6 Shotgun Crips gang member she knew as "OD." That's his  
7 street name. And as Sergeant Neil Nelson will tell you when  
8 he testifies, "OD" has the legal name of Michael Odell  
9 Johnson. And Ms. Slayden tells Sergeant Nelson specifically  
10 that "OD," who we will know as Michael Odell Johnson, knows  
11 her blue Cadillac and, in fact, threatened her while she was  
12 in her blue Cadillac. This information that Ms. Slayden,  
13 who was there, gives Sergeant Neil Nelson becomes important,  
14 and it will be important, because two days after that, on  
15 July 24th, a government informant sees someone driving the  
16 blue Buick Regal that the neighbors on Sherburne saw as the  
17 get-away car, and the driver of the get-away car is "OD,"  
18 Michael Odell Johnson. Ms. Slayden then tells Sergeant  
19 Nelson that a week before the shooting on July 20th, a black  
20 male, driving a car with plate number 155 MUZ, pulled  
21 alongside her blue Cadillac as she drove around the Target  
22 Center in Minneapolis and threatened her.

23 Ladies and gentlemen, the evidence will be  
24 that Kamil Johnson has never had any association with "OD,"  
25 or Michael Odell Johnson, and Kamil Johnson has never had an

1 association or a connection with a car with plate number 155  
2 MUZ. The government told us about a pick-up truck that was  
3 parked at the Amoco. And I believe the color is black. If  
4 I could just resort to using the government's mock-up of the  
5 station. We'll use this eraser as the black pick-up truck.  
6 That black pick-up truck is parked -- and it's sitting there  
7 for about five minutes before the shots are fired -- and in  
8 that pick-up truck are five individuals and they live in,  
9 like, Arden Hills and Shoreview, and they're out just having  
10 a good time. They had been at the airport watching the  
11 planes come in and then they came up to University Avenue  
12 simply to watch all the fancy cars and the older cars that  
13 drive up University Avenue at that time of the week and at  
14 that time of night. And in this truck are five people. The  
15 truck is faced, as I said, to the south, towards University,  
16 kind of angled to the northeast, giving some of these people  
17 who will testify a very clear and good view of the fence.  
18 In fact, several of them saw what happened. The driver of  
19 this black pickup is Michael Biebl. And he will testify.  
20 Two of his passengers will also testify, one is Jayne  
21 Sommerfeld and the other is Eric Saari. Jayne Sommerfeld  
22 was interviewed by the police right after the shooting -- or  
23 -- shortly after the shooting. And here's what she told the  
24 police. She described how the pickup was parked, she told  
25 the police she was sitting in the bed of the pickup and she

1 basically had her body turned towards the fence. She heard  
2 eight to 12 shots, she saw more than one person and more  
3 than one gun sticking over the fence. And, as you could  
4 imagine, after the shots were fired, she tells the police  
5 that the driver, Michael Biebl, sped away as fast as he  
6 could, and then they called 911 from another location. Now,  
7 Ms. Sommerfeld was not sure whether there was two or three  
8 shooters or two or three guns. She, however, told the  
9 police that she saw a black male's head and arms extended  
10 over the fence, and shooting. The shooter had his hair  
11 pulled back but not braided. Ms. Sommerfeld told the police  
12 she got a very good look at one of the men. So, on July  
13 23rd, the police showed to Ms. Sommerfeld two separate  
14 photographic lineups. I believe each lineup had the  
15 photographs of six black males who resembled her  
16 description. In lineup Number 1, Ms. Sommerfeld picked out  
17 a man who she said looked very much like the shooter.  
18 And as Sergeant Nelson will tell you, the man that  
19 Ms. Sommerfeld picked out of lineup -- in fact, two  
20 different lineups -- she only picked out one -- had the  
21 name, and the man that Ms. Sommerfeld picked out -- now,  
22 remember, the facts will be she was sitting in the bed of  
23 the pick-up truck, clear view of the fence, saw the man's  
24 face, his arms extended -- and she picked out one man out of  
25 12, and Sergeant Nelson will tell you that that man's name

1 is Anthony Shelby. The evidence will be that Kamil Johnson  
2 has never had any association with anyone named Anthony  
3 Shelby. There is no connection.

4 Now, as I told you, the driver is Michael  
5 Biebl -- the driver of the pick-up truck, and he also was  
6 interviewed shortly after the shooting. And he saw more.  
7 He told the police that he saw three men pop up over the  
8 fence. He was able to see the three men from the chest up.  
9 At the time the shots were fired, he had stepped out of his  
10 vehicle. He was conversing with the people in the bed of  
11 the truck. One of the people that Mr. Biebl picked out was  
12 none other than -- out of a lineup -- "OD," Michael Odell  
13 Johnson, the same person that the government informant said  
14 drove away from a certain car wash -- we'll talk about that  
15 later -- driving the get-away car. More importantly, on  
16 August the 8th, Sergeant Nelson showed to Mr. Biebl a lineup  
17 of, I believe, 12 photographs, all similar young black  
18 males. Mr. Biebl looked at the 12 photographs carefully, he  
19 then picked out Photograph Number 11, which, as Sergeant  
20 Nelson will tell you, is a photograph of none other than  
21 Rico Williams-Terron Williams-Terrance Williams. And  
22 Mr. Biebl said, "That is a man that I recognize as being in  
23 the parking lot of the Amoco station on July 20th." He also  
24 said that after the shooting, they peeled out of there to  
25 get away to safety and they dialed 911 from another

1 location.

2 The picking out of Rico's photograph out of, I  
3 believe, a series of 12, is important, because the facts  
4 will be that four days later, on July 24th, Rico received a  
5 call. It wasn't a pleasant call. He received a call, it  
6 was an angry call, from Robert "Buster" Jefferson. Now,  
7 Mr. Jefferson is, I suppose, the equal to Rico Williams.  
8 Here's Rico over here in St. Paul with his Rolling 60's, and  
9 here's Robert "Buster" Jefferson over here with his 6-0 Tray  
10 gang. So they're on the same level, they're gang leaders.  
11 And "Buster" Jefferson was upset because he read in the  
12 newspaper that his gang, the 6-0 Trays, had been linked to  
13 the murder of a four-year-old girl, and he wanted an  
14 explanation from Rico, because he knew he could get an  
15 explanation from Rico. And, so, a meeting was called, it  
16 occurred at the TC Car wash on Snelling and Carol in the  
17 city of St. Paul, on July 24th. Rico Williams was there,  
18 some of his gang was there. They were cleaning their cars,  
19 they were smoking some weed, they were drinking, they were  
20 polishing up their rims. And "Buster" pulled up. And I  
21 will tell you what Rico told his equal, "Buster" Jefferson.

22 MR. PAULSEN: Your Honor, could we approach on  
23 an 801 issue?

24 THE COURT: Sustained.

25 MR. BRYANT-WOLFE: May we approach, your

1 Honor?

2 THE COURT: No, sir. We'll proceed.

3 MR. BRYANT-WOLF: Rico said --

4 THE COURT: No, sir. Move to a different part  
5 of your argument (sic).

6 MR. BRYANT-WOLF: Thank you, your Honor.

7 Another person in the black pick-up truck was  
8 an Erik Saari. Now, he was with his friends who were in the  
9 pick-up truck, and they were parked, as I had told you  
10 before. And he had stepped out on the passenger side but in  
11 the front of that pickup, and he was also speaking to the  
12 people in the bed of the pick-up truck. So Mr. Saari was  
13 facing the fence, and facing northeast, speaking, possibly,  
14 to Ms. Sommerfeld. He also had a clear view of the  
15 shooters. He heard the shots. He looked at the fence, he  
16 saw two arms hanging over the fence shooting -- and these  
17 are two separate arms of two different people -- and he told  
18 Sergeant Weston that both shooters "appeared to be  
19 right-handed." And again, after the shots, he, with his  
20 friends, took off. The evidence will be that Kamil Johnson  
21 is left-handed. He is not right-handed.

22 The government's case will be presented to you  
23 through witnesses, several of whom could best be described  
24 as the who's who of narcotics trafficking in the mid-'90s in  
25 St. Paul and Minneapolis. They are a rogues gallery of



1 felons, liars, shooters, manipulators. They represent an  
2 inner sanctum of violent and indiscriminate violence, and  
3 they only care about themselves and the people they're  
4 mostly closely related to, as the evidence will show. The  
5 government's witnesses all know each other; most of them are  
6 related, most of them are from Los Angeles, most of them  
7 have their roots in the Rolling 60's gang. That Rolling  
8 60's from Los Angeles is decades old -- that gang culture is  
9 decades old. And not one of them ever came forward to tell  
10 their stories until they were facing charges on this or  
11 other matters.

12 Now, let's talk about some of the government  
13 witnesses, the people who have had almost six years to get  
14 their story straight. The first one is Rico Williams,  
15 Terron Williams, Terrance Williams. He was born in Los  
16 Angeles. He was jumped into the Rolling 60's when he was 14  
17 years of age. In 1986, he was tapped for a promotion. "Go  
18 out to Minnesota and help 'Big U,' one of our original  
19 gangsters." "Go help 'Big U' open up the drug market in  
20 St. Paul." As you will hear, the drug market in Minnesota  
21 is very much more lucrative than it was in Los Angeles.  
22 They wanted to make more profits, they sent their people out  
23 here. Initially, Rico Williams' job was to keep the cocaine  
24 secure. Watch over the drugs, collect the money. He did  
25 well. And in 1989, he relocated to St. Paul permanently.

1 He was dissatisfied with the payment of money he received  
2 from "Big U." Thought he was worth more. He started his  
3 own organization and, as the government told you, that  
4 organization in the mid-1990s was over 200 strong.  
5 Because Rico was good. He was smart, he was clever, he  
6 could manipulate, he could use people and, so, he was very  
7 successful. And you'll hear that by the time he finally got  
8 busted after ten years, he was so successful at manipulating  
9 people and lying and hiding and intimidating, that he was  
10 selling three kilos a month of cocaine and, then, process  
11 into crack and sold in St. Paul and Minneapolis. He was  
12 grossing about 60,000 a month. Rico would sell the drugs to  
13 his gang members who would then either sell to street  
14 vendors or sell it themselves. He was the leader of a  
15 highly structured organized criminal enterprise. And his  
16 most trusted people were his brother, Greg Hymes, also known  
17 as Keith Williams, also known as "Baby G," also known as  
18 "Little Rico." Now, Rico, the leader also enlisted the help  
19 of his wife, Twana. He had a tight inner circle. I guess I  
20 don't disagree with what the government showed you, one of  
21 their exhibits, the inner circle. Just wasn't big enough.  
22 We'll talk about some names that should be added and those  
23 are the other witnesses who will testify for the government.  
24 So, Rico Williams, he's in charge of 200 people, is highly  
25 organized, he's making a lot of money. He determines who

1 makes how much, he determines who gets beat up, he  
2 determines who gets shot. But in 1996, Rico began to have  
3 trouble with another gang from Minneapolis known as the  
4 "Bogus Boys." They were stealing his cars. His cars. He  
5 didn't like that. He had a lot of cars. They would  
6 vandalize his cars, they would steal his cars. He, in turn,  
7 would shoot at them. He alone. They would steal his cars,  
8 they would vandalize his cars. So he and his brother, "Baby  
9 G"-Keith Williams-"Little Rico," would also shoot at the  
10 Bogus Boys. It was the two leaders and these people from  
11 Minneapolis. That's how it got started. You will hear that  
12 from the summer of '95 to the summer of '96, Rico has  
13 admitted to shooting three Bogus Boys on three separate  
14 occasions. Well, of course, the retaliation factor was  
15 there. The Bogus Boys came over to St. Paul and they shot  
16 up his house at 910 Edmund. Rico called meetings and told  
17 his people under him in the gang, "You've got to back us up  
18 when there's trouble, if you're a real gangster." And these  
19 kids from St. Paul would want to know how to be a real  
20 gangster, and Rico would tell them what's done in L.A., and  
21 they'd better do it here. And his trusted enforcer of the  
22 gang rules, the one that would mete out punishment. And his  
23 own bodyguard was Kevin Snead, "6-6." And that is correct,  
24 meetings were held at 910 Edmund, meetings were held at  
25 Central High School; 200 people were there. And at the top

1 of this big organization, at the very tip of that pyramid,  
2 here's Rico calling the shots, selling drugs, into armed  
3 robberies. Well, after ten years, luck ran out. He was  
4 indicted, pleaded guilty. And one thing you'll hear when  
5 Rico testifies, he does not like to go to prison. Doesn't  
6 like to be locked up. Likes his freedom. Well, right now,  
7 by virtue of the guilty plea to the federal narcotics case,  
8 his sentence, as it stands, is 30 years to life. Could be  
9 30, could be 31, could be natural life. And you know what,  
10 he doesn't want to do that. Rico likes his freedom. And,  
11 so, Rico Williams has a chance to reduce his sentence all  
12 the way down to ten years if he names names and testifies.  
13 Not only does he hope to help himself, but he avoids, it is  
14 reasonable to assume, being indicted in this case. Now, who  
15 decides what Rico's sentence will be. A federal judge  
16 decides, but that's not the whole story. The federal judge  
17 who will decide Rico's sentence cannot, by law, go below 30  
18 to life unless the federal prosecutor makes a certain  
19 motion, and once that motion is made, and only if that  
20 motion is made, can the federal judge depart, or go  
21 downward, from 30 to life. In order to get the federal  
22 prosecutor to make this very special motion, the federal  
23 prosecutor must be convinced that Rico has rendered what we  
24 call "substantial assistance" to the prosecution in this,  
25 and perhaps other cases, and that includes testifying

1           against Kamil Johnson. If the prosecutor is satisfied, the  
2           prosecutor makes the motion, the federal judge is able to  
3           depart all the way down to ten years. Can't go below ten.  
4           But the bottom line is Rico, who has a history of lying and  
5           lying to the police, is now a government witness, and he  
6           needs the blessing of the federal prosecutor to have a  
7           chance of having a sentence of less than 30 years to life.  
8           Rico has said other things about who else has -- well, Rico  
9           has named Kamil Johnson. That's a recent vintage. You'll  
10          hear about the other names he has named.

11                         And remember, Mr. Biebl, the driver of the  
12          pickup, what one person did he pick out as being there out  
13          of the 12 photographs shown to him by Sergeant Nelson? He  
14          picked out Rico Nelson's (sic) photograph as someone he  
15          remembers seeing in the parking lot at the Amoco.

16                         On August 8th, 2001, police interviewed Rico  
17          williams about the shooting. Here's what he said then.  
18          Number one, "I am not a gang member"; number two, "I haven't  
19          been involved with gangs since the late '80s and that's why  
20          I left California." He never mentioned Kamil Johnson then.  
21          The evidence will show that Rico speaks the truth to trusted  
22          gangsters, he lies to the police. The evidence will be that  
23          Rico williams was a supreme manipulator. He took pride in  
24          being able to order around and manipulate what he called the  
25          wannabes, the shorties: the little kids. Remember, Kamil

1 Johnson was 17 years old when this incident occurred, one of  
2 the little kids. And Rico wanted to make sure that he could  
3 order them around. They were expendable. They were Rico's  
4 cannon fodder. And the evidence will be there's no problem  
5 with cutting them loose when he has to do it to protect  
6 himself and the inner circle. The evidence will be that  
7 Rico Williams, the drug dealer of epic proportions, he's a  
8 talented manipulator, he's a man of extreme violence,  
9 careless violence, cares nothing of innocent life. And he's  
10 the government's witness.

11 Let's talk about Greg Hymes briefly, his  
12 brother, also a government witness. He's also awaiting  
13 sentencing on a narcotics case, same as his older brother,  
14 Rico. Greg Hymes -- most people know him as "Baby G."  
15 He is facing a sentence of 15 to 20 years in federal prison.  
16 And he is like his older brother in that he doesn't want to  
17 spend -- he wants to spend as little time as he can in  
18 prison. So he's been procured by the government under the  
19 same circumstances. And if "Baby G," or Greg Hymes, pleases  
20 the prosecutor in this case, the prosecutor can make that  
21 motion, the federal judge can depart from 15 to 20 years all  
22 the way down to zero, in his case. Again, "Baby G," the  
23 brother of Rico, is from L.A. Now, he was jumped into the  
24 rolling 60's when he was 11. He was sent out to St. Paul in  
25 1994 to assist Rico rake in the cocaine profits from

1 Minneapolis-St. Paul. In one of his statements, "Baby  
2 G" says his brother, Rico, and "6-6" were the leaders of the  
3 St. Paul Rolling 60's. Now, on December 3rd, 2001, "Baby  
4 G" testified before the grand jury and he let it slip --  
5 just about in every case it seems as though -- and will be  
6 in this case as well -- the truth shows itself. The truth  
7 will have to come out. And in the grand jury testimony,  
8 "Baby G" told the grand jury that Maalik Harut told "Baby  
9 G" that he was a shooter in this case that resulted in the  
10 death of Davisha Gillum.

11 Let's now turn our attention to Maalik Harut.  
12 Maalik Harut, this individual, also a government witness, is  
13 considered by Rico to be his little brother. "Maalik is  
14 like my little brother." Rico has two daughters with  
15 Maalik's sister. They've known each other for a long  
16 time. It's family. And the evidence will be that Maalik  
17 Harut is one of the special ones, one of the inner circle,  
18 that's supposed to be protected in this case. The  
19 expendables are not. Maalik Harut is awaiting sentencing,  
20 after pleading guilty to conspiracy to commit murder, in the  
21 Davisha Gillum murder case. The same goes for Maalik as the  
22 others, he wants that motion from the federal prosecutor.  
23 He's facing ten years. He could go down -- way down. So  
24 he's now a government witness as well. Once again, the  
25 truth shows itself in Maalik Harut's testimony to the grand

1 jury. He testified to the grand jury that he had not seen  
2 Rico for 12 years, and he also testified that he did not  
3 believe that Rico was the leader of the Rolling 60's. So  
4 the loyalty and the protection goes both ways when you're in  
5 the inner circle.

6 Diane Williams, she's also a government  
7 witness. This is Rico's older sister, this is "Baby G's"  
8 older sister. She's also from L.A. She will testify that  
9 on July 20th, she saw Rico with "6-6." She testified before  
10 the grand jury on November 8th, 2001, that she knew of Kamil  
11 Johnson. Later she knows him. But when she testified  
12 before the grand jury, it was, "I know of him." We'll see  
13 what she says on the stand now. Back in 1997, she gave a  
14 taped interview to Sergeant Weston about her knowledge of  
15 the shooting. Never mentioned Kamil Johnson. Don't be  
16 fooled by Diane Williams. She's part of the inner circle.  
17 She's related. She's the one to be protected.

18 Lavern Christopher, this is "Baby G's"  
19 girlfriend and the mother of his children. She also gave a  
20 statement to the police at some point in 1997 about the  
21 shooting. She never mentioned Kamil Johnson then.

22 Lanesha Bailey is a government witness. She  
23 is the daughter to Diane Williams. Therefore, Rico and  
24 "Baby G" are her uncles. Part of the family. She never  
25 came forward. Her statement to the police occurred on April



1 29th, 2002, right before the trial.

2 Roosevelt Sanders may be called by the  
3 government. He's a Rolling 60's gang member. He was  
4 interviewed by Sergeant Weston on August the 5th, 1996 and,  
5 at that time, Sanders told Sergeant Weston he was drunk on  
6 Rondo Days. He got kicked out of the drill team competition  
7 area at Central High School because he had a liquor bottle.  
8 He told Sergeant Weston that "I was drunk. I got kicked out  
9 of the Rondo Days thing, and I went over to the Hanover  
10 Apartments, but I was home by dusk. I was at my house  
11 alone, somewhere between nine and ten o'clock at night."  
12 And that's what he told Sergeant Weston on August 5th, 1996.  
13 Never mentioned Kamil Johnson. Now, Mr. Sanders -- he's  
14 facing some criminal complications as well. And five or six  
15 years later, when the word is out, on February 22nd, 2002,  
16 now he's on the bandwagon. He's thrown in with Rico and  
17 "Baby G," Maalik, and their women.

18 Earl Harvey is a government witness. He made  
19 a statement to the police on November 22nd, 1999. He says  
20 that he saw Rico driving a blue Buick Regal in a drive-by  
21 shooting against the Bogus Boys. So Earl Harvey associates  
22 the car, or at least one that looks like it, that's  
23 associated with the getaway with Rico Williams himself.  
24 Now, in a statement on June 19th, 2001, Mr. Harvey told what  
25 he believed was the whole story about the Rolling 60's; who

1 ran it, who belonged to it, what they did, how they hid  
2 their narcotics, how they got their narcotics, who they  
3 shot, who were the shooters, talked about the meetings,  
4 talked about the gang. He never mentioned Kamil Johnson.  
5 And the evidence will be Kamil Johnson was never jumped in.  
6 Considered a shorty, a 16-, 17-year-old shorty, an  
7 expendable human being to Rico Williams. In August of 2001,  
8 he again made a statement -- actually testified before the  
9 grand jury in this case. He never mentioned Kamil Johnson.  
10 The common thread to the government witnesses all related to  
11 Rico. They're all rolling 60's, they're all in the inner  
12 sanctum, the inner circle, as are their women. None came  
13 forward before they had something to gain six years later.  
14 If they did come forward early on, if they did come forward  
15 and talk to the police, they never mentioned Kamil Johnson.  
16 Never implicated him.

17 The government talked about a certain kind of  
18 firearm, a Heckler & Koch, I think it was, a P7, or  
19 something, Black Talon ammo. There is no Heckler & Koch.  
20 It won't be part of the evidence. There's speculation by an  
21 expert that some of the shells or the bullets could have  
22 been shot by a gun with a similar pattern. It's not Kamil  
23 Johnson's gun, regardless. Patricia Banks used to be Kamil  
24 Johnson's girlfriend, but contrary to what the government  
25 told you, they never lived together. Never. Not one night.

1 And, in fact, Patricia Banks really didn't trust Kamil  
2 Johnson, and never gave him a key. He didn't have a key to  
3 her apartment; and she has stated that in her prior  
4 statements. Moreover, she was a neighbor in 1995 and '96,  
5 and a friend of, none other than, Maalik Harut. Lived about  
6 a mile apart. They knew each other. And both of them will  
7 have to admit on the stand that Patricia Banks dated another  
8 Rolling 60 -- or -- a Rolling 60 gang member, "Baby G." So  
9 Patricia Banks' boyfriend was "Baby G," the little brother  
10 to Rico.

11 Maalik Harut will testify that on the night of  
12 July 20th, "I didn't see Kamil with a gun, but at a prior  
13 time, I saw '6-6' take a gun from Kamil Johnson to go do a  
14 shooting, or something. I want your gun. I'm taking your  
15 gun. You're a shorty. I'm a boss." Took his gun. Heckler  
16 & Koch nine millimeters; their expensive, they're not rare,  
17 they're not unique. The evidence will be you can buy them  
18 at a gun shop, you can buy them on the Internet.

19 The government's case will be built on broad  
20 themes, emotion, maybe this, maybe that, corroborated by the  
21 support from liars, felons, gangsters, people who have  
22 something to gain by saying what they're going to say, which  
23 conflicted with the things they said prior, at least with  
24 respect to Kamil Johnson. Against this orchestrated  
25 onslaught is Kamil Johnson, 17 years old at the time of this

1 crime. Never mentioned until recently, never in any  
2 lineups. He doesn't have an alibi because the evidence will  
3 be that as a 16- or 17-year-old kid, he did not keep a  
4 diary, he did not keep a daytimer, and couldn't tell you  
5 where he was when this crime was committed. So, he places  
6 his trust in the American jury system, he places his trust  
7 in a group of people true who will stand between him and the  
8 government and witnesses like Rico and his family, people  
9 who want to engineer a conviction for their own benefits,  
10 and it's your job to do that and to be skeptical about this  
11 evidence and to hold the government to its heavy burden of  
12 proof, and when that proof is done, the government's  
13 evidence against Kamil Johnson will fall short and there  
14 will remain reasonable doubt that this 17-year-old kid,  
15 Kamil Johnson, had any hand in this terrible crime.

16 At the end of the trial, I'll get to speak to  
17 you one last time in closing argument. I'm going to ask you  
18 to protect him. That is the great calling and function of  
19 the American jury, to stand between the power of the  
20 government and the things they can do and offer and compel  
21 out of people like Rico to get a conviction. You are to  
22 stand between that power --

23 THE COURT: Counsel, may I suggest you stay a  
24 little closer to the facts.

25 MR. BRYANT-WOLF: Thank you, your Honor.

1           And against this power is Kamil Johnson, and  
2 he will need your help. Thank you.

3           THE COURT: Thank you. Members of the jury, I  
4 remind you that you have heard no evidence. And with that,  
5 we will take a recess, we will break for lunch. We will  
6 begin the evidence at two o'clock this afternoon.

7           (A lunch recess was had commencing at  
8 approximately 12:30 p.m., and court reconvened at  
9 approximately 2:00 p.m.)

10          THE COURT: Members of the jury, we'll begin  
11 the evidence in just one moment. I have a copy of the  
12 Indictment at hand and you will receive, of course, a copy  
13 of it when you go to your deliberations. Let me tell you  
14 that at the top it just has the title of the case, it  
15 identifies the defendants, and it says that the United  
16 States grand jury charges, and it is a single-count  
17 Indictment. It identifies the murder of Davisha Brantly  
18 Gillum. It says: "At all times relevant to this  
19 Indictment" -- I'm going to kind of summarize it here.  
20 You'll, of course, have the full text later. It says "The  
21 Rolling 60's Crips gang constituted an 'enterprise,' as is  
22 defined by law," and that is, it says, "It's a group  
23 associated, in fact, which was engaged in activities which  
24 affected interstate and foreign commerce. The enterprise  
25 constitutes an ongoing organization whose members functioned

1 for a common purpose of achieving the objectives of the  
2 enterprise. Its primary purpose was to earn money for its  
3 members through the sale of controlled substances, which  
4 included cocaine and crack cocaine, another was the  
5 commission of violent acts against those that the enterprise  
6 thought of as its enemy." It then says "That that gang,  
7 through its members and associates, engaged in racketeering  
8 activities, as is defined by law." It then says "That on or  
9 about July 20, 1996, in the state and district of Minnesota"  
10 -- and the defendants are identified -- it says "For the  
11 purpose of gaining entrance into, and maintaining and  
12 increasing their position in, the Rolling 60's Crips gang."  
13 That is that enterprise that was identified. It says:  
14 "They knowingly murdered and aided and abetted each other in  
15 the murder of Davisha Brantly Gillum, age four, in violation  
16 of the law." And that is the nature of the charge with  
17 which they are accused and with which we are concerned.

18 And with that, counsel, are you ready to call  
19 your first witness?

20 MR. PAULSEN: Yes, your Honor. The government  
21 calls Mr. Randy Crooms.

22 THE COURT: Randy Crooms.

23 Sir, would you please step forward. Right  
24 about there would be fine. would you raise your right hand.

25 Sir, do you swear the testimony you're about

1 to give in this cause now on hearing before this court and  
2 jury will be the truth, the whole truth, and nothing but the  
3 truth, so help you God?

4 THE WITNESS: Yes.

5 THE COURT: Please be seated. Sir, would you  
6 kind of get yourself by that microphone and please tell us  
7 your name and spell your last name.

8 THE WITNESS: Yes. It's Randy Crooms,  
9 C-r-o-o-m-s.

10 THE COURT: Mr. Crooms, what community do you  
11 live in?

12 THE WITNESS: Woodbury.

13 THE COURT: Counsel.

14 RANDY CROOMS,  
15 witness herein, called as a witness on behalf of Plaintiff,  
16 having been first duly sworn, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. PAULSEN:

20 Q. Mr. Crooms, back in 1996, were you living over on  
21 Sherburne Avenue, in St. Paul?

22 A. Yes.

23 Q. What was your address then?

24 A. 1371 Sherburne.

25 THE COURT: Sir, I want you to get real close

1 to that microphone. You're a good-size fellow. I want you  
2 to speak up. I want to be able to hear you.

3 A. 1371 Sherburne.

4 BY MR. PAULSEN:

5 Q. Now, before we get into the events of that day, how old  
6 a man are you?

7 A. Thirty-three.

8 Q. Can you tell the jury what you do for a living?

9 A. I'm a real-estate agent.

10 Q. How long have you been in the real-estate business?

11 A. Since 1993.

12 Q. Directing your attention back to July 20th of 1996, when  
13 you were living at 1371 Sherburne, how long had you been  
14 living there, about, at that time?

15 A. I don't know, maybe about -- I really can't remember,  
16 about -- maybe six months to a year, something like that.

17 Q. And were you generally familiar with the area?

18 A. Yes.

19 Q. Was there an Amoco gas station nearby?

20 A. Yes.

21 Q. Where was that from where you lived?

22 A. It was at the end of the block, going east, and -- you  
23 know, over on University.

24 MR. PAULSEN: You're going to have to keep  
25 that voice up. All right?



1 THE WITNESS: Okay.

2 THE COURT: Can the jury hear okay? If you  
3 have a hard time, I need to know it right away. Okay.

4 MR. PAULSEN: Your Honor, at this time I'd  
5 like to offer Exhibit 7, some aerial photographs.

6 THE COURT: Hearing no objection, it's  
7 admitted.

8 BY MR. PAULSEN:

9 Q. I'm going to show you one first to kind of orient you.  
10 would you agree this is the Amoco station here?

11 A. Yes.

12 Q. And the street in front -- the busy street is what?

13 A. University.

14 Q. Was there an alley that runs between the Amoco station  
15 and the houses on the other side?

16 A. Yes.

17 Q. And this street to the -- that would be the north, this  
18 street here? That street is what?

19 A. Sherburne.

20 Q. And you were at 1371 Sherburne. And we're going to try  
21 to pick out your house.

22 THE COURT: You notice this is only working  
23 fair. Hold on a minute here.

24 Counsel, I'm going to let you take over.

25 MR. PAULSEN: Thank you, judge.

1 BY MR. PAULSEN:

2 Q. We're looking for your house, Mr. Crooms. I'm going to  
3 help you out a little bit. Is it this one here with the  
4 brown roof?

5 A. Yeah, that's it.

6 Q. Who lived next door to you here, on this one with the  
7 bluish roof or gray roof?

8 A. Edy -- a lady I know as Edy.

9 Q. Edy?

10 A. Yeah.

11 Q. Did you ever know her true name?

12 A. I heard that it's Alice Kraus, or something like that.

13 Q. Could it be Alice Erickson?

14 A. Yeah. Yeah, maybe that's it.

15 Q. Anyway, she was your neighbor?

16 A. Yes.

17 Q. Is she an older woman?

18 A. Yes.

19 Q. Now, on July 20th, 1996, were you home in the evening?

20 A. Yes.

21 Q. Anybody home with you?

22 A. Yes.

23 Q. Who was that?

24 A. My family, my wife and kids.

25 Q. Your wife's name is?

1 A. Shavelle.

2 Q. Now, at about 10:45 in the evening, or so, what were you  
3 doing?

4 A. Just watching TV.

5 Q. Did something happen that caught your attention?

6 A. Yeah. I mean, I heard a lot of gunshots.

7 Q. Could you tell from what general area they were coming?

8 A. They sounded like they were kind of in the front of the  
9 house, so...

10 Q. What did you do then?

11 A. I went out on the porch.

12 Q. Did you see anything while you were out on the front  
13 porch?

14 A. Yeah. I saw three guys running into a car -- or --  
15 running between a house to get into a car, on Sherburne.

16 Q. Now, this is your house right here?

17 A. Yes.

18 Q. I'm going to show you another angle, the reverse angle  
19 of that. I'll orient you again. We've got the gas station  
20 here, looking at the back of it now.

21 Do you see that?

22 A. Yeah.

23 Q. So this would be the alley going down here. Now, if we  
24 can find your house again. Would that be this one here?

25 Nope. One too many. Is it that one?

1 A. No.

2 Q. Which one is it?

3 A. The one next to it, to the right.

4 Q. Okay. I had it right the first time. All right. So  
5 from where you were sitting in the front, were you facing  
6 Sherburne Avenue?

7 A. I was -- you mean when I was on the porch?

8 Q. Right.

9 A. I was standing, and I was facing Sherburne.

10 Q. And what exactly did you see?

11 A. I just saw three guys -- well, first I saw a car that  
12 was just kind of sitting there and, then, I --

13 Q. What kind of car was sitting there?

14 A. It was kind of, like, an older American model car, had,  
15 like, some horizontal, you know, lights in the back of it,  
16 the taillights.

17 Q. What color?

18 A. I can't really remember the color. It was just dark.

19 Q. And where was that car?

20 A. It was sitting, like, in front of Edy's house.

21 Q. So if this is your house, then the car would have been  
22 parked over here in front of Ms. Erickson's house?

23 A. Yes.

24 Q. There happens to be in this aerial photo a car parked  
25 there. I'm not saying this photo was taken that night. In

1 fact, it wasn't. But just for reference purposes, where, in  
2 relation to that car on the photo, was the car you saw that  
3 night?

4 A. It was, like, sitting in the middle of the street.

5 Q. And you say you saw three guys?

6 A. Yes.

7 Q. How long after the shots did you see these three guys?

8 A. Seconds.

9 Q. Where did you first see them?

10 A. I saw them, like -- they were running between the house  
11 directly across the street from me.

12 Q. This is you. They go right across the street to this  
13 house?

14 A. Not that one. The next one.

15 Q. This one here?

16 A. Yeah.

17 Q. And where exactly did they run through?

18 A. On the -- like the east side of the house, between --

19 Q. That would be here?

20 A. Yeah. Between the two houses.

21 Q. Between those two houses. Can you describe these three  
22 guys?

23 A. They were just three young black men. I mean, they were  
24 thin, not really -- I guess about six feet, maybe, in  
25 height.

1 Q. Age range?

2 A. They looked kind of young, you know, like maybe in their  
3 late teens, maybe early 20s.

4 Q. Try to keep your voice up again. Okay?

5 A. Okay.

6 Q. Did you say "late teens, early 20s"?

7 A. Yeah.

8 Q. And you said all three of them were black?

9 A. Yes.

10 Q. Were they all the same skin color or not?

11 A. No. There was, like, two dark skinned and one that was  
12 light skinned.

13 Q. Did you see these three males -- when they were coming  
14 between the houses, did you see them do anything?

15 A. They were kind of tucking their guns back in their  
16 waistband.

17 Q. Could you actually see them doing that, tucking the  
18 guns?

19 A. Yeah.

20 MR. ELLISON: Objection; leading.

21 THE COURT: The answer may stand.

22 BY MR. PAULSEN:

23 Q. How many of them had a gun?

24 A. All three of them did.

25 Q. You said they were all around -- how tall?

1 A. About --

2 MR. ELLISON: Objection, your Honor;  
3 repetitive and leading.

4 THE COURT: You may answer.

5 A. About six feet tall, maybe.

6 BY MR. PAULSEN:

7 Q. Was anybody extremely tall, like six-foot-six, or  
8 anything like that?

9 A. No.

10 MR. ELLISON: Same objection; repetitive and  
11 leading.

12 MR. MAHONEY: Objection; leading.

13 THE COURT: The answer may stand.

14 BY MR. PAULSEN:

15 Q. Where did these three individuals go?

16 A. They got into the car that was sitting there.

17 Q. And, then, what happened?

18 A. The car took off, and I called the police.

19 Q. Now, that car that was sitting in the middle of the  
20 street, did it have a driver?

21 A. I imagine that it did. I mean, they just got in the  
22 car. It looked like they got in, like, the backseat and the  
23 passenger side, and the car was just -- it just took off as  
24 soon as they got in it, so... I assume that it was the  
25 driver, so...

1 Q. Which direction did the car go?

2 A. It went toward Albert.

3 THE COURT: Did it go toward or away from the  
4 gas station?

5 THE WITNESS: Away from the gas station.

6 THE COURT: Okay.

7 BY MR. PAULSEN:

8 Q. So I'm pointing with my pen here, it went westbound on  
9 Sherburne?

10 A. That's correct.

11 Q. After making these observations, did you call anybody?

12 A. Yeah. I called the police.

13 Q. Did you call the 911 number?

14 A. Yes.

15 MR. PAULSEN: At this time, your Honor, I'd  
16 offer Government Exhibit 2. This is a tape of that 911  
17 call.

18 THE COURT: According to the ruling  
19 previously, it's admitted.

20 MR. PAULSEN: And, your Honor, a transcript  
21 has been prepared, which is marked as Government's Exhibit  
22 2A, which I would request permission to distribute to the  
23 jury for their reference.

24 THE COURT: Members of the jury, the evidence  
25 is what you hear. There is a transcript that's been



1 prepared. And you'll have it. If it's of assistance to  
2 you, that's fine. But the question's not what's on the  
3 paper, because that's what some stenographer wrote down  
4 based on what he or she heard. And at the end of the tape,  
5 you just kind of collect them and pass them down here would  
6 be just fine. Okay? And when you go to your deliberations,  
7 you very likely will not have the transcript, you'll simply  
8 have the tapes and you may listen as you need.

9 Counsel.

10 BY MR. PAULSEN:

11 Q. According to the transcript, Mr. Crooms, you made this  
12 call at approximately 10:51 p.m., the first call; does that  
13 sound about right?

14 A. That sounds about right.

15 Q. And it looks like you called back a few minutes later  
16 with a second call. There's going to be a reference on here  
17 to someone named Randy. who's that?

18 A. I'm sorry, what was that?

19 Q. Randy.

20 A. That's me. Is that what you meant?

21 Q. I'm sorry. Okay. You already gave your wife's name.

22 MR. PAULSEN: May I play the tape, your Honor?

23 THE COURT: I hope so. Do you have your own  
24 tape or are we using this?

25 MR. PAULSEN: I'm using this.

1 THE COURT: Okay. Go ahead.

2 (At this time Government Exhibit 2, an  
3 audiocassette tape, was played).

4 BY MR. PAULSEN:

5 Q. Now, you mentioned on there that you had gone to the  
6 site. What did you mean about going to the site?

7 A. I went up to the Amoco to see who died.

8 Q. Could you see what was going on there?

9 A. I just -- there was just a lot of people there, you  
10 know, and the police were just looking over, you know, the  
11 scene, and I heard that, like, a little girl got killed, and  
12 maybe some other women, so...

13 Q. You initially were reluctant to give your name. Did you  
14 subsequently give your name and give interviews to police  
15 officers?

16 A. Yes.

17 Q. What was the lighting like in front of your house, where  
18 you saw these guys?

19 A. I mean, it was light there, but, I mean, it wasn't like  
20 a whole lot of light. I mean, it was kind of like there  
21 was -- it was dark, so I can't really say that the light was  
22 that good.

23 Q. Are you able to identify anybody that you saw that night  
24 after all this time?

25 A. No.

1 MR. PAULSEN: Nothing further.

2 THE COURT: Any cross-examination,  
3 Mr. Ellison?

4 MR. ELLISON: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. ELLISON:

7 Q. Good afternoon, Mr. Crooms.

8 A. Good afternoon.

9 Q. You didn't want to give your name that night, but you  
10 did try to tell the police everything that you saw; right?

11 A. That's correct.

12 Q. Because you were trying to do the right thing,  
13 obviously.

14 A. Exactly.

15 Q. So, even though you didn't give your name, you did give  
16 them all the other information that you had, isn't that  
17 right?

18 A. That's correct.

19 Q. And you saw three fellows about six feet tall, isn't  
20 that true?

21 A. That's correct, yes.

22 Q. Sir, can I ask you to step down from the witness stand,  
23 with the court's permission?

24 THE COURT: You may.  
25

1 BY MR. ELLISON:

2 Q. How tall of a man are you, sir?

3 A. Six-one.

4 Q. And --

5 THE COURT: why don't you be seated again.  
6 You're not near a microphone.

7 MR. ELLISON: You can be seated.

8 THE COURT: I think you indicated you're about  
9 6-1?

10 THE WITNESS: That's correct.

11 THE COURT: Okay.

12 BY MR. ELLISON:

13 Q. Do I look about 5-foot-6 to you?

14 A. Pretty close, yeah.

15 Q. Maybe 5-7?

16 A. Yeah.

17 Q. And, so, you would agree with me that 5-foot-9 is quite  
18 a bit shorter than you; wouldn't you agree with that?

19 A. Yes.

20 Q. Now, also, you said you saw three black males; two of  
21 them were darker skinned and one of them was lighter, isn't  
22 that right?

23 A. That's correct.

24 Q. would you describe me as a lighter-skinned black person?

25 A. Yes, I would.

1 Q. So the person you saw looked about my color; am I right?

2 A. Pretty close.

3 Q. Pretty close to me; right?

4 A. Yeah.

5 Q. Okay. And the other two were about the same color;  
6 correct?

7 A. That's correct.

8 Q. So you had one guy about my color and a couple of other  
9 fellows who might be around your complexion; am I right  
10 about that?

11 A. That's correct.

12 Q. Now, the gentlemen you saw -- well, the men you saw, put  
13 it like that, they had on long pants; correct?

14 A. That's correct.

15 Q. Jeans, in fact, you said; am I right about that?

16 A. Yes.

17 Q. Now, you also saw a motor vehicle that they got into,  
18 isn't that right?

19 A. That's correct.

20 Q. And I believe on the tape your best judgment was that it  
21 was a Ford product; is that right? That's what you said on  
22 the tape.

23 A. Yeah -- I mean, I didn't really know what kind of car it  
24 was, you know.

25 Q. But you did say "Ford."

1 A. That's what I said, that's correct.

2 Q. Right. And you did say "Ford" moments after you saw  
3 that car, isn't that right?

4 A. That is what I said.

5 Q. And, so, the kind of car you identified closest in time  
6 to the event was a Ford, even though you don't want to hold  
7 yourself to a Ford necessarily; right?

8 A. That's what I said.

9 Q. All right. Because it's true that's what you thought  
10 you saw; right?

11 A. Yes, it is.

12 Q. Now, this vehicle that you saw, you described it as a  
13 dark American car; right?

14 A. That's correct.

15 Q. "Dark" meaning it could have been black; right?

16 A. It could have been. It could have been.

17 Q. Dark burgundy color. You don't know what color the car  
18 was; am I right?

19 A. No, I don't know what color the car was.

20 Q. Did the car have any other distinguishing features that  
21 you may have noted?

22 A. The taillights were, like, a horizontal shape. It  
23 seemed like -- it had, like, horizontal stripes, you know,  
24 in the taillight itself, so...

25 Q. And that's what you remember; right?

1 A. That is correct.

2 Q. And, clearly, you would have told the law-enforcement  
3 authorities everything that you would have remembered about  
4 that car; right?

5 A. That's correct.

6 Q. Particularly anything that was distinguishing and might  
7 stick out; right?

8 A. That's right.

9 Q. Such as if the rims were a particularly stick out kind  
10 of way, you would have noticed that; right?

11 A. I might have, you know.

12 Q. Yeah. Now, you didn't see the shooting incident, did  
13 you?

14 A. No, I did not.

15 Q. And you did not -- let me ask you this. Did the police  
16 ever give you an opportunity to look at any kind of  
17 photographs?

18 A. No.

19 Q. They never said, "Here, look at these pictures and see  
20 if you can pick out anybody"?

21 A. No.

22 Q. Okay. Because you knew you couldn't, isn't that right?

23 A. That's right. I couldn't make out their faces.

24 MR. ELLISON: All right. Nothing further.

25 Thank you.

1 THE COURT: Thank you.

2 Mr. Mahoney.

3 MR. MAHONEY: No questions, your Honor.

4 THE COURT: Mr. Bryant-wolf.

5 MR. BRYANT-WOLF: Thank you, judge.

6 CROSS-EXAMINATION

7 BY MR. BRYANT-WOLF:

8 Q. Mr. Crooms, the man who is standing on my left, he's  
9 under six feet tall, isn't he?

10 A. He appears to be.

11 Q. In fact, he's about 5-7 to 5-8, isn't he?

12 A. That would -- I'd have to really stand next to him and  
13 kind of gauge. But he does look shorter than me, so...

14 Q. Shorter than six feet; correct?

15 A. That is correct.

16 MR. BRYANT-WOLF: Thank you.

17 THE COURT: I take it you have nothing  
18 further. Anything else, counsel?

19 MR. PAULSEN: Nothing further, your Honor.

20 THE COURT: Thank you sir, you may step down.

21 MR. PAULSEN: The government calls Alice  
22 Erickson.

23 THE COURT: Ma'am, would you please step right  
24 on through and over by the witness box. Before you step in  
25 there, would you raise your right hand, please. Ma'am,



1 would you raise your right hand. Do you swear the testimony  
2 you're about to give in this cause now on hearing before  
3 this court and jury will be the truth, the whole truth, and  
4 nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: Ma'am, would you -- you can put  
7 your hand down. Now, get the microphone close to your  
8 mouth. It's right there. There you go. would you tell us,  
9 please, your name.

10 THE WITNESS: Okay.

11 THE COURT: what's your name?

12 THE WITNESS: Alice Erickson.

13 THE COURT: And how do you spell your last  
14 name?

15 THE WITNESS: E-r-i-c-k-s-o-n.

16 THE COURT: okay. Maybe you want to be a  
17 little further away.

18 THE WITNESS: A little farther away.

19 THE COURT: okay. Counsel.

20 THE WITNESS: Is that okay?

21 THE COURT: Yes, ma'am.  
22  
23  
24  
25

1 ALICE ERICKSON,  
2 witness herein, called as a witness by Plaintiff, having  
3 been first duly sworn, was examined and testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. PAULSEN:

7 Q. Ms. Erickson --

8 A. Yes.

9 Q. -- do people sometimes call you "Edy"?

10 A. I can't hear you.

11 Q. Do people sometimes call you "Edy"?

12 A. I can't hear you.

13 MR. PAULSEN: Can I get a little closer, your  
14 Honor?

15 THE COURT: I think she may have a hearing  
16 problem.

17 MR. PAULSEN: Yes.

18 BY MR. PAULSEN:

19 Q. Does anybody ever call you "Edy"?

20 A. Yes. My middle name is Edith and they call me Edy.

21 Q. I'm going to talk real loud. Okay? Back in 1996, you  
22 lived over on Sherburne?

23 A. Yes.

24 Q. What's the address there?

25 A. 1375.

1 Q. Now, that evening of July 20th, 1996, were you home?

2 A. Yes.

3 Q. And that was a summer evening. Where were you?

4 A. I was sitting on my front porch.

5 Q. Does your front porch look out onto a street?

6 A. Yes.

7 Q. Which street?

8 A. Sherburne Avenue.

9 Q. Around quarter to 11:00 that night, did you hear  
10 anything unusual?

11 A. A car -- I heard gunshots before that. Do you want me  
12 to say what happened or what I saw?

13 Q. Did you see something even before the gunshots?

14 A. Yeah. A car pulled up in front of a house next to me,  
15 it was a dark-colored car. Three black persons got out of  
16 the car; two of the persons walked towards University  
17 Avenue, the other one stayed with the car. And after the  
18 boys in the back walked away, the driver got out of the car  
19 and walked towards my house, and he was going to -- this is  
20 what caught my attention. He was walking towards the corner  
21 of my chain-link fence, and he was going to relieve himself  
22 and I didn't like that. So I went to the door and opened  
23 the door and I said, "Hey, that's not a toilet," the guy  
24 muttered, and I quickly closed the door and went and sat  
25 down, and he went farther into my neighbor's yard and I

1 suppose he finished what he wanted to do. He went back in  
2 the car and sat in the car the whole time.

3 Q. This is the driver?

4 A. Yes.

5 Q. You say he stayed with the car the whole time?

6 A. The whole time he was sitting in the car after what he  
7 did.

8 Q. There was some other people that left the car before  
9 that?

10 A. Yes. They walked towards -- they left the car and --  
11 they got out of the car on the driver's side of the car, in  
12 the backseat. They walked towards University Avenue, and  
13 they cut through some yards to get to University Avenue.  
14 And after a little while, I heard gunshots -- I heard  
15 several gunshots that got my attention. I saw, after a  
16 short period of time, that the people -- that the boys that  
17 walked out of the backseat of the car came back and entered  
18 the car on the driver's side, and the driver took off. They  
19 went off -- they took off in a hurry.

20 Q. Can you give a general description of the people you  
21 saw?

22 A. The driver of the car was of the age of -- more like a  
23 college age. He wore light clothing, and he didn't have any  
24 beard, or anything, on his face. When he walked towards me  
25 -- towards my fence to relieve himself, he was directly in

1 front of me -- I was sitting on the porch and he was  
2 directly in front of me and, then, the car was sort of a  
3 straight line.

4 Q. How about the individuals you saw leaving the car and  
5 then coming back?

6 A. They got out of the car. They didn't cross the street  
7 and walk on the public sidewalk. They walked mostly down  
8 the street across -- as close from one point to the other.  
9 They went into a yard and went through a yard, probably that  
10 didn't have a fence in the back, and, then, shortly after  
11 that, I heard the gunshots. And after the people left, I  
12 called 911, but that was when they were all through and  
13 taking off.

14 Q. Right. The ones that you saw leaving the car and then  
15 you saw coming back to the car --

16 A. Yeah.

17 Q. -- what race were they?

18 A. They were all black, and they were wearing dark  
19 clothing. The driver was wearing light -- and another  
20 thing, the driver was brown-skinned, he wasn't real black.  
21 But I would say he was a black man, but he was the light  
22 brown type of person.

23 Q. Now, you were living alone there at the time?

24 A. Yes.

25 Q. You're a widow?

1 A. Yes.

2 Q. What did you do for a living when you were working?

3 A. I worked at Montgomery Ward's for 27 years and, then, I  
4 worked -- I was a federal employee at the Veterans'  
5 Administration at Ft. Snelling and I worked there 14 years  
6 and, then, I retired.

7 Q. Now, a minute ago -- correct me if I'm wrong. A minute  
8 ago I thought I heard you say there was a driver who stayed  
9 with the car; right?

10 A. (Indicating affirmatively).

11 Q. And how many people do you recall walking away from the  
12 car and coming back?

13 A. I recalled two, when I was recalling this six years  
14 later. But I know when I heard the 911 recording, I said  
15 four. But I'm saying what I recall. I would say that the  
16 911 call was the most accurate because of the fact that it  
17 was the same day that this thing happened. I was excited,  
18 but I probably knew more then than I knew six years later.

19 Q. Well, that's what I'm trying to establish. Right now  
20 you remember one stayed with the car and two went away.

21 A. Yeah, that's right.

22 Q. Okay. Now, we're going to play that 911 call in a  
23 minute here. And you've heard that before; right?

24 A. Yeah.

25 Q. Do you think your recollection was more accurate back

1 then, six years ago, when you called in?

2 A. I would say so. I would say so.

3 MR. PAULSEN: Your Honor, at this time I'd  
4 like to offer Government Exhibit 3 and the corresponding  
5 transcript, 3A.

6 THE COURT: Hearing no objection, 3 and 3A --  
7 as a matter of fact, do we have the transcript from the last  
8 one? Why don't you pass those down and just put it on the  
9 rail on the front of the -- there you go.

10 (At this time Government Exhibit 3, an  
11 audiocassette tape, was played).

12 BY MR. PAULSEN:

13 Q. Now, Ms. Erickson, I don't know if you could hear that  
14 being played, but --

15 A. Yeah, I heard it.

16 Q. -- you got the transcript there?

17 A. I heard it.

18 Q. Okay. And you said on that tape that there were four  
19 guys altogether?

20 A. Yeah.

21 Q. And you think your recollection was better back then?

22 A. Yes.

23 MR. ELLISON: Objection, your Honor.

24 A. Yes, I do. I believe --

25 MR. ELLISON: Objection, your Honor.

1 A. I believe I would have --

2 THE COURT: Hold on a minute.

3 A. I believe I would have --

4 THE COURT: Sustained.

5 MR. PAULSEN: No further questions.

6 THE COURT: Any cross-examination?

7 MR. ELLISON: Yes, your Honor.

8 CROSS-EXAMINATION

9 BY MR. ELLISON:

10 Q. Good afternoon, ma'am.

11 A. Hi.

12 Q. Can you hear me fine?

13 A. Uh-huh.

14 Q. All right. Only a few questions for you. Ma'am, you  
15 don't remember the kind of car that you saw that night; is  
16 that right?

17 A. I don't know cars by what types they are, but it must  
18 have been a four-door, because I believe that the people  
19 that came from University Avenue after the gunshots went  
20 into the backseat without too much problem. They were in a  
21 hurry and they got in there in a hurry.

22 Q. Okay. And do you recall telling the people on the 911  
23 that it was a big car you saw?

24 A. Well, it wasn't a compact little car, let's put it that  
25 way.



1 Q. Okay. Do you recall saying it was a big car?

2 A. Well, I would say it was a medium-size car, you know.

3 Q. Okay. Do you remember telling the 911 people that it  
4 was a big car?

5 A. Well, bigger than a compact car; that's what I meant  
6 when I said "big."

7 Q. All right. Do you recall in the 911 tape when the 911  
8 dispatcher tried to get you to calm down? Do you recall  
9 that?

10 A. Yeah; because I was upset.

11 Q. You were pretty excited, obviously.

12 A. I was excited about it. After I heard gunshots, I was  
13 excited, yes. Scared.

14 Q. Right. Are you feeling a little bit more calm about it  
15 today?

16 A. Yes. I'm nervous -- very nervous. I'm calm.

17 Q. Okay. And you've had time to calm down since the  
18 incident, isn't that right?

19 A. Right.

20 Q. And today you told us you saw two people go over there  
21 and two people run back.

22 A. Yeah.

23 Q. Okay.

24 A. And altogether three in the car, the driver.

25 Q. All right. Thank you. And you saw them get out of the

1 driver's side and come back on the driver's side.

2 A. Right.

3 Q. Now, did you see anything that was particularly  
4 distinguishing about that car?

5 A. No. It was late in the evening and -- it wasn't shiny,  
6 I know that. Other cars, when the -- there's an arc light  
7 directly in front of my house, and when the arc light shines  
8 on them, they're usually -- the chrome, at least, shines  
9 quite a bit. This car didn't seem to have any shine to it.

10 Q. No shine.

11 A. Well, I would say -- you know, I would say it was a  
12 dull -- it appeared to be a dull, dark car.

13 Q. Right. Including the rims; right?

14 A. Including what?

15 Q. The rims; right?

16 A. I can't answer because I didn't get that word.

17 Q. Okay. The wheels on the car, they were dull too?

18 A. Yeah. Yeah. Nothing shined.

19 Q. Okay. Now, I noticed that you didn't notice any guns.  
20 You didn't see the men with guns; is that right?

21 A. No guns. I didn't see any guns.

22 Q. And it sounds like you're quite sure that the driver got  
23 out and tried to urinate on your neighbor's yard.

24 A. Correct -- on my fence.

25 Q. And you're quite sure about that.

1 A. Yes; because his hands were down in that area. And  
2 after he finished -- after I said that to him and closed the  
3 door, he went farther into the yard. Why would he go in  
4 there? He finished what he was doing, I think.

5 MR. ELLISON: All right. Nothing further.  
6 Thank you.

7 THE COURT: Counsel.

8 MR. BRYANT-WOLF: Thank you, your Honor.

9 THE COURT: I'm sorry, I went the wrong order  
10 here.

11 MR. MAHONEY: I'm sorry, your Honor. I have  
12 no questions.

13 CROSS-EXAMINATION

14 BY MR. BRYANT-WOLF:

15 Q. Good afternoon, Ms. Erickson.

16 A. Hi.

17 Q. Can you hear me okay?

18 A. Uh-huh.

19 Q. All right. When you called 911 --

20 A. Yes.

21 Q. -- you told 911 that it was four big guys; right?

22 A. Yes, I said that. I would say that -- I was excited,  
23 but I would say -- it happened that day, and I would say  
24 that there was four big guys. I mean -- that I recalled. I  
25 recalled all the time that there was three when I was making

1 statements. But I trust that what I said the day I called  
2 911 would be accurate.

3 Q. And would it be four big guys like me? I'm about 6-2.

4 Did they look about my size?

5 A. Well, not as tall as you.

6 Q. About six feet tall?

7 A. The driver of the car, maybe, yes, I would -- yeah, a  
8 little shorter. And, then, the two that went appeared to be  
9 more like high school age, smaller build.

10 Q. Now, you told the operator four big guys; right?

11 A. Yeah, I guess so. That's what the -- I heard the tape  
12 and that's what I said.

13 Q. And you've testified that your memory right when this  
14 incident happened would be the most accurate memory.

15 A. I would think so. This is six years later. I would say  
16 -- what I said on the phone, on the 911 call -- I was  
17 nervous, but I said the facts that I knew.

18 Q. And, in fact, the very first fact that you gave to 911  
19 was the fact that these were four big guys; right?

20 A. Well, I maybe said big guys. But adult guys, you know.  
21 They weren't kids -- they weren't school kids or, you know,  
22 young kids. They were adults.

23 Q. Yes, ma'am. But my question is the first fact that you  
24 gave to 911 was that these were four big guys; correct?

25 A. Yeah. Well, and --

1 MR. BRYANT-WOLF: Okay. Thank you, ma'am.  
2 Thank you.

3 THE COURT: Anything else?

4 MR. PAULSEN: No, your Honor.

5 THE COURT: Thank you so much, ma'am, and you  
6 may step down.

7 THE WITNESS: Thank you.

8 THE COURT: Be careful when you try to get out  
9 of there because you could trip.

10 THE WITNESS: I will.

11 THE COURT: Okay.

12 THE WITNESS: Thank you.

13 MR. PAULSEN: Next witness is Jayne  
14 Sommerfeld.

15 THE COURT: Ma'am, would you be good enough to  
16 step forward, please, over by the witness box, and would you  
17 raise your right hand. Ma'am, do you swear the testimony  
18 you're about to give in this cause on hearing before this  
19 court and jury will be the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 THE WITNESS: Yes.

22 THE COURT: Please be seated. Get yourself up  
23 by the microphone, please, and tell us your name and spell  
24 your last name.

25 THE WITNESS: Jayne Sommerfeld,

1 S-o-m-m-e-r-f-e-l-d.

2 THE COURT: Ms. Sommerfeld, in what town do  
3 you live?

4 THE WITNESS: Oakdale.

5 THE COURT: Counsel.

6 JAYNE SOMMERFELD,  
7 witness herein, called on behalf of Plaintiff, having been  
8 first duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PAULSEN:

11 Q. Ms. Sommerfeld, what do you do for a living right now?

12 A. I'm a radiation therapist.

13 Q. How long have you been a radiation therapist?

14 A. About two years.

15 THE COURT: Get a little closer to the mike,  
16 if you would. Thank you. Or speak up, which is also a good  
17 idea.

18 BY MR. PAULSEN:

19 Q. How old are you?

20 A. Twenty-four.

21 Q. I want to direct your attention back to July 20th of  
22 1996. I guess you were what, about 18 then?

23 A. Correct.

24 Q. Did you have occasion to be at this Amoco gas station on  
25 Hamline and University Avenues in St. Paul, in the evening

1 hours?

2 A. Yes.

3 Q. To kind of set the stage here, can you tell us who you  
4 were with that night?

5 A. Five high school friends.

6 Q. Five high school friends?

7 A. Yep. Do you want their names?

8 Q. Sure.

9 A. Erik Saari, Mike Biebl, Joe Peeka, Chris Rollinger and  
10 Avesh.

11 Q. And were you in some sort of a vehicle?

12 A. A Chevy truck.

13 Q. Whose truck was that?

14 A. Mike Biebl's.

15 Q. What kind of truck?

16 A. Full-size, extended cab.

17 Q. Is it a pick-up truck?

18 A. Pickup truck, yeah.

19 Q. Now, where had you and your five high school friends  
20 been prior to going to the Amoco?

21 A. We were at the airport and then drove down University to  
22 look at the cars.

23 Q. What were you doing out at the airport?

24 A. Just watching planes land.

25 Q. Did some of your friends have a particular interest in

1 aviation?

2 A. Yeah. Some of them were UND attendants in the aviation  
3 program.

4 Q. After watching the planes at the airport, where did you  
5 go next?

6 A. Down University.

7 Q. What was the point of doing that?

8 A. I was with five guys that liked to look at cars, and  
9 there's some particular place that there's a gathering of  
10 cars, I understand.

11 Q. "A gathering of cars." Is there any particular type --

12 A. Old cars, hot rods.

13 Q. At some point, did you end up at that gas station?

14 A. We did. It was kind of the end of the strip. We pulled  
15 in there to decide what we were going to do next.

16 Q. Now, there's a scale model in front of you here.

17 MR. PAULSEN: And at this time, your Honor,  
18 I'd like to offer it. It's Government's Exhibit 1.

19 THE COURT: Hearing no objection, Exhibit 1 is  
20 admitted.

21 BY MR. PAULSEN:

22 Q. Just to kind of orient you, this would be University  
23 Avenue over here.

24 THE COURT: She's got it on her monitor.

25 MR. PAULSEN: Oh, I'm sorry.



1 THE COURT: She can see it too.

2 BY MR. PAULSEN:

3 Q. This is the front of the Amoco station on University  
4 Avenue. Where were you and your friends parked?

5 A. To the left of the car wash, up back towards the fence.

6 Q. We've got an eraser here we've been using as Mike  
7 Biebl's truck. Where should I put it?

8 A. Right about there is good. Back it up. It should be  
9 perpendicular to the fence.

10 Q. Perpendicular? Like this?

11 A. Yeah. Uh-huh.

12 Q. Okay. And this is the --

13 A. And to my best guess that would be about the right  
14 place, maybe a little bit more off towards the -- away from  
15 the gas station.

16 Q. Right here?

17 A. Uh-huh.

18 Q. And which is the front of the truck?

19 A. Pointing towards University.

20 Q. All right. And the pick-up part, is that an open bed  
21 with no topper on there?

22 A. Correct.

23 Q. Now, where were the five of you in relation to this  
24 vehicle?

25 A. There was three in the front of the vehicle and three of

1 us were in the back. I was in the back.

2 Q. And when you're in the back of this open-bed pickup,  
3 which direction were you facing?

4 A. Towards the fence. I had my back to the cab windows.

5 Q. And where was Mike Biebl, the driver?

6 A. He was out of the driver's side door, leaning up against  
7 the bed of the truck.

8 Q. Now, did there come a time when some noises attracted  
9 your attention?

10 A. Yes.

11 Q. Describe what happened.

12 A. I thought what sounded to be like a car backfiring, so I  
13 turned to the noise and looked. And as fast as it could  
14 register, it was guns shooting. And I ducked in the bed of  
15 the truck and we took off. we left.

16 Q. What did you see before you ducked into the bed of the  
17 truck?

18 A. A couple of guns over the fence. I believe it was two  
19 or three; I'm not sure, with some individuals.

20 Q. What part of the body on these two or three individuals  
21 could you see? How much of their bodies?

22 A. From about their armpits up, I guess. Mid-chest length.

23 Q. Could you tell what race they were?

24 A. Only one I could give a definite, confident answer was  
25 African-American.

1 Q. African-American. And which one was that?

2 A. The one closest to me, to my left.

3 Q. Let's see if we can't figure out where these individuals  
4 were standing.

5 MR. PAULSEN: May she come down, your Honor?

6 THE COURT: Certainly. But, ma'am, when you  
7 do, you're going to have to speak up.

8 THE WITNESS: Okay.

9 BY MR. PAULSEN:

10 Q. Give us your best estimate of where these individuals  
11 were standing when you saw them.

12 A. Right here, about.

13 THE COURT: Ma'am, I can't hear you. You've  
14 got to yell.

15 A. About right here.

16 THE COURT: All right.

17 BY MR. PAULSEN:

18 Q. There is a light post on the inside of the fence, the  
19 Amoco side of the fence, and you have your finger just to  
20 the right of that light post? Now you're moving your  
21 finger. was it --

22 A. Somewhere in this region is my best guess.

23 Q. Somewhere within a few feet either side of that light  
24 post; is that correct?

25 A. Yes.

1 Q. So the record is clear on this model, this light post is  
2 directly opposite the entrance to the car wash on the  
3 backside of the Amoco; is that right?

4 A. Yes.

5 MR. PAULSEN: All right. Why don't you go  
6 back up.

7 BY MR. PAULSEN:

8 Q. Could you actually see guns?

9 A. Yes.

10 Q. How many guns did you see?

11 A. Two or three. More than one. I'm not sure.

12 Q. Were there some other cars besides yours that were  
13 present at the Amoco?

14 A. Yes.

15 Q. Where?

16 A. There was a blue Cadillac about where you have it  
17 positioned now, and there was also some cars at the pumps  
18 filling up, but I don't know how many.

19 Q. We've got a couple over there. Do you remember whether  
20 that is right or not?

21 A. No. I saw them pull up, but I don't know where they  
22 parked.

23 Q. How far would you say you were away from the people that  
24 you saw?

25 A. I have no idea.

1 Q. How good a look did you get at the one that was closest  
2 to you?

3 A. Fairly good. I could pick out some characteristics.

4 Q. Do you recall anything about his hairstyle?

5 A. To my best memory it was something that I've learned  
6 after the fact is called "corn rows," where it was kind of  
7 -- not braided, but pulled back in strips on his hairline.

8 Q. The person that you got the best look at, did you later  
9 describe that person to some police officers?

10 A. Did I later?

11 Q. Yes.

12 A. I don't remember. Possibly.

13 Q. Well, do you recall going to the police station to look  
14 at some photographs at a certain point in time?

15 A. Yes.

16 MR. PAULSEN: May I have a moment, your Honor?

17 THE COURT: You may.

18 MR. PAULSEN: Your Honor, there's going to be  
19 a stipulation, I believe, as to a certain photo spread.

20 THE COURT: Members of the jury, as I told  
21 you, a stipulation is an agreement by the lawyers that's  
22 something occurred. You, of course, have to make your  
23 independent decision about it. But the lawyers will agree,  
24 apparently, that something is as they're about to describe  
25 it. Okay? If they all agree that bricks float in water,

1 well, you may not want to believe that; but if it made  
2 sense, you probably would.

3 MR. PAULSEN: I'm going to mark as  
4 Government's Exhibit 33 a photo spread -- a six-photograph  
5 photo spread that was used -- by stipulation -- was used  
6 back in 1996 -- on July 23rd, 1996, actually. It was shown  
7 to Ms. Sommerfeld, and there's a stipulation, based on  
8 police reports, that she picked out the individual in  
9 Photograph Number 2. I'd offer Government Exhibit 33.

10 MR. BRYANT-WOLF: May I have a moment, your  
11 Honor, to examine it?

12 THE COURT: Certainly.

13 MR. BRYANT-WOLF: No objection, your Honor.

14 THE COURT: Apparently it's agreed that among  
15 -- that these were the photos that were shown to her. Saves  
16 us calling back every police officer who was at the scene  
17 gathering this sort of thing. Okay.

18 MR. PAULSEN: And if I may, your Honor, put  
19 Photograph Number 2 on the ELMO.

20 BY MR. PAULSEN:

21 Q. Ms. Sommerfeld, there's a stipulation that that's the  
22 photograph you picked out at the time. Will you accept that  
23 for the moment?

24 A. Yes.

25 Q. All right. At the time you picked this person out, you

1 recall noting that there were some differences that did not  
2 appear in the picture from the person you saw that night?

3 A. I don't recall.

4 Q. Well, you had testified that the person you saw you  
5 thought had a certain type of hairstyle.

6 A. Correct.

7 Q. Is this the type of hairstyle of the person you saw?

8 A. No.

9 Q. How was this hairstyle you saw different?

10 A. Well, he had hair that was gathered in rows from his  
11 scalp all the way across his head.

12 Q. Just for illustration purposes, do you see anyone in the  
13 courtroom with a hairstyle like that today?

14 MR. ELLISON: Objection, your Honor.

15 THE COURT: I'm sorry, I can't hear you.

16 MR. ELLISON: Well, I'll object on the grounds  
17 of relevance.

18 THE COURT: Overruled. You can answer.

19 A. I don't really feel comfortable answering that question.

20 MR. PAULSEN: Your Honor, at this time I'd  
21 like to offer a photograph of -- I'd like to offer as an  
22 exhibit Government Exhibit 34, which is a photograph.

23 THE COURT: Hearing no objection --

24 MR. ELLISON: Your Honor, I do object.

25 THE COURT: All right. Can you put it up so I

1 can take a look at it? You can put it on the screen.

2 MR. PAULSEN: If there's a redaction issue,  
3 I'd have no problem with redacting.

4 MR. ELLISON: Your Honor, may I be heard on  
5 this?

6 THE COURT: Yes, sir.

7 (The following side-bar record was made out of  
8 the hearing of the jury).

9 MR. ELLISON: Your Honor, my objection has to  
10 do with relevance. What counsel is about to do is to put in  
11 front of the jury a picture of my client and then make the  
12 argument that they look similar. Well, this jury -- this  
13 witness didn't pick out my client, so why are we even going  
14 to do that? She didn't pick him out. And his argument that  
15 they look similar --

16 THE COURT: Was your client's picture in the  
17 photo spread?

18 MR. ELLISON: Not in that photo spread. But  
19 it was shown.

20 THE COURT: All right. Well, in that case --  
21 first of all, I'm going to have you clip all that junk off  
22 here.

23 MR. ELLISON: And, judge -- I mean, I -- you  
24 know, she was asked to pick out who did it and she picked  
25 somebody else out, and for him to --



1 THE COURT: I understand.

2 MR. ELLISON: -- say it looks like a picture  
3 of -- "would you say it looks like a picture of Timothy  
4 McGruder" --

5 THE COURT: I don't know what he's going to  
6 say.

7 MR. ELLISON: -- is an offer of proof.

8 MR. PAULSEN: Let the jury decide. Make the  
9 argument, hoping the first thing kept out was the real  
10 shooter.

11 THE COURT: I'll permit it.

12 (At this time the side-bar record made out of  
13 the hearing of the jury concluded).

14 MR. ELLISON: Your Honor, may we reapproach  
15 very briefly?

16 THE COURT: No, sir. we'll move along.

17 MR. PAULSEN: Is 34 admitted, your Honor?

18 THE COURT: It is.

19 MR. PAULSEN: Putting Number 34, a picture of  
20 Timothy McGruder, that was taken on July 3rd of 1995, on the  
21 screen next to the person we've stipulated you picked out  
22 that night. The person you picked out that night,  
23 Photograph Number 2, from the photo spread is here on the  
24 left, the photograph from July of 1995 of Mr. Timothy  
25 McGruder is on the right.

1 I have no further questions.

2 THE COURT: Cross-examination?

3 MR. ELLISON: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MR. ELLISON:

6 Q. Ma'am, you picked out this person on the 23rd of July,  
7 1996, isn't that right?

8 A. Yes.

9 Q. You didn't pick out the other guy that Mr. Paulsen  
10 showed you, did you?

11 A. No. I believe my statement, when I did the  
12 photo lineup, was, "If it's not that person, it's somebody  
13 very similar."

14 Q. But, in fact, that night, when you were sitting in that  
15 flatbed truck just watching all the cars go by, you saw the  
16 person from about the armpits up, isn't that right?

17 A. Yes.

18 Q. And you had a few moments to take a look at that person,  
19 isn't that true?

20 A. Maybe a split second.

21 Q. Well, at least that much time; right?

22 A. Yes.

23 Q. And there was lighting in the back of that Amoco, wasn't  
24 there?

25 A. Not very much, I don't believe.

1 Q. Okay. Not very much. But, anyway, you were not under  
2 the influence of any --

3 A. No.

4 Q. -- substances, or anything; right?

5 A. No.

6 Q. And you got a chance to see whatever you saw; right?

7 A. Correct.

8 Q. And the very next day the officer asked you what you saw  
9 and you picked out the person who was just on the screen a  
10 moment ago as the person who you thought --

11 A. It was actually a few days later.

12 Q. Okay. A few days later. You're right about that.  
13 Three days later; right?

14 A. Uh-huh.

15 Q. And you say you couldn't really see the other people; is  
16 that right?

17 A. Correct.

18 Q. Now, the person who you saw that night had a certain  
19 hairstyle; right?

20 A. Correct.

21 Q. And you made it clear a few days later that what you saw  
22 was not braids; right?

23 A. Correct. I made it clear that evening as well.

24 Q. Right, you made it clear that evening that it was not  
25 braids; right?

1 A. Correct.

2 Q. But it was some sort of a twist thing and it looked like  
3 rows; right?

4 A. Correct.

5 Q. Okay. And you may not have had much time, but you saw  
6 that; right?

7 A. Yes.

8 Q. So the person you saw had such a hairstyle on that  
9 night; correct?

10 A. Correct.

11 Q. All right. Now, the other two individuals, you didn't  
12 pick them out; right?

13 A. No.

14 Q. And you don't even know their race; is that right?

15 A. Correct.

16 Q. And you understand that individuals in this world may  
17 have similar characteristics, isn't that right?

18 A. Yes.

19 Q. Such as, you and another person might have a similar  
20 skin color; right?

21 A. Yes.

22 Q. Hairstyle; correct?

23 A. Right.

24 Q. Your eyes may be a certain distance apart or a certain  
25 closeness; right?

1 A. Yep.

2 Q. But you understand that when the officer on the 23rd of  
3 July asked you who you saw, you weren't just looking for  
4 similarities, you were looking for the person; right? You  
5 were looking for the person, that's who you were trying to  
6 pick out; right?

7 A. Right.

8 MR. ELLISON: Nothing further.

9 THE COURT: Counsel?

10 MR. MAHONEY: Nothing from Mr. Crenshaw, your  
11 Honor.

12 THE COURT: Mr. Bryant-Wolf?

13 MR. BRYANT-WOLF: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. BRYANT-WOLF:

16 Q. Good afternoon, ma'am. You were with four friends in a  
17 black pick-up truck that had parked at the Amoco station; is  
18 that correct, on July 20th, 1996?

19 A. I was with five friends.

20 Q. Five friends. And the pick-up truck was facing  
21 University Avenue; is that correct?

22 A. Correct.

23 Q. You were in the bed of the pick-up truck; is that right?

24 A. Yep.

25 Q. And were you basically facing towards the north or

1 northeast?

2 A. I was facing towards the fence.

3 Q. You were facing towards the fence. Okay. And you heard  
4 eight to 12 gunshots; is that correct?

5 A. That is what my statement says. I remember it different  
6 now, but -- I remembered more.

7 Q. Okay. You looked over at the individuals with the guns;  
8 is that right?

9 A. Yep.

10 Q. And you saw a black man's head, with arms extended over  
11 the fence shooting; is that correct?

12 A. Yes.

13 Q. You may have seen more than one person and more than one  
14 gun, however; correct?

15 A. Correct.

16 Q. However, you got a very good look at one of the men;  
17 correct?

18 A. I would say a better look at one man. I wouldn't say a  
19 very good look.

20 Q. Do you recall being interviewed on July 21st at 1:30 in  
21 the morning by a Sergeant Weston?

22 THE COURT: Better set the year.

23 MR. BRYANT-WOLF: Thank you, your Honor.

24 BY MR. BRYANT-WOLF:

25 Q. July 21st, 1996, at 1:30 in the morning, by a Sergeant

1 weston?

2 A. I remember being interviewed. I don't recall the name,  
3 but...

4 Q. And do you recall being interviewed by a police officer?

5 A. Yes.

6 Q. And that was a couple, three hours after you viewed, or  
7 saw the shooting; is that right?

8 A. Could be three hours. I don't recall the time frame.

9 Q. Do you recall telling Sergeant Weston that you got a  
10 very good look at one of the men?

11 A. I don't recall that.

12 Q. Fair to say that your memory was better immediately  
13 after the incident?

14 A. Definitely.

15 Q. "Definitely." Thank you. And when you were answering  
16 the government's questions --

17 MR. BRYANT-WOLF: May I approach the exhibit,  
18 your Honor?

19 THE COURT: Approach the exhibit? Oh. Sure.

20 MR. BRYANT-WOLF: Thank you, judge.

21 BY MR. BRYANT-WOLF:

22 Q. I believe you walked over to Exhibit 1 and you pointed  
23 in this vicinity where you saw the man that you got a good  
24 look at; is that right?

25 A. Yes; on either side of the light post. I'm not sure of

1 the exact placement.

2 Q. Somewhere near this telephone pole and on either side of  
3 the light post. That's sort of like -- it's almost dead  
4 center in the middle of that fence; correct?

5 A. Yes.

6 Q. Okay. And the reason why you were able to get a very  
7 good look at this man you saw shooting was because your view  
8 was unobstructed; correct?

9 A. I don't recall that. Yes.

10 Q. Yes. Nothing blocked your view of this man you saw  
11 shooting; correct?

12 A. Not to my memory.

13 Q. And you were able to see him from the armpits up,  
14 including his head and face; correct?

15 A. Correct.

16 Q. Another reason why you had got a very good look at him  
17 is because he was right beside a very large commercial gas  
18 station-type light; correct?

19 A. I don't remember the placement of the light at this  
20 date.

21 Q. In fact, you told Sergeant Weston that you got such a  
22 good look at the shooter that you could identify him again  
23 if you saw him; correct?

24 A. I don't remember saying that. But if I said it that  
25 night, I would assume it to be true.



1 stipulation. That stipulation, your Honor, will be --

2 MR. PAULSEN: Your Honor, I think it has to be  
3 all parties if we're going to do it.

4 THE COURT: This would be a good time for a  
5 recess this afternoon. We'll take about 15 minutes.

6 Ma'am, we're just going to take a break and  
7 then we'll come back.

8 (At this time a recess was had commencing at  
9 approximately 3:50 p.m., and court reconvened at  
10 approximately 4:05 p.m.)

11 THE COURT: Counsel.

12 MR. BRYANT-WOLF: Your Honor, the parties have  
13 reached a stipulation.

14 THE COURT: You may proceed.

15 MR. BRYANT-WOLF: Your Honor, that stipulation  
16 is that this witness --

17 THE COURT: It looks like Mr. Ellison is  
18 thinking, before we get to that.

19 MR. BRYANT-WOLF: Okay, your Honor.

20 MR. ELLISON: Your Honor, I'd like to approach  
21 in lieu of the stipulation. I need a little more detail,  
22 because I haven't arrived at the point where I can  
23 stipulate.

24 THE COURT: Fine. In that case, there's no  
25 stipulation. We'll proceed.

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. Thank you. And when you looked at that second set of  
5 six, the officers then again said, "Don't say anything.  
6 Look at them carefully. And after you've looked at them all  
7 carefully, tell us if you recognize any of these guys";  
8 correct?

9 A. I believe so.

10 Q. And after you looked at the collection of 12  
11 photographs, you kept with your first choice, Photograph  
12 Number 2; correct?

13 A. I don't recall.

14 Q. You also recognized another person in the second set of  
15 six, didn't you?

16 A. I don't recall that, either.

17 Q. Do you recall telling Sergeants Nelson, Reed, and Weston  
18 that in the second photographic lineup, a guy in Photograph  
19 Number 8, you were fairly positive you saw that person with  
20 a gun at the Amoco; do you remember that?

21 A. No. Six years later I do not.

22 Q. I'm sorry?

23 A. Six years later I do not remember saying those words.

24 MR. BRYANT-WOLF: Your Honor, the government  
25 and the defense, Mr. Kamil Johnson, will enter into a

1 The lineups were all about the shooting at the Amoco;  
2 correct?

3 A. Correct.

4 Q. And you knew this was a very important case; is that  
5 right?

6 A. Yes.

7 Q. Very serious; right?

8 A. Yes.

9 Q. And when you looked at these photographic lineups, you  
10 wanted to be accurate and you wanted to tell the police the  
11 truth as you knew it; correct?

12 A. Correct.

13 Q. And the police sergeants even mentioned, "Look at the  
14 first six carefully. Don't say anything until you've had a  
15 chance to look at all six of those photographs"; correct?

16 A. Yes.

17 Q. And after they said that, you pointed at -- in Lineup  
18 Number 1 you pointed at Photograph Number 2; is that right?

19 A. I don't remember what number I pointed at, but...

20 Q. And you don't know, probably, but I'll ask you anyway.

21 You don't know that the man that you picked out as the  
22 shooter was one Anthony Shelby; correct?

23 A. I don't know that.

24 Q. You don't know that. Okay. Then the sergeants gave you  
25 another set of photographs to look at; right?

1 Q. Okay. And because you said that, that you could  
2 identify this man again because you got such a good look at  
3 him, two days later you were asked to look at some  
4 photographic lineups; correct?

5 A. I believe it was three. But, yes.

6 Q. I'm sorry. Let me just check. On July 23rd, 1996, you  
7 were asked to look at some photographs?

8 A. Yes.

9 Q. And this time three St. Paul police sergeants talked to  
10 you; is that correct?

11 A. I remember they were St. Paul police. I don't know  
12 their rank or the number.

13 Q. Do you recall the name Sergeant Neil Nelson?

14 A. No.

15 Q. Sergeant Reed?

16 A. No.

17 Q. Or Sergeant Weston again?

18 A. No.

19 Q. Okay. Been a long time. But you do recall that,  
20 because of your first statement to the police three hours  
21 after you saw this, they came to you with two sets of  
22 photographic lineups, if you will; correct?

23 A. Correct.

24 Q. And when they showed you the first set, obviously what  
25 they want to know is can you identify the shooters; right?

1 MR. ELLISON: We may be able to arrive at one,  
2 your Honor.

3 THE COURT: Well, why don't you gentlemen chat  
4 and fix this problem up.

5 (At this time an off-the-record discussion was  
6 had between the respective attorneys).

7 MR. ELLISON: Your Honor, may we approach?

8 THE COURT: Sure.

9 (The following side-bar record was made out of  
10 the hearing of the jury).

11 THE COURT: What's the problem?

12 MR. ELLISON: I would agree to stipulate if  
13 counsel does not provide my client's picture side by side  
14 with whoever shows up on that screen. The basis for that is  
15 there's been no police officer or custodian or anybody who  
16 has introduced my client's picture. Therefore, there's no  
17 foundation for it.

18 THE COURT: There's no stipulation, then.  
19 Let's proceed.

20 MR. ELLISON: Your Honor --

21 THE COURT: Counsel, I want you to quit  
22 playing games. You're not trying a lawsuit to me. We've  
23 got a jury here.

24 MR. ELLISON: It's not a game, your Honor, as  
25 long as I'm trying the case.

1 THE COURT: Then try the case.

2 (At this time the side-bar record concluded).

3 THE COURT: You may proceed.

4 MR. BRYANT-WOLF: Thank you, your Honor.

5 There will not be a stipulation.

6 THE COURT: Counsel, we'll move along.

7 MR. BRYANT-WOLF: Thank you, judge.

8 CROSS-EXAMINATION (Continuing)

9 BY MR. BRYANT-WOLF:

10 Q. Ms. Sommerfeld, I asked you generally about your  
11 interviews with police officers on July 21st, 1996. I want  
12 to ask you two specific questions about the interviews.  
13 First of all, you do recall being interviewed on July 21st,  
14 1996; is that correct?

15 A. Correct.

16 Q. And did you or did you not tell the sergeants, including  
17 Sergeant Weston, that you got a very good look at one of the  
18 men; is that true or not true?

19 A. I do not recall my exact words six years ago. I cannot  
20 comfortably say "Yes" or "No" I said that statement.

21 Q. Secondly, did you or did you not tell Sergeant Weston  
22 that you could identify the shooter again if you saw him  
23 again?

24 A. Again, I don't recall my exact statement that evening  
25 six years after the fact.

1 Q. On a different subject, then, after you left the Amoco  
2 station in the black pick-up truck, did you go to another  
3 location where one of your parties dialed 911?

4 A. Yes.

5 Q. And after you dialed 911, did you or any member of your  
6 party, to your knowledge, return to the Amoco at University  
7 and Hamline?

8 A. We all had to return.

9 Q. And when did you return to the Amoco station?

10 A. A time frame? You're asking for a time or...?

11 Q. Well, let me ask you this. Why did you have to return  
12 to the Amoco station?

13 A. Because we were instructed to do so by the 911 operator.

14 Q. And do you recall how much time elapsed between that  
15 directive to return and your return to the Amoco station?

16 A. I do not recall a time, the number of minutes. It was  
17 as fast as we could get there, with all the traffic, and  
18 everything.

19 Q. Okay. So let me ask you this. How far from the Amoco  
20 station was the other location where you dialed 911?

21 THE COURT: Counsel, how in the world is the  
22 relevance? Let's move this thing along.

23 MR. BRYANT-WOLF: Yes, your Honor. Nothing  
24 further. Thank you, judge.

25 THE COURT: Thank you. Further questions?

1 MR. PAULSEN: No redirect, your Honor.

2 THE COURT: Thank you, ma'am, you may step  
3 down. Be careful, if you would. Thank you.

4 MR. PAULSEN: Next witness is Michael Biebl.  
5 Your Honor, I'm anticipating a rule 803(5)  
6 exception.

7 THE COURT: Thank you. Sir, would you please  
8 step over by the witness box and raise your right hand.  
9 Sir, do you swear the testimony you're about to give in this  
10 cause now on hearing before the court and jury will be the  
11 truth, the whole truth, and nothing but the truth, so help  
12 you God?

13 THE WITNESS: I do.

14 THE COURT: would you please be seated. If  
15 you could get yourself by the microphone and please tell us  
16 your name and spell your last name.

17 THE WITNESS: Michael Biebl, B-i-e-b-l.

18 THE COURT: Mr. Biebl, what town do you live  
19 in?

20 THE WITNESS: Stillwater.

21 THE COURT: Thank you. Counsel.  
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MICHAEL BIEBL,

witness herein, called as a witness by Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PAULSEN:

Q. Mr. Biebl, how old are you?

A. Twenty-five.

Q. So back in July of '96, you were what, 19, or so?

A. Correct.

Q. What do you do for a living right now?

A. I'm an engineering consultant.

Q. Back in July of 1996, were you friends with a woman who just testified, Jayne Sommerfeld?

A. Yes.

Q. And would you and some other friends occasionally go on outings together?

A. Correct.

Q. Back then, what kind of vehicle did you have?

A. A '93 Chev pickup; black.

Q. A black one?

A. (Indicating affirmatively).

Q. I want to direct your attention to July 20 of 1996. Do you remember being at the Amoco station --

A. Yes.

1 Q. -- in the evening hours, about 10:45?

2 A. Yep.

3 Q. And do you remember something unusual happening?

4 A. Yes, I do.

5 THE COURT: Speak up a little bit, if you  
6 would, sir.

7 THE WITNESS: No problem.

8 BY MR. PAULSEN:

9 Q. First of all, there's a diagram over here of the Amoco  
10 station. This would be the back here where the fence is.

11 A. Right.

12 Q. I don't know if you can see this eraser, but another  
13 witness has indicated that was approximately where your  
14 truck was. Do you agree? Disagree?

15 A. I would agree.

16 Q. And which way was your pick-up truck facing?

17 A. The front was towards the street.

18 Q. Towards University?

19 A. Yes.

20 Q. And this is an open bed --

21 A. Yes.

22 Q. -- back here? where are you standing?

23 A. On the left side of the vehicle.

24 Q. Is that over here?

25 A. Yes.

1 Q. what happened?

2 A. We were standing there talking and, then, there were  
3 some gunshots, and we left.

4 Q. And I've talked you in preparation for trial; right?

5 A. Correct.

6 Q. Do you remember much about the details of what happened  
7 that night?

8 A. Not a whole lot. That was six years ago.

9 Q. Now, you did give a handwritten statement to the police  
10 that same night, did you not?

11 A. I did.

12 Q. And my understanding it was just a few hours later; does  
13 that sound about right?

14 A. Correct.

15 Q. Were the events still fresh in your memory at the time?

16 A. I'm sure they were.

17 Q. When you did this handwritten statement, did you put  
18 down your information accurately?

19 A. Yes.

20 Q. Did you sign that statement with your name, Michael J.  
21 Biebl?

22 A. Yes.

23 Q. Can you remember any of the details of what happened  
24 that night here today?

25 A. No. The details are vague.

1 MR. PAULSEN: Your Honor, at this time, under  
2 Rule 803(5), past recollection recorded, I'm going to ask  
3 permission for the witness to read his handwritten statement  
4 given a few hours after the event into the record.

5 THE COURT: Hearing no objection, you may  
6 proceed.

7 Members of the jury, this gentleman, according  
8 to his testimony, wrote this down at the time. Time has  
9 elapsed and now he has no particular recollection, other  
10 than in general, that something occurred, apparently. But  
11 this is what he wrote at that time.

12 Counsel.

13 MR. PAULSEN: May I approach him, your Honor?

14 THE COURT: Yes, sir.

15 BY MR. PAULSEN:

16 Q. Handing you a copy of that statement. And if you'd wait  
17 just a second. All right. would you read that into the  
18 record what you wrote that night?

19 A. Sure. "We were coming from the airport, turned right on  
20 Minnehaha and headed down" --

21 THE COURT: A little slower.

22 THE WITNESS: Sure.

23 THE COURT: You're getting through it real  
24 fast, but we're taking it down.

25 THE WITNESS: All right.

1 A. "We were coming from the airport, turned right on  
2 Minnehaha and headed down University towards Hamline.  
3 Turned left at Hamline and into Amoco and parked beneath the  
4 light in the back. I was out of the pickup, standing  
5 outside of the truck, in the back, talking to people in the  
6 bed. We talked for about five minutes, then three cars  
7 pulled in right after each other and went to the pumps. A  
8 minute later a fourth car pulled in and stopped on the north  
9 side of the station. It was a tan car, in the late '70s,  
10 early '80s. Then three men appeared over the fence" --

11 BY MR. PAULSEN:

12 Q. Let me stop you for a second. I just want you to slow  
13 down so everybody can hear. Okay?

14 A. Okay. Where would you like me to start?

15 Q. "Then three..."

16 A. "Then three men appeared over the fence; two were  
17 dark-skinned black men and the third was either white or a  
18 light-skinned black. The shooter closest to the rear of the  
19 truck had a dark blue T-shirt and had a black gun. He had a  
20 medium build. The second shooter had a white undershirt on,  
21 which was a tank top, with vertical stripping that was  
22 stitched in. He had a silver gun with a black handle on the  
23 grip. About five shots were fired from both guns. After  
24 the shooting was done, we drove off up to shelter (sic) and  
25 called 911 from the pay phone at a mobile phone. We were at

1 the Super America. The men had to be standing on something.  
2 The end."

3 MR. PAULSEN: No further questions.

4 THE COURT: Mr. Ellison, do you have any  
5 questions?

6 MR. ELLISON: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MR. ELLISON:

9 Q. Now, Mr. Biebl, some time has passed since that evening,  
10 but you do have some recollection of that evening and the  
11 days that were after that evening, isn't that right?

12 A. Vague.

13 Q. It sounds to me like at least on that night, you got a  
14 fairly good look at who it was that you -- who it was on the  
15 other side of that fence; would you agree, based on your  
16 statement?

17 A. Based on statement back then, yes, I would agree.

18 Q. Because it seems as though you were able to identify  
19 clothing on one of the men; is that right?

20 A. That would appear to be so.

21 Q. Yes. Skin tone on one man versus the other two; is that  
22 right?

23 A. Correct.

24 Q. It appears that you were able to identify the color of  
25 one of the firearms that you saw -- well, both firearms that

1 you saw, a silver one and a black one; is that right?

2 A. Correct.

3 Q. And, so, would you agree that that's a decent amount of  
4 detail right there?

5 A. I would agree so.

6 Q. Is that because at the time you were able to get a  
7 fairly good look at the people who were shooting? I mean,  
8 you may not remember today, but at the time do you recall  
9 being able to see them fairly well?

10 A. Decently, yes.

11 Q. Because it was nighttime; right?

12 A. Correct.

13 Q. But there's lighting back there; right?

14 A. I couldn't -- I don't remember how much lighting there  
15 was.

16 Q. Okay. It was enough for you to see the striped  
17 stitching on one of the shirts; right?

18 A. That's what it says, yes.

19 Q. It says: "Enough to see the black handle on the grip of  
20 one of the guns"; correct?

21 A. Yes.

22 Q. All right. Now, after this incident, you cooperated  
23 with the police; that's true, isn't it?

24 A. I believe so.

25 Q. And, in fact, do you recall a few days later when you

1 were actually asked to come down to look at some pictures?

2 A. I don't recall going down there. I know I did, but I  
3 don't recall going down there.

4 Q. Okay. Do you recall officers showing you some pictures?

5 A. I remember seeing pictures.

6 Q. Okay. You do recall those pictures. Do you recall when  
7 you were shown a group of pictures that you immediately --  
8 you looked at that set of pictures and said -- put your  
9 finger on one photograph and said, "Him." Do you recall  
10 that, being able to identify somebody fairly quickly?

11 A. I don't remember that, no.

12 Q. You don't recall that one, huh?

13 A. No.

14 Q. Okay. Do you think looking at a police report might  
15 refresh your recollection? Is that possible?

16 A. I certainly will take a look at it.

17 MR. ELLISON: Your Honor, may I?

18 THE COURT: Yes, sir. Sir, the question is  
19 not what it says on the paper. The question is does it  
20 refresh your recollection.

21 THE WITNESS: Okay.

22 BY MR. ELLISON:

23 Q. Take a moment to look at it.

24 THE COURT: Does that refresh your  
25 recollection, sir?



1 THE WITNESS: I don't recall this, no.

2 BY MR. ELLISON:

3 Q. Okay. Why don't we take it step by step.

4 A. Okay.

5 Q. A few moments ago I asked you if you remember seeing  
6 some pictures; do you recall that?

7 A. I recall seeing pictures.

8 Q. Now, after reading this report, does it help you  
9 remember those pictures or the time and the place and the  
10 manner in which you reviewed those pictures?

11 A. No, I don't remember reviewing those pictures at all. I  
12 know I looked at them, but I don't remember selecting.

13 Q. You don't remember selecting anybody out of the  
14 photographs?

15 A. I don't recall that, no.

16 Q. Do you remember being shown more than one set of  
17 pictures?

18 A. I can't say I do.

19 Q. Okay. When you looked at those pictures, do you  
20 remember ever picking out anybody? Do you remember that you  
21 -- that at some point you said, "That person." Or do you  
22 remember picking out anybody?

23 A. Again, I don't remember. Six years ago, I don't  
24 remember selecting anybody in particular, no.

25 Q. Okay. You may not remember selecting anybody in

1 particular, but do you remember selecting anybody?

2 A. I don't remember selecting anybody.

3 Q. Okay. Do you remember the officer telling you to look  
4 carefully at the photographs?

5 A. Again, I can't say for sure or not, no.

6 Q. Do you remember the officer telling you -- do you  
7 remember the officer's name, Officer Nelson?

8 A. No, not at all.

9 Q. Does that ring a bell for you?

10 A. No.

11 MR. ELLISON: Nothing further.

12 THE COURT: Thank you.

13 Mr. Mahoney.

14 MR. MAHONEY: No questions, your Honor.

15 THE COURT: Mr. Bryant-Wolf.

16 MR. BRYANT-WOLF: Thank you, judge.

17 CROSS-EXAMINATION

18 BY MR. BRYANT-WOLF:

19 Q. The incident that you witnessed occurred on July 20th,  
20 1996; correct?

21 A. I believe so.

22 Q. About three hours after that, you gave a statement to  
23 the police; correct?

24 A. Yes.

25 Q. You told Sergeant Weston that the first shooter was six

1 feet tall; correct?

2 A. If that's what you have written down from back then,  
3 that is correct.

4 Q. You told Sergeant Weston that the second shooter was six  
5 foot one inches tall; correct?

6 A. If that's what was written down, that's what's correct.

7 MR. PAULSEN: Your Honor, I just don't think  
8 these answers are responsive.

9 THE COURT: I think that's correct.

10 The question at this moment is does he recall  
11 that, not whether or not it's on the paper.

12 BY MR. BRYANT-WOLF:

13 Q. How tall were the men who were shooting the guns at the  
14 Amoco?

15 A. I don't recall.

16 Q. Do you recall making a statement to Sergeant Weston  
17 about the height of the three shooters?

18 A. No.

19 Q. Do you recall telling Sergeant Weston that the first man  
20 was six feet tall?

21 A. No.

22 Q. Do you recall telling Sergeant Weston that the second  
23 man was six foot one inches tall?

24 THE COURT: Counsel, you may see if you can  
25 prod his recall; and if you can, that's fine. But you're

1 not going to read the report.

2 BY MR. BRYANT-WOLF:

3 Q. Do you recall --

4 THE COURT: You might do it by showing it to  
5 him.

6 MR. BRYANT-WOLF: May I approach, your Honor?

7 THE COURT: Absolutely. And you all may, if  
8 you need to, throughout the trial.

9 BY MR. BRYANT-WOLF:

10 Q. Mr. Biebl, if I could ask you, maybe, to read this  
11 portion of this report to yourself and, then, I'll take it  
12 back from you. Thank you, sir. Mr. Biebl, does that  
13 refresh your memory that on July 21st, 1996 you told  
14 Sergeant Weston --

15 THE COURT: Does that refresh your  
16 recollection, sir?

17 BY MR. BRYANT-WOLF:

18 Q. Does that refresh your recollection, Mr. Biebl?

19 A. No, it does not.

20 Q. Okay. Two days later, on July 23rd, 1996, do you recall  
21 being shown a photographic lineup?

22 A. No.

23 Q. Do you recall pointing to a particular picture, or  
24 Photograph Number 2, saying, "Him"?

25 A. No.

1 Q. Do you recall looking at a photograph, Number 4?

2 THE COURT: Do you have any recollection of  
3 having gone back and looking at another set of photos?

4 THE WITNESS: No, I do not.

5 BY MR. BRYANT-WOLF:

6 Q. Again, on August 2nd, 1996, at about 4:25 in the  
7 afternoon, do you recall meeting with Sergeant Neil Nelson  
8 and Sergeant Weston at the Total gas station located at  
9 Highway 694 and Rice Street?

10 A. No, I don't.

11 Q. And you don't recall picking out Photograph Number 11 in  
12 a photographic lineup?

13 A. No.

14 Q. Do you recall the meeting at all?

15 A. No.

16 MR. BRYANT-WOLF: Thank you, sir. Thank you,  
17 your Honor.

18 THE COURT: Counsel.

19 MR. PAULSEN: Nothing further.

20 THE COURT: You may step down, sir. Thank  
21 you.

22 MR. PAULSEN: At this time, your Honor, the  
23 government calls Shalla Gillum.

24 THE COURT: Ma'am, would you please step right  
25 on up over this direction, please.

1 THE WITNESS: Over here?

2 THE COURT: Yes, ma'am. would you raise your  
3 right hand. Ma'am, do you swear the testimony you're about  
4 to give in this cause now on hearing before the court and  
5 jury will be the truth, the whole truth, and nothing but the  
6 truth, so help you God?

7 THE WITNESS: Yes.

8 THE COURT: would you please be seated.  
9 Ma'am, if you kind of turn and get yourself lined up with  
10 that microphone, if you'd tell us your name and please spell  
11 your last name.

12 THE WITNESS: My name is Shalla Gillum, last  
13 name G-i-l-l-u-m.

14 THE COURT: Ms. Gillum, why don't you pull the  
15 microphone a little closer to yourself. That's good. And  
16 what town do you live in?

17 THE WITNESS: Minneapolis, Minnesota.

18 THE COURT: Counsel.

19 SHALLA GILLUM,  
20 witness herein, called as a witness by Plaintiff, having  
21 been first duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. PAULSEN:

25 Q. Ms. Gillum, what do you presently do for a living?

1 A. I'm a supervisor at a nursing home.

2 Q. what are you the supervisor of there?

3 A. Food staff.

4 Q. Roughly, how many people do you supervise?

5 A. Probably about 30.

6 Q. How long have you been doing that?

7 A. Two years, almost.

8 THE COURT: Can you hear okay?

9 BY MR. PAULSEN:

10 Q. Directing your attention back to the summer of 1996,  
11 were you living at 1314 Irving Avenue North, I believe it  
12 is?

13 A. Yes.

14 Q. Is that an apartment building or what kind of building  
15 is it?

16 A. Yes; it's an apartment complex.

17 Q. And was there another woman living in that building at  
18 the same time in north Minneapolis named Lashawn Slayden?

19 A. Yes.

20 Q. Was she a neighbor of yours?

21 A. Uh-huh. Yes.

22 Q. Prior to the events of July 20, 1996, about how long had  
23 you known Lashawn Slayden?

24 A. Probably at the time two and a half, three years. About  
25 three years.

1 Q. How well did you know her?

2 A. well enough to knock at her door and borrow sugar.

3 Q. Had you done things with her and her kids before?

4 A. Yes.

5 Q. How many kids did she have back then?

6 A. Lashawn had one, a little boy.

7 Q. what was his name?

8 A. Robert.

9 Q. How old was he back in 1996?

10 A. Robert as four.

11 Q. And how many kids did you have back in 1996?

12 A. I had two.

13 Q. Who were they?

14 A. Kaniesha and Davisha.

15 Q. Davisha was age four back then?

16 A. Davisha was four and Kaniesha was two.

17 Q. Two, did you say?

18 A. Two.

19 Q. Back at the time this happened, did you know anything  
20 about Lashawn Slayden being involved with buying any guns  
21 illegally for any people, or anything like that?

22 A. No.

23 Q. Did you know anything about that?

24 A. No.

25 Q. Back on July 20th, 1996, were you pregnant?



1 A. Yes.

2 Q. How far?

3 A. Eight months.

4 Q. And on that date, Saturday, July 20, 1996, did Lashawn  
5 ask you to go someplace?

6 A. Yes. She asked me and the kids if we wanted to go to  
7 Rondo Days. She thought it would be a good idea because I  
8 could walk the baby down.

9 Q. "walk the baby down"?

10 A. Uh-huh.

11 Q. Meaning?

12 A. Make the labor easier.

13 Q. So what was your understanding about what Rondo Days  
14 was?

15 A. Just like a big family event. You go, maybe purchase  
16 things, play games, walk around, eat food. Just have a --  
17 family fun.

18 MR. PAULSEN: At this time, your Honor, I'm  
19 going to offer Government Exhibit 14.

20 THE COURT: Hearing no objection, 14 is  
21 admitted.

22 MR. ELLISON: Your Honor, we'll object --

23 THE COURT: All right.

24 MR. ELLISON: -- on the grounds of relevance,  
25 your Honor.

1 THE COURT: Counsel, would you put it up there  
2 for a minute? The objection is overruled.

3 MR. PAULSEN: Fourteen is admitted, your  
4 Honor?

5 THE COURT: Fourteen is admitted, subject to  
6 the objection.

7 BY MR. PAULSEN:

8 Q. In preparation for this trial, you provided us some  
9 pictures of Davisha?

10 A. Uh-huh. Yeah.

11 Q. I have two of them here. Who is that there on the left?

12 A. That is Davisha and Kaniesha.

13 Q. The other little girl is the other daughter, the  
14 three-year-old?

15 A. Yes, that's Kaniesha.

16 Q. But Davisha is here on the left?

17 A. Yes, that's Davisha.

18 Q. And, then, there's three little girls in this second  
19 picture. Who is this?

20 A. The first one is Davisha.

21 Q. That's Davisha?

22 A. Uh-huh.

23 Q. And the little one on the right here?

24 A. That's my other daughter, Kaniesha.

25 Q. Who is the little girl with them in the middle?

1 A. And that's my niece, Dania.

2 Q. Was she in the car that night too?

3 A. Yes, she was.

4 Q. So did you agree to go with Lashawn Slayden and her son  
5 Robert to Rondo Days?

6 A. Yes.

7 Q. And what did you do at Rondo Days?

8 A. We walked around, we fed the kids, we bought a few  
9 things, fed some animals, watched some performances. That  
10 basically was it. We enjoyed ourselves.

11 Q. Did you go to some event in the evening?

12 A. Yeah. We went to a drill team show at one of the high  
13 schools in St. Paul.

14 Q. And what was that all about?

15 A. A couple performances again, drills. And we sat there  
16 maybe 15, 20 minutes at the most -- 20 minutes at the most.  
17 Left there, heard a few shots while we were leaving.

18 Q. I want to stop you there. When you were leaving the  
19 drill team, you say you heard some shots?

20 A. Uh-huh.

21 Q. What do you mean by "shots"?

22 A. Gunshots.

23 Q. Nearby? Far? Where?

24 A. They weren't that far. It sounded like they was close.  
25 I don't know, a few blocks away.

1 Q. what happened after you heard the gunshots?

2 A. I was ready to go home --

3 Q. You wanted to go home?

4 A. -- because everybody had ran, and people were scared.  
5 And by then, I was ready to go home.

6 Q. what kind of car did Lashawn Slayden have back then?

7 A. I don't know the difference in cars. I don't know if it  
8 was a Cadillac or a Buick.

9 Q. what color?

10 A. It was blue.

11 Q. So after hearing these shots at the end of the drill  
12 team, where did you all go?

13 A. Back to the car -- well, first we got everybody that was  
14 originally with us back together, and then we went back to  
15 the -- went to the car. And we were getting ready to leave,  
16 until she saw some friends of hers, which was the Bogus  
17 Boys. So she stopped and had a few -- a conversation with  
18 them, and they made plans for later on that night. And we  
19 got in the car. They were supposed to --

20 Q. Was it Lashawn that had the conversation with the Bogus  
21 Boys?

22 A. Lashawn, "Zippy," "Shay," the girl that called herself  
23 "Aliza," they all were talking to them.

24 Q. we haven't talked about them yet.

25 MR. PAULSEN: At this time, your Honor, I'm

1 going to offer Government Exhibit 9.

2 THE COURT: Hearing no objection, 9 is  
3 admitted.

4 BY MR. PAULSEN:

5 Q. There's a little diagram here of the way people ended up  
6 sitting in the car at the time of the shooting. And we've  
7 already talked about the three people in front. Now, you've  
8 mentioned some other names here. Who is this person here,  
9 Yovondi Peavey?

10 A. That's "Shay."

11 Q. "Shay."

12 A. Uh-huh.

13 Q. And when did she join the group?

14 A. Oh. We picked her up when we were leaving the school  
15 from the drill team -- after watching the drill team, that's  
16 when "Shay" decided to ride with us. This is after the  
17 conversation with the Bogus Boys. She wanted to ride with  
18 us because she was ready to go home as well.

19 Q. And did anybody else join you at that point?

20 A. Yes. That was Alice.

21 Q. Is Alice over here?

22 A. Uh-huh. Yes.

23 Q. And did she have a child with her?

24 A. Yes, she did. She had her baby.

25 Q. And you've already talked about Kaniesha, your

1 two-year-old, and Dania, that was your four-year-old niece?

2 A. Yes.

3 Q. So after Lashawn Slayden talked to these Bogus Boys --  
4 by the way, about how many of these Bogus Boys was she  
5 talking to?

6 A. I'd say it probably was about four or five of them --  
7 four or five people that showed up.

8 Q. Did they have cars?

9 A. Uh-huh. Yeah.

10 Q. How many cars did you notice?

11 A. Two.

12 Q. Do you remember what kind of cars they were, what color?

13 A. I remember a maroon, kind-of-like Chevy. I don't know  
14 if that's what it was, but that type of car.

15 Q. What happened after Lashawn talked to these Bogus Boys?  
16 You said she made some plans with them?

17 A. Yes, she made plans with them. She let them know she  
18 had to drop me off and drop "Shay" off and, you know,  
19 Alice's baby, and everything. And they said, "Okay. Fine.  
20 we'll just follow you back to Minneapolis." So we got in  
21 the car, we were on our way back to Minneapolis, but she  
22 decided she wanted to ride around St. Paul -- or -- take the  
23 long way.

24 Q. Who decided that?

25 A. Lashawn. She decided she wanted to ride around

1 St. Paul. So we took the long way going back to  
2 Minneapolis. On our way back to Minneapolis, we heard some  
3 -- well, we saw a big commotion going on. It was ambulance,  
4 fire trucks, and everything, at a gas station. So they  
5 decided to stop to see what was going on. Had a  
6 conversation with a few people, it must have been somebody  
7 that they had knew. And we sat there a few minutes.

8 Q. Did you find out what happened at this place where the  
9 commotion was?

10 A. I guess somebody had got shot.

11 Q. What type of place was it where this commotion was?

12 A. A gas station.

13 Q. Do you know which gas station?

14 A. No.

15 Q. Was it a different gas station than the one later on  
16 where you got shot in?

17 A. Yes.

18 Q. Was it still over in St. Paul?

19 A. Yes.

20 Q. What happened after the commotion at that gas station?

21 A. We got in the car, went -- she made a statement she had  
22 to put some air in her tire before --

23 Q. Who said that?

24 A. Lashawn. She made a statement, "I have to put air in my  
25 tire before I drop you off, or you could take my car and

1 drive it." I didn't know St. Paul and the freeways that  
2 well, so I told her I'd prefer for her to drop me off at  
3 home. So we went to the gas station -- we drove down -- we  
4 left the one gas station that had all the commotion going on  
5 and went to the other gas station to get air for her tire.

6 Q. Was that the gas station that we have in this model  
7 here, the one at Hamline and University?

8 A. The Amoco that my daughter got killed at, yeah. So we  
9 get there --

10 Q. When you went there, were all nine of these people in  
11 the car in the positions that we got on the screen here?

12 A. Yes.

13 Q. When you went to that Hamline and University Amoco, were  
14 there any cars following you or with you?

15 A. Well, we had felt like we was being followed earlier  
16 that night, but once we got to the gas station, we didn't  
17 see anybody behind us -- well, not the car that we thought  
18 was following us, we didn't see it anymore. So when we  
19 pulled in the gas station there was Lashawn and, then, I  
20 guess one of the Bogus Boys pulled in with -- and she was  
21 putting the air in her tire.

22 Q. So there was at least one car of Bogus Boys at the gas  
23 station with you?

24 A. Yeah.

25 Q. Do you remember somebody named "Stoney"?



1 A. Yeah, I remember hearing his name.

2 Q. Have you seen him before? would you recognize his  
3 picture? well, let me show you some pictures.

4 MR. PAULSEN: If it's all right, your Honor.

5 THE COURT: You may.

6 BY MR. PAULSEN:

7 Q. See if you recognize anybody.

8 THE COURT: If you want to put them down, she  
9 can probably tap on the screen, if you want.

10 MR. PAULSEN: what's that, your Honor?

11 THE COURT: If you put it back in front, I can  
12 put it on the screen --

13 MR. PAULSEN: Oh.

14 THE COURT: -- and she can tap on it,  
15 probably.

16 A. This one, he was one -- he was at the gas station that  
17 night.

18 BY MR. PAULSEN:

19 Q. You're pointing to Marvin Robinson, known as "Starvin"  
20 Marvin. He was at the gas station with you that night?

21 A. Yes.

22 Q. Meaning the Amoco at Hamline and University?

23 A. Yes.

24 Q. Any others that you recall being there?

25 A. And this one, I believe I saw him.

1 Q. You just pointed to Robert Williams, also known as  
2 "Stoney." He was at that Amoco gas station at Hamline and  
3 University?

4 A. And there was a few more of them, but they were kind of  
5 wild looking, so I can't remember how they really looked.

6 Q. Now, when the blue car that Lashawn Slayden was driving  
7 pulled into the Amoco, where did it park?

8 A. She parked by the air pumps on the side of -- kind of  
9 like on the side of the gas station, over by the fences.

10 Q. We've got a diagram here -- this model, I should say --  
11 and got the blue Lashawn Slayden car parked about here.

12 Does that look about right to you?

13 A. Yes.

14 Q. So between the back of the gas station and the fence  
15 that separates the gas station from the alley?

16 A. That's just where she was parked at.

17 Q. By the way, had there been a stop prior to this for any  
18 food?

19 A. Yeah. We had stopped and got the kids some Kentucky  
20 Fried Chicken.

21 Q. What was Lashawn Slayden doing when the shooting  
22 started?

23 A. Excuse me? Could you repeat that?

24 Q. What was Lashawn Slayden doing when the shooting  
25 started?

1 A. She was putting air in her tire.

2 Q. And where would she have been in relation to where the  
3 car is on the model here?

4 A. She was in the front, on the driver's side, by the front  
5 tire, bending down.

6 Q. Pardon?

7 A. She was bending down.

8 Q. Was everybody else still in the car?

9 A. Yes, pretty much -- well, I take that back, because  
10 "Shay" and Alice had gotten out of the car to talk to a  
11 couple of the Bogus Boys, but, then, they had got back in  
12 once they were done.

13 Q. So they were all sitting in the car when the shooting  
14 started?

15 A. Yes.

16 Q. By the way, were there any Bogus Boys -- any males --  
17 standing by your car or near your car?

18 A. No.

19 Q. Were the windows on the car up or down?

20 A. Down.

21 Q. How was the lighting where the car was parked?

22 A. It's pretty much bright. It was bright but dim. In the  
23 front part of the car it was dim and, then, right where we  
24 were parked at, like from the front seat to the backseat,  
25 you can see light in the car, because there was light.

1 Q. How long do you think you'd been parked there before the  
2 shots rang out?

3 A. Probably about three or four minutes.

4 Q. Were the kids still awake?

5 A. Yes.

6 Q. Did you talk to any of them?

7 A. Yes. I was telling them to sit down because they were  
8 getting a little restless. And I was telling them to sit  
9 down. My daughter had just reached over the front seat and  
10 asked me something, and I told her to sit down and "we'll be  
11 leaving in a minute."

12 Q. Was that Davisha?

13 A. Yes.

14 MR. PAULSEN: Your Honor, could we go back to  
15 the diagram?

16 THE COURT: Counsel, you might clear out the  
17 marks.

18 BY MR. PAULSEN:

19 Q. After you told Davisha to sit back down in the car, what  
20 happened?

21 A. That's when they started shooting.

22 Q. Tell us about that.

23 A. Well, they -- I heard the first gunshots, and we was  
24 kind of shocked -- we heard the first shooting and, then, we  
25 was shocked. We kind of looked around, you know, because we

1 didn't know where it was coming from. And then I turned  
2 around -- then, once we realized where it was coming from,  
3 that's when I turned around. I reached over to put my hand  
4 over Robert so that I could put him down so that he wouldn't  
5 get hit in his head, because of how the bullets was coming  
6 through the car, and that's when I got shot.

7 Q. where did you get shot?

8 A. In my leg -- in the back of my leg.

9 Q. which leg?

10 A. My right leg. And, then, we sat there and we waited for  
11 it to be over with.

12 Q. How long did it last?

13 A. It seemed like a long time, but it wasn't. Probably  
14 about a minute, a minute and a half, two minutes. I don't  
15 know.

16 Q. could you tell where the shots were coming from?

17 A. Yes.

18 Q. where?

19 A. On the right side of the car, from this way.

20 Q. could you tell how many guns were being fired?

21 A. No. But you could tell that there was more than one.

22 Q. How could you tell?

23 A. Because the bullets was coming this way and they was  
24 coming this way, from both sides, from the front way and  
25 from the back way, like the passenger-seat door over here

1 and, then, from that door to the backdoor.

2 THE COURT: Ma'am, would you stay a little  
3 more toward the microphone?

4 THE WITNESS: Oh. Okay.

5 A. From that door to the backdoor, you could tell the  
6 bullets was coming in that way.

7 BY MR. PAULSEN:

8 Q. Did you actually see anybody shooting?

9 A. No.

10 Q. What was going on in the car while these shots were  
11 hitting the side of the car?

12 A. Screaming and hollering.

13 Q. Were you, yourself, screaming?

14 A. Yes.

15 Q. Do you know what you were screaming?

16 A. "Get the kids out of the car."

17 Q. How about the kids, were they screaming?

18 A. Yes.

19 Q. When the shooting ended, where did you end up?

20 A. I was in the front seat. My first instinct was to look  
21 back to see -- to make sure the kids had all got out of the  
22 car. When I looked back, I looked down in the backseat on  
23 the floor and there was my baby slumped over a seat. So I  
24 got out of the front seat of the car -- and I had forgot I  
25 was shot, so when I got out of the car, I kind of fell, and

1 "Shay" and them had finished helping pull her out of the car  
2 for me, and I sat there and I held my baby until the  
3 paramedics came.

4 Q. Could you tell whether she was still alive at all?

5 A. I thought she was, but she wasn't.

6 Q. When you saw Davisha slumped over the hump in the  
7 backseat of the car -- I'm sorry I have to ask you for  
8 details -- but which way was her head facing?

9 A. Towards the gas pumps.

10 Q. Was there blood?

11 A. Yes. She was facing towards the gas pumps.

12 Q. Davisha died that day?

13 A. Yes.

14 Q. How about you? Did you go to the hospital?

15 A. Yes.

16 Q. How long were you in the hospital?

17 A. To be honest with you, I don't remember.

18 Q. Did you find out whether that bullet was still in your  
19 leg?

20 A. Could you say that again?

21 Q. Was the bullet still in your leg?

22 A. Yes.

23 Q. How long did that bullet stay in your leg?

24 A. A year and a half.

25 Q. Since this happened, have you talked to Lashawn Slayden

1 again?

2 A. No.

3 Q. Have you seen her again since then?

4 A. No.

5 Q. Do you know what became of Lashawn Slayden after this?

6 A. No.

7 Q. Was she still living over at that same apartment with  
8 you after this happened?

9 A. No. She moved out the day we buried my daughter.

10 Q. Davisha was four when she died. Can you tell us just a  
11 little bit about her?

12 A. Davisha was a bright little girl. She was sweet, she  
13 was smart, she was happy, and she was my first child. She  
14 had a lot of life in her, that I do know, that she didn't  
15 finish sharing with us. She was in school before she died,  
16 just graduated her preschool. She knew how to write, sing,  
17 dance. She was just a lot of fun. She was a happy kid.

18 MR. PAULSEN: No further questions.

19 THE COURT: Cross-examination?

20 MR. ELLISON: Very briefly, your Honor.

21 CROSS-EXAMINATION

22 BY MR. ELLISON:

23 Q. Ms. Gillum, you didn't see who was doing the shooting  
24 that night; is that right?

25 A. No.



1 Q. And, obviously, you never were able to identify any of  
2 the people who shot your child, isn't that right?

3 A. Yes. No, I can't identify them.

4 MR. ELLISON: Nothing further.

5 THE COURT: Mr. Mahoney?

6 MR. MAHONEY: No questions, your Honor.

7 MR. BRYANT-WOLF: No questions, your Honor.

8 THE COURT: Mr. Bryant-wolf?

9 MR. BRYANT-WOLF: No questions.

10 THE COURT: Anything else?

11 MR. PAULSEN: No, your Honor.

12 THE COURT: Thank you, Ms. Gillum. You may  
13 step down.

14 MR. PAULSEN: I have another witness  
15 available, your Honor, but it involves the stipulation  
16 dispute. It might be useful to work that out.

17 THE COURT: Members of the jury, let me ask  
18 you if you'd be good enough to go back to your deliberation  
19 suite.

20 (The following proceedings were had in open  
21 court, out of the hearing and presence of the jury).

22 THE COURT: Gentlemen.

23 MR. PAULSEN: well, I think the issue we've  
24 come to is what use, if any, is going to be made of these  
25 photo spreads and the photos that a couple of witnesses

1 picked out. I have no problem with having the officer who  
2 showed those photo spreads come in and talk about them, but  
3 I also want to introduce and use some photographs taken at  
4 or about the same time of the defendants to show similarity  
5 in appearance. The argument was made by at least one, maybe  
6 two, of the defense attorneys that the people that were  
7 picked out by the eyewitnesses must be the real shooters.  
8 And to avoid -- by the way, a declaration that the witnesses  
9 themselves do not subscribe to. But the point is that in  
10 order to give a fair showing of what these witnesses really  
11 saw, it would be useful to show not only the picture they  
12 picked out but to show pictures of one or more of the  
13 defendants taken at or about the same time, for comparison  
14 purposes, to allow the jury to decide whether they are  
15 similar or not.

16 MR. ELLISON: Your Honor, I don't have any  
17 problem with the stipulation itself. My problem was with  
18 the introduction of my client's booking photograph as an  
19 exhibit in this case without it being introduced with the  
20 proper foundation. And, then, also, your Honor -- I mean,  
21 if we would have been notified that there was an issue of  
22 eyewitness identification and my client was picked out of a  
23 photographic lineup or out of just a single photograph, then  
24 I would have made a motion to exclude that. We may have  
25 argued -- or maybe not -- but we may have argued that it was

1 impermissibly suggestive. And maybe the court would have  
2 suppressed it, maybe the court would not have. The way  
3 we're doing it now is just "Here's my client's photograph"  
4 and, you know, "It looks like that guy." And I don't know  
5 what the witnesses -- I mean, it just seems to me, your  
6 Honor, that we haven't gone through the proper procedure in  
7 order to introduce my client's photograph in that manner.  
8 And, also, I don't -- you know, I think if he's going to  
9 bring in an officer who keeps a booking photograph in the  
10 normal course of business, maybe we can get through the  
11 booking -- maybe we can get -- then we can deal with the  
12 foundation issue. But to do what counsel is trying to do  
13 just seems to me to just do an end around the whole  
14 constitutional process when we -- of the way we deal with  
15 photo arrays and booking photographs and eyewitness  
16 identification. I mean, I would like to do the stipulation.  
17 If, at some point in this trial, there's foundation to admit  
18 my client's photograph, the jury can sit there in  
19 deliberations and look at it, I imagine. But, I mean, no  
20 one identified my client. No one identified him. There's  
21 no booking photograph that counsel will be able to produce  
22 to say, "Yeah, we ID'd Timothy McGruder." Yeah, it could  
23 happen right in this witness stand right before the jury,  
24 and I have no way of controlling what these folks are going  
25 to say once they get on the witness stand. And I think the

1 argument is being made that they look similar. well, your  
2 Honor, there's a lot of people -- everybody on that booking  
3 photograph looks similar, but they picked out one. They  
4 didn't pick out my client. So why are we going to introduce  
5 my client in front of the jury?

6 THE COURT: It's pretty obvious. They didn't  
7 pick out your client because your client's picture wasn't in  
8 there.

9 MR. ELLISON: Right. But they never picked --  
10 I mean, certainly they could have shown --

11 THE COURT: Perhaps -- I mean, you win on the  
12 point.

13 MR. ELLISON: Okay. So, I mean, I guess what  
14 I'm saying is I want to do the stipulation, I want to say  
15 this is who was picked out. But in terms of my client being  
16 brought before witnesses, saying, "Does Mr. McGruder look  
17 similar to that person?" I just object to that, your Honor.  
18 Otherwise, I agree.

19 THE COURT: To my knowledge -- I don't know,  
20 are you going to ask that question?

21 MR. PAULSEN: No, your Honor. This isn't a  
22 question of doing a one-photo showup of Mr. McGruder. This  
23 is a question of there having been done six years ago a  
24 photo spread where, in one photo spread, Number 2 was picked  
25 out, in another photo spread Number 8 was picked out. And

1 what we are doing now is simply showing the jury the two  
2 photos that were picked out and, for comparison purposes --  
3 because six years have passed -- and just looking at the  
4 defendants in court is not a fair representation for  
5 comparison purposes. what we're doing is providing  
6 comparison photos of some of the defendants taken at or  
7 about the same time as the identification was made.

8 THE COURT: Mr. Ellison's objection is well  
9 taken insofar as the fact that the other person who is  
10 looking at it has no reason to know when any photograph was  
11 taken by anybody or who was saw. So you may point out which  
12 pictures were taken, and in argument -- I presume you'll lay  
13 foundation for the booking photo -- and in argument you may  
14 offer it and do with it as you deem appropriate; otherwise,  
15 you're asking witnesses who have no foundation to know what  
16 they're talking about. whether two things look alike is a  
17 jury question, not for a witness, anyway.

18 MR. PAULSEN: And that's all I wanted to do  
19 with this upcoming witness is rather than relying on  
20 stipulations, which are not agreed to by all parties, to  
21 have the officer say which photograph was picked out by  
22 Ms. Sommerfeld.

23 THE COURT: That's fine.

24 MR. PAULSEN: But, then, I want to be able to  
25 introduce the comparison photos. That's what --

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THE COURT: You may --

MR. PAULSEN: -- Mr. Ellison's objected to.

THE COURT: -- introduce the comparison photos by anybody who's a records custodian of the organization that took that photo. Okay? we'll recall the jury.

MR. OSTGARD: Excuse me, your Honor, if I could address the court on that issue.

THE COURT: Sure.

MR. OSTGARD: It seems to me that we still have -- we've solved the foundation problem, but we still have a relevance problem. I take it we're talking about photographs taken of the defendants at various times in the past. The first relevance issue is the photograph being offered by the government close enough to July of 1996 to be a fair representation of what the defendant looked like at that time; and, then, the second issue is --

THE COURT: So far we're shooting in the blind. I have no idea what we're talking about, because I don't know when the photo was taken, either.

MR. OSTGARD: well, I know the photograph that we saw of the other defendant was taken a year before the incident in question. But we also have the problem that -- the descriptions that have been given by the witnesses so far -- the witnesses that we've heard so far have not included any -- or -- sufficient details about the facial

1 features of the people that they saw. About the only thing  
2 we've heard about is some hair and the tone of skin. If the  
3 government's purpose is to demonstrate or to corroborate the  
4 descriptions given by these witnesses -- and it seems to me  
5 that that may be the only relevant purpose for introducing  
6 these booking photographs -- there hasn't been enough  
7 testimony so far to make that corroboration possible.  
8 They've given descriptions about heights, about body builds,  
9 and that kind of thing, but they have not talked about  
10 facial features. That, of course, is the only thing in the  
11 booking photographs. And, therefore, there isn't any  
12 relevance established or a corroboration of their witnesses'  
13 eyewitness descriptions.

14 THE COURT: I take it that the nature of that  
15 objection is foundation; and if that's what it is, it's  
16 overruled. Otherwise, I can't think of a basis.

17 MR. OSTGARD: The nature of the objection,  
18 your Honor, is relevance and 403.

19 THE COURT: In that case, it's overruled. And  
20 403, it's overruled. All right. Call the jury.

21 MR. ELLISON: One last thing, your Honor, it  
22 is five o'clock.

23 THE COURT: No; it's ten minutes to 5:00.

24 MR. ELLISON: Oh. Okay. My watch is off.

25 THE COURT: And this is federal court. The

1 company pays me until 5:00.

2 (The proceedings had out of the hearing of the  
3 jury concluded at approximately 4:50 p.m.)

4 (The jury was recalled at approximately 4:52  
5 p.m.)

6 MR. PAULSEN: Government calls Sergeant Neil  
7 Nelson.

8 THE COURT: would you step over there and  
9 would you raise your right hand. Sir, do you swear that the  
10 testimony you're about to give in this cause now on hearing  
11 before this court and jury will be the truth, the whole  
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do swear.

14 THE COURT: Please be seated. Sir, would you  
15 please tell us your name and spell your last name.

16 THE WITNESS: My name is Neil Paul Nelson. My  
17 last name is spelled N-e-l-s-o-n.

18 THE COURT: You're employed, Mr. Nelson?

19 THE WITNESS: Yes, I am.

20 THE COURT: In what capacity?

21 THE WITNESS: I am a Sergeant-investigator  
22 with the St. Paul Police Department.

23 THE COURT: All right. And St. Paul,  
24 downtown, probably is your regular duty station?

25 THE WITNESS: That is correct.



1 THE COURT: Counsel, you may proceed.

2 NEIL PAUL NELSON,

3 witness herein, called as a witness by Plaintiff, having  
4 been first duly sworn, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. PAULSEN:

8 Q. Sergeant Nelson, how long have you been a police  
9 officer?

10 A. Almost 25 years.

11 Q. And what division are you in right now?

12 A. I am currently assigned to the homicide unit.

13 Q. Have you gone have you been working homicide?

14 A. A little over eight years.

15 Q. So you were working homicide back in July of 1996?

16 A. That is correct.

17 Q. Were you one of the principal investigators of the  
18 Davisha Gillum murder at the Hamline and University Amoco  
19 station that day?

20 A. Yes, sir, I was.

21 Q. Was there a shooting at a different Amoco station the  
22 same day?

23 A. Yes, there was.

24 Q. When, and where?

25 A. There was a shooting approximately a half hour preceding

1 the shooting at Hamline and University at an Amoco station  
2 at Lexington and Interstate 94.

3 Q. Who was the shooting victim in that case?

4 A. Mr. Stansbury. I don't recall his first name.

5 Q. Okay. And was this Mr. Stansbury killed or just  
6 wounded?

7 A. He was wounded.

8 Q. Were there, in fact, some other shootings during the day  
9 during that Rondo's Day event?

10 A. Yes, there were.

11 Q. Can you estimate how many reports of shootings there  
12 were throughout that day?

13 A. Total, between, I think, five and eight shootings were  
14 unknown for sure if they were -- five minimum and possibly  
15 as many as eight.

16 Q. Now, there came a time when you prepared some photo  
17 spreads, meaning photographic lineups, for people to look  
18 at. And one of the photo spreads has already been admitted  
19 in evidence, Government Exhibit Number 33, this one here; do  
20 you recall that one?

21 A. Yes, I do.

22 Q. Okay. And this one you included a photograph of Number  
23 2, which the parties have all agreed here is Anthony Shelby.

24 A. That is correct.

25 Q. I think his nick name was -- do you remember it?

1 A. "Senile."

2 Q. Can you tell us why you included Anthony Shelby's  
3 picture in that photo spread?

4 A. Because Mr. Stansbury identified Anthony Shelby as one  
5 of the individuals involved in his shooting a half hour  
6 earlier at the other Amoco.

7 Q. So Anthony Shelby was a suspect in the other Amoco  
8 shooting?

9 A. That is correct.

10 Q. What was the theory at that point about why you would  
11 include him in the photo spread to be shown to witnesses  
12 from the Amoco where Davisha was killed?

13 MR. BRYANT-WOLF: Objection, your Honor;  
14 relevance.

15 THE COURT: The objection is overruled.

16 You may answer.

17 A. At the time I was trying to see if I could develop a  
18 connection between any of the shootings that had taken place  
19 that day, because some of the previous shootings had  
20 suspects and the shooting with Davisha did not.

21 BY MR. PAULSEN:

22 Q. Do you recall showing this photo spread, Government  
23 Exhibit 33, the one with Anthony Shelby in Position Number  
24 2, to witness Jayne Sommerfeld?

25 A. Yes, I do.

1 Q. And just so the record is clear, she was a witness at  
2 the Hamline and University Amoco, the Davisha Gillum  
3 shooting?

4 A. That is correct.

5 Q. Now, when you showed this six-person photo spread to  
6 her, did she pick anybody out?

7 A. Yes. She picked Photograph Number 2.

8 Q. which happens to be that Anthony Shelby.

9 A. That is correct.

10 Q. Now, this is Anthony Shelby that we're looking at here;  
11 is that right?

12 A. That is correct.

13 Q. There's another document already in evidence, Government  
14 Exhibit 34, a photograph of Timothy McGruder.

15 MR. ELLISON: Objection, your Honor;  
16 foundation.

17 THE COURT: Let me hear the question.

18 BY MR. PAULSEN:

19 Q. Was Timothy McGruder's photograph in that six-person  
20 photo spread that you showed to Jayne Sommerfeld?

21 MR. ELLISON: Same objection.

22 THE COURT: Sustained. You may remove the  
23 photo.

24 MR. PAULSEN: Can he answer the question?

25 THE COURT: You may answer the question.

1 BY MR. PAULSEN:

2 Q. Let me repeat it. Was the picture of Timothy McGruder  
3 included in that six-person photo spread that you showed to  
4 Jayne Sommerfeld?

5 A. No, it was not.

6 Q. Was any picture of Keith Crenshaw in that six-person  
7 photo spread that you showed to Jayne Sommerfeld?

8 A. No, it was not.

9 Q. Was any picture of Kamil Johnson in that six-person  
10 photo spread that you showed to her?

11 A. No, sir.

12 Q. At that point, when you showed this photo spread to her,  
13 which I think we've established the date was July 23rd,  
14 1996, three days after the shooting at the Amoco, had you  
15 focused on those people as suspects yet?

16 A. No, I had not.

17 THE COURT: I think this would probably be a  
18 good time to take a break for the evening.

19 Members of the jury, we have now begun the  
20 trial, and now you have a fair amount of at least the  
21 beginnings of the information in the case. Let me tell you,  
22 first of all, we are going to start -- notwithstanding a  
23 little calendar that I gave you, we will start at nine  
24 o'clock tomorrow morning. The second thing is one or more  
25 of your friends or colleagues may ask you about the case and

1 you may tell them that it concerns a shooting that took  
2 place a few years ago, and then they will ask you for some  
3 more details, and now I will tell you you ought not to give  
4 them any details, because to draw those kinds of details out  
5 will require you to draw the kinds of conclusions that I  
6 suggested you ought to wait until you get all the pieces to  
7 do. So with that in mind, then they're going to say, "Oh,  
8 come on, tell me what you learned," and then you tell them  
9 that I'm a very unpleasant person, and mean, and, therefore,  
10 you can't. Okay? So blame me because everybody else does.  
11 All right. The next thing I will tell you that we have been  
12 favored by some of the leading lights of the local media  
13 around here today, some of whom work for the print media and  
14 some work for the broadcast media. We are always thrilled,  
15 as I told you, whenever they appear. However, you will not  
16 get to enjoy the labors of their works. Okay? This would  
17 be a really good time to watch Biography, watch the Twins,  
18 curl up with a good book, or something along that line.  
19 Okay? And if you do care about what's in the newspaper, ask  
20 a friend to clip it out another day and put it in an envelope  
21 and you'll see what I talked about before. With all that in  
22 mind, I hereby enter an order to have a pleasant evening.  
23 Good night.

24 (The following proceedings were had in open  
25 court out of the hearing of the jury).

1 Counsel, are we all fully informed on the time  
2 we are to start tomorrow's proceeding?

3 MR. ELLISON: Let the record reflect we are,  
4 your Honor.

5 THE COURT: Excellent. Have a pleasant  
6 evening. Anything else we need to take up?

7 MR. OSTGARD: Your Honor, the calendar said  
8 that we were finishing early tomorrow.

9 THE COURT: Yes; but I probably lied about  
10 that too. All right. We'll see you. Have a pleasant  
11 evening.

12 (Court was in recess at approximately 5:00  
13 p.m., on May 28th, 2002).

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1 STATE OF MINNESOTA )  
 2 ) ss.  
 3 COUNTY OF HENNEPIN )  
 4  
 5

6 I, Ronald J. Moen, CSR, RMR, and a Notary Public in  
 7 and for the County of Hennepin, in the State of Minnesota,  
 do hereby certify:

8 That the said proceedings was taken before me as a  
 9 CSR, RMR, and Notary Public at the said time and place and  
 was taken down in shorthand writing by me;

10 That said proceedings was thereafter under my  
 11 direction transcribed into computer-assisted transcription,  
 and that the forgoing transcript constitutes a full, true  
 12 and correct report of the transcript of proceedings which  
 then and there took place;

13 That I am a disinterested third person to the said  
 14 action;

15 That the cost of the original has been charged to the  
 16 party who ordered the transcript of proceedings, and that  
 all parties who ordered copies have been charged at the same  
 rate for such copies.

17 That I reported VOLUME I, pages 1 through 192.

18 IN WITNESS THEREOF, I have hereto subscribed my hand  
 19 and affixed my official seal this 20th day of December 2002.

20 *Ronald J. Moen*  
 21 -----

22 Ronald J. Moen,  
 23 CSR, RMR

