

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 -----

4 STATE OF MINNESOTA,

5 Plaintiff,

6 vs. TRANSCRIPT OF PROCEEDINGS

7 TAMIKA SUTTLES and DANIEL DRLJIC,

8 Defendants.

9 -----

10 DISTRICT COURT FILES: 62-CR-10-1465 and 62-CR-10-1464

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12 The above-entitled matter came on for jury trial before
13 the HONORABLE GAIL CHANG BOHR, one of the judges of the
14 above-named court, on the 24th day of November, 2010, in the
15 Ramsey County Courthouse, St. Paul, Minnesota.

16 * * *

17 APPEARANCES

18 ELIZABETH LAMIN, of the RAMSEY COUNTY ATTORNEY'S
19 OFFICE, 50 West Kellogg Boulevard, Suite 315, St. Paul,
20 Minnesota 55102, appeared representing the Plaintiff.

21 JILL CLARK, of the LAW OFFICE OF JILL CLARK, P.A., 2005
22 Aquila Avenue North, Golden Valley, Minnesota 55427,
23 appeared representing the Defendants.

24

25 (Whereupon, the following proceedings were duly had.)

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1 THE CLERK: Calling page one, line one, and
2 page two, line three, Daniel Drljic and Tamika
3 Suttles.

4 THE COURT: And appearances, please.

5 MS. LAMIN: Good morning, Your Honor,
6 Elizabeth Lamin on behalf of the State.

7 MS. CLARK: Jill Clark appearing on behalf of
8 both Defendants, who are here in person.

9 THE COURT: Good morning, everyone. Good
10 morning, Mr. Drljic. Good morning, Ms. Suttles.
11 You wanted to have some time this morning before
12 we call the jury, apparently, to put some things
13 on the record.

14 So, we'll start with Ms. Clark.

15 MS. CLARK: Thank you, Your Honor. As the
16 Court knows, we wanted to make a record yesterday,
17 and I was certainly willing to work with
18 everyone's schedule and defer it until today. I'm
19 not going to make a complete record at this time
20 because there are some issues that are not
21 emergent before the jury enters the courtroom, but
22 I do believe that there are some issues that are
23 emergent.

24 The first thing I'd like to state for the
25 record was that I went down to talk with

1 Sgt. Strickland, view evidence in the property and
2 evidence room and take pictures of what they still
3 had left, and a lot of things had already been
4 given away. At that time, Sgt. -- I asked to
5 interview Sgt. Strickland. He called -- my
6 understanding is he called Rick Dusterhoft and
7 said is that fine and he said it was fine, and I
8 interviewed him. And as the Court knows, I made a
9 tape of that. We later had a court reporter
10 transcribe it, but there was never any statement
11 by Sgt. Strickland under oath at that time. You
12 know, it's just a court reporter transcription of
13 the audiotape. For some reason, I ran across
14 today something Mr. Dusterhoft had sent to the
15 Court indicating that we'd had some -- I don't
16 know -- I guess the allegation was secret
17 testimony from Strickland under evidence (sic),
18 which did not occur.

19 The State does have a copy of the transcript
20 of that audiotape. Obviously also --

21 THE COURT: It was an audiotape that was not
22 done under oath, correct?

23 MS. CLARK: It was not done under oath.

24 THE COURT: All right.

25 MS. CLARK: We just had -- for ease of

1 transcription, had a court reporter listen and
2 transcribe it.

3 THE COURT: Okay. But you're not planning to
4 introduce that?

5 MS. CLARK: No. I'm just confirming that
6 it's not under oath, but that the prosecution does
7 have a copy of it. I've talked to Ms. Lamin and
8 she does have a copy of it.

9 Then Ms. Lamin had asked me about a
10 transcription of an audiotape that had been made
11 by Tamika Suttles. The Court probably recalls
12 that from the omnibus, as well.

13 THE COURT: Right.

14 MS. CLARK: And she confirmed with me this
15 morning that she did find it. That was actually
16 filed with some of our motion papers back in May.

17 THE COURT: Okay. I remember that, although
18 I did have some questions about authenticating the
19 tape and those kinds of things.

20 MS. CLARK: Yeah, I don't know if it will be
21 an issue or not.

22 THE COURT: Okay.

23 MS. CLARK: If he just admits to what he
24 said, I don't think we have to play the tape.

25 THE COURT: Well, that may be an issue, but

1 keep going.

2 MS. CLARK: Ms. Suttles can authenticate the
3 tape.

4 THE COURT: We will deal with that later.

5 MS. CLARK: Is there an issue I should be
6 prepared for? Is there something on the Court's
7 mind that I could prepare for?

8 THE COURT: Well, you're raising some things
9 here that we had not talked about in that regard.
10 However, just keep going right now --

11 MS. CLARK: Okay.

12 THE COURT: -- and we can get to it.

13 MS. CLARK: And it was the Sgt. Strickland
14 piece that reminded me of those, Your Honor.

15 THE COURT: Okay.

16 MS. CLARK: And also, then, I want to make a
17 record that when I took pictures of evidence in
18 the Property & Evidence Room, I asked
19 Mr. Dusterhoft if he wanted them and he said no --
20 you know, copies of the pictures.

21 I don't want to be in a situation where we
22 have a new prosecutor and -- so I'm offering
23 them -- or I'm disclosing them. I have them with
24 me on my laptop. She can view them. If she'd
25 like me to email her copies, you know, I can do

1 that.

2 THE COURT: Okay.

3 MS. CLARK: Then also with regard to Sgt.
4 Strickland, the Defense has him under subpoena.
5 I've spoken with him. He's on vacation this week,
6 off of work. And so I had spoken to the
7 prosecutor -- well, first, I said to him, I'll
8 work with the prosecutor and we'll make sure we
9 put you on only once. It seems like a courtesy.
10 But when I spoke with the prosecutor, she has,
11 with all due respect, refused to tell me anything
12 about when any witnesses will be called.

13 The Defense is making two motions right now.
14 One is for the disclosure of if the prosecution
15 plans to call Sgt. Strickland and, if so, when, so
16 that I can prepare so that I don't have to have
17 him down twice. If I'm not told in advance when
18 he will be called, then the Defense reserves the
19 right to call him in our case.

20 THE COURT: Sure.

21 MS. CLARK: The other motion -- the Court has
22 heard it before, and I don't want to sound like a
23 broken record, but I do not believe that the
24 Constitution and the Rules of Criminal Procedure
25 are about trial by surprise.

1 Now here, this morning, I asked the
2 prosecutor who she's calling as her first witness,
3 and she is -- she will not disclose that to me. I
4 understand about scheduling, but I cannot imagine
5 she does not at this time know who she's going to
6 call as her first witness. I've never been in a
7 trial where no one will tell me who the witnesses
8 are going to be. It seems the State is trying to
9 gain some kind of advantage from that. So we have
10 an issue with that.

11 Also, the physical evidence, the State has
12 control of the physical evidence that they haven't
13 spoliated or given away. I asked the prosecutor
14 the first day we came for trial how I can get it
15 and whether I had to make a motion, and she said,
16 oh, they will, you know, take care of getting it
17 here through officers. I asked this morning where
18 is it and I could not get any conversation going
19 about it. I can't put it on -- I'm allowed to
20 prepare for my testimony of these witnesses and my
21 cross, and that includes having access to these
22 exhibits. I need to see them, I need to know
23 where they are so that I can grab them to put them
24 in through somebody, and I feel that that access
25 is being blocked. Again, the prosecutor has

1 superior information and access to evidence that
2 we believe denies due process.

3 Also, I'd like to put on the record that one
4 of the issues that we resolved by stipulation at
5 the time of the omnibus was the motion for
6 evidence of whether or not any witness in this
7 case was a CRI. And for the record, that's
8 confidential reliable informant. Sometimes
9 they're called CIs, confidential informants. And
10 in my experience, they sometimes have formal
11 relationships with the police department and
12 sometimes have informal relationships with the
13 police department.

14 We are very concerned Thomas Nolan could be a
15 CRI. Mr. Dusterhoft, on behalf of the State, said
16 he would look into that, and that's why we dropped
17 it as a motion at the time of the omnibus. I do
18 not have follow-through from the State on that.
19 What I have from Mr. Dusterhoft some time ago was
20 an email saying, St. Paul doesn't have an official
21 agreement with this gentleman. I don't think that
22 is the end of the inquiry. But at any rate, then
23 he was going to try to get information from the
24 Minneapolis Police Department as to whether or not
25 Nolan had a relationship with them. Obviously,

1 this would include English, too. And then I just
2 never heard anything back about that.

3 In chambers on Monday, Ms. Lamin said that
4 she is not aware of any relationship. And if you
5 look at the Brady law, including, for example,
6 State versus Williams in this state, the
7 prosecution is deemed to know everything that the
8 police know. And one of my concerns is, when
9 there's a kind of a, well,
10 I-don't-have-personal-knowledge statement made by
11 someone working for the State, that that really
12 isn't the end of the inquiry; however, it may
13 block us from access to rightful information.

14 And now I hear there's going to be an oral
15 motion this morning from the State to exclude any
16 CRI evidence because there isn't any evidence of
17 any, but I don't think the State can have it both
18 ways. I don't think they can fail in their duty
19 to follow through with their stipulated agreement
20 and not determine if there's any evidence and then
21 -- it seems the only way that I could get the
22 evidence would be today asking -- well, during the
23 trial, asking Mr. English and/or Mr. Nolan if they
24 are confidential informants, and it seems that
25 that isn't an appropriate question because they

1 would now be a source of information that the
2 State has claimed that they don't have access to
3 or were not able to obtain easily.

4 The last thing I want to say before the jury
5 comes in is, this morning we arrived -- well, we
6 arrived at 8:45, and I think it was maybe 8:55,
7 Your Honor, that the State gave me, again, a large
8 envelope of information I'm seeing for the first
9 time. It contains two new motions in limine, and
10 I'm very concerned about these because I think
11 that my clients's ability to defend hangs in the
12 balance. So we object to the late making of the
13 motions.

14 Again, instead of emailing them to me or
15 faxing them to me last night, I get them this
16 morning when I don't have the ability to research.
17 I'm not sure what the Court wants to do about it.
18 Since I don't know who the State's witnesses are
19 this morning, I don't want to say, let's put it
20 off until I can research it at noon, because what
21 if these witnesses are on the stand that I could
22 put this information in through.

23 So I'm extremely concerned about, again,
24 trial by surprise and -- I guess I'll say it this
25 way: It appears the prosecution wants to keep out

1 any evidence that can help acquit my clients. The
2 prosecution has a duty to have a fair trial.
3 Their duty is to seek justice and not just
4 convictions.

5 This letter from Joseph Brown is very much
6 part of our defense because we intend to go into
7 how Sgt. Strickland when he investigated obviously
8 released the money back to my client and thought
9 my clients hadn't been involved and then the case
10 wasn't charged out. It wasn't until after Joseph
11 Brown wrote the letter that the case was charged
12 out. And to do it any other way -- to not put
13 that evidence in would be misleading to the jury
14 because it could lead the jury to think, oh, well,
15 the officer could have thought that, but then a
16 prosecutor reviewing the same evidence thought the
17 case should get charged. The jury would not have
18 that missing piece of information to explain why
19 the difference. And so we very much believe that
20 that's an appropriate letter. In addition to the
21 fact that it urges the prosecution, it does have
22 some factual recitation by this witness about what
23 he understands occurred, and that's fair for
24 cross-examination, it seems.

25 So that's the first of the State's motions in

1 limine. Again, we would be asking whether or not
2 they are going to put Joseph Brown on the stand
3 this morning, because I think that may assist the
4 Court in determining if it should give the Defense
5 over the noon hour to research.

6 I haven't even read the second motion.

7 (Whereupon, Ms. Clark perused a document.)

8 MS. CLARK: Oh, the second motion is
9 prohibiting any questioning or mention of the
10 Ramsey County Attorney's Office charging process
11 or how long it took this case to get charged.
12 Since the charging process is also irrelevant to
13 the issues, it would be confusing and a waste of
14 time. I don't know yet if we need to go into
15 that. I don't know how the testimony is going to
16 come in, but we would want to go into the letter,
17 for sure, that the charging occurred after the
18 letter was written. And, in fact, Your Honor, the
19 police reports show that the prosecutor called the
20 police officer and told the police officer to
21 present the complaint to the prosecutor. In other
22 words, it didn't happen the other way. Sgt.
23 Strickland didn't say, I'm presenting this for
24 probable cause charging. He got the call from
25 Mr. Path, who is the one who received the letter

1 from Joseph Brown.

2 And I have copies of that letter, if it would
3 help the Court to look at that.

4 THE COURT: I remember this very well because
5 we've already addressed it at the Brady hearing.

6 Okay. Ms. Lamin.

7 MS. LAMIN: Your Honor, briefly. Your Honor,
8 the State is doing its best to present a fair and
9 just trial, give both defendants their day in
10 court and their ability to present their full
11 defenses.

12 However, let's talk about this letter for one
13 second. And maybe if Ms. Clark -- I'm not having
14 ease finding my copy, but this letter -- could I
15 show the Judge a copy of the letter?

16 MS. CLARK: Would you like one, Your Honor?

17 THE COURT: Yes, I'll take one, but I do
18 recall it.

19 MS. CLARK: It was Exhibit 1 at the omnibus.

20 MS. LAMIN: Your Honor, the first thing, if
21 you'll notice, about the letter is that it's
22 written by Joseph Brown. He is -- he was not a
23 witness on the State's witness list and he is not
24 a witness on the Defense witness list.

25 THE COURT: I noticed that.

1 MS. LAMIN: So, Your Honor, at the outset,
2 the letter contains inadmissible hearsay. The
3 letter isn't dated. I don't know when this letter
4 was sent. We don't -- I read it again last night.
5 It seems like, you know, personal frustration with
6 police or prosecution -- you know, a victim's
7 complaint. It also talks about another incident
8 which the -- which we're keeping out.

9 So, obviously, this letter itself cannot be
10 admitted into evidence. The author of the letter
11 is not here. The things it discusses are exactly
12 the items that Defense has requested that we keep
13 out. Your Honor, we do not know who had that
14 letter.

15 I just want to stress, the charging process
16 of the county attorney is within the purview of
17 the county attorney. It will be confusing for the
18 jury to hear the county attorney didn't charge on
19 day one, then they charged on day two, or they
20 waited three weeks and then charged, Your Honor.
21 The fact is, we did charge the case. What we
22 think in terms of at what point the case had
23 probable cause -- you've already made that
24 determination, that it has probable cause -- and
25 that we're here to prove the charges beyond a

1 reasonable doubt. At what point the investigation
2 met that standard, at what point all of the police
3 reports were completed, the photographs printed,
4 the interviews conducted and presented to the
5 county attorney is not -- it's not the point.

6 Furthermore, Your Honor, if the Defense goes
7 down that path, we're going to have to call the
8 charging attorney and have him explain, if he can
9 remember, when he charged it, why there was a
10 delay, and it might have been as simple -- I mean,
11 delays in charging -- first of all, the county
12 attorney's office declines -- I'm not a charger,
13 but my understanding is 30 to 50 percent of items
14 that are brought in. Initially, further
15 investigation is sought. If that investigation is
16 completed, then they charge the case. It's very
17 rare that cases are charged immediately when
18 presented in an in-custody situation, Your Honor,
19 and I think, given that, to go into the entire
20 process of how the county attorney charges will be
21 confusing for the jury. The fact is, the case is
22 charged, it has met the probable cause standard,
23 and we are here to prove the facts of the case --
24 not when it was charged, but the facts of the case
25 beyond a reasonable doubt.

1 Now, the Defense is free to ask Sgt.
2 Strickland -- I mean, I don't know if it's
3 appropriate to ask Sgt. Strickland if he thinks
4 those people were involved, if they were his
5 suspects. I mean, they're free to talk to Sgt.
6 Strickland, but, again, they might be getting into
7 the purview of the jury. I mean, it's ultimately
8 the jury's determination whether, you know,
9 Mr. Suttles and Mr. Drljic were involved in a
10 burglary on that day and did the State prove it
11 beyond a reasonable doubt.

12 To ask the personal opinions of individuals
13 is very unusual, it's confusing for the jury. We
14 don't -- and it's ironic. The Defense wants it
15 both ways. They don't want officers to speculate
16 about what something means, that it means someone
17 is guilty, but they do want officers to speculate
18 that we might not have enough yet to prove someone
19 is guilty.

20 THE COURT: All right.

21 MS. LAMIN: That was my basis. My
22 understanding about the CRI is that Mr. Dusterhoft
23 contacted St. Paul. I think there is no formal
24 agreement. I believe someone from St. Paul
25 contacted Minneapolis and maybe someone else and

1 didn't receive any reply back, which we would take
2 to mean that there is nothing.

3 Again, Your Honor, there is no offer of
4 proof, there is no evidence, there is nothing to
5 indicate that anyone is a CRI in this case. This
6 is not a drug case, Your Honor, and the Defense
7 cannot just merely go on a fishing trip with
8 witnesses and ask these type of questions, which,
9 again, evidence has to be relevant, and I don't
10 want to -- the Defense needs to present its
11 defense to the best of its abilities, and in no
12 way is the State seeking to limit its ability to
13 argue that the clients are innocent, that they
14 didn't do it, they weren't there, they didn't
15 understand. They're free to argue that.

16 But to argue things that there is no basis in
17 fact for is -- it's not appropriate. I mean, at
18 the end of the day, evidence and questions have to
19 be somewhat relevant. So -- I'm sorry, I don't
20 mean to belabor those points.

21 Again, we're not trying to do anything by
22 surprise. Trials, I have found, are an organic
23 process. As things come up, we respond to them.
24 One of the thick papers that the State gave was
25 the juror panel that Defense requested.

1 In terms of access to exhibits, I have my
2 first 18 exhibits marked. They're photographs. I
3 have given them to defense counsel to review.

4 In terms of physical evidence, my
5 understanding is the defendant -- the Defense has
6 been given an opportunity to go to the property
7 room and investigate and examine the evidence. I
8 guess I am not clear if they need to go again to
9 the property room and investigate the evidence.
10 Typically, what happens and what we intend to
11 happen is an officer will check that evidence out
12 and will bring it to court and then we will submit
13 that evidence. I am unfamiliar with an additional
14 -- some other process where the Defense needs an
15 extra -- well, if they need us to take a
16 five-minute break where they can examine that
17 evidence -- that physical evidence when the
18 officer brings it, that's fine, Your Honor -- I
19 mean, that's not uncommon, and we want to give the
20 Defense every opportunity to present their
21 defense.

22 This is a fairly short witness list, Your
23 Honor. This is, I think, 10, 11 witnesses total.
24 It's fairly manageable. Some of those people have
25 very minor roles to play, at best. Your Honor, I,

1 as a matter of course -- and I don't know many who
2 disclose the order of witnesses. This is a
3 holiday. Witnesses we thought might come can't
4 come. Its logistics are tricky. I do not feel
5 comfortable disclosing my order of witnesses
6 because they may change. The fact is, it is the
7 State's burden to present witnesses. I've never
8 heard of being ordered to provide a list of when
9 who will come, because the fear is, if you do that
10 list and they come in a different order, what
11 then?

12 And, Your Honor, in terms of Sgt. Strickland,
13 Defense has subpoenaed him and the State has
14 subpoenaed him. We're not calling him today, if
15 that lessens any concern for the defense. So if
16 Ms. Clark says he's on vacation this week, great,
17 he'll be around next week, then.

18 Again, I cannot say exactly when someone will
19 be called, especially when we haven't even begun
20 the trial.

21 Your Honor, I hope that covered it. I'm
22 sorry I ran a little late. I will let you know
23 that Mr. Handley is here. He is the attorney who
24 represented Jermaine English. I did speak to him
25 last night and let him know that Mr. English is

1 coming and, I presume, here. And maybe if I can
2 have a minute to speak to Mr. Handley --

3 THE CLERK: He's not here.

4 MS. LAMIN: No? Okay. No.

5 THE CLERK: I notified Security. Mr. English
6 is here on a writ. They say that he is currently
7 at the Law Enforcement Center and they need 20
8 minutes, at least, lead time to bring him over.

9 MS. LAMIN: That's fine, because we
10 still have -- he would not be my first witness, I
11 can tell you that.

12 THE COURT: Okay. All right.

13 MS. CLARK: I do have some responses to those
14 points.

15 THE COURT: Okay.

16 MS. CLARK: I'm sorry, I did try to --

17 THE COURT: No, that's fine.

18 MS. CLARK: -- carve out some time so we
19 wouldn't take jury time.

20 Sgt. Strickland is copied and received this
21 letter from Joseph Brown. Exhibits get put in
22 that way a lot. So it's not actually him, but he
23 did say he received it, he got it from his
24 commander, and he testified about it at the
25 omnibus. He has knowledge of it.

1 I heard kind of slipped in there, I believe,
2 a new motion in limine trying to prevent us from
3 asking Strickland about -- I don't know --
4 something about his investigation. I really don't
5 know enough about the motion to respond to it,
6 even at this time. I think it's an inappropriate
7 motion in limine that we'll have to either carve
8 out some time or --

9 THE COURT: We will deal with it when it
10 comes up --

11 MS. CLARK: Thank you.

12 THE COURT: -- with the objections.

13 MS. CLARK: Thank you.

14 THE COURT: I think it had to do with
15 personal opinions.

16 MS. CLARK: Well, obviously, an
17 investigator doing his job --

18 THE COURT: But I have to say, we will deal
19 with it in trial. We don't need to do anything as
20 far as a motion in limine.

21 MS. CLARK: Do you want us if we have -- if
22 someone makes an objection, but we think we want
23 to make some argument, do we ask to approach?

24 THE COURT: You will need to do that.

25 MS. CLARK: Okay.

1 THE COURT: I do not want this turning into
2 something that the jury has to listen to.

3 MS. CLARK: I just wanted to let the Court
4 know we do not have -- we do not have any
5 intention of going into a long bit of evidence
6 about the charging process. We don't. All we
7 want to show is that Strickland had completed his
8 investigation and then thought that my clients
9 weren't involved and then after the letter it got
10 charged out. That's really all we intend to do.
11 The letter --

12 THE COURT: Here's the problem with the
13 letter, there's no date on it.

14 MS. CLARK: Well, that doesn't make it not
15 relevant and it doesn't make it exculpatory.

16 THE COURT: Well, your time line, though,
17 would suggest that it would be relevant.

18 MS. CLARK: But we have testimony from
19 Strickland under oath at the omnibus.

20 THE COURT: About when he received this
21 letter?

22 MS. CLARK: Yeah.

23 THE COURT: He had never seen the letter
24 until the day that we came in here for the omnibus
25 hearing.

1 MS. CLARK: He had never seen it?

2 THE COURT: He testified to that.

3 MS. CLARK: Well, here's what I would like to
4 do, then, Your Honor, I'd like to have some time
5 to review his testimony and this letter before I
6 respond to the State's motion in limine. I just
7 think it's premature.

8 THE COURT: Well, here's what I'm going to
9 do: I'm going to rule on that -- I don't want to
10 interrupt you, so finish up, and then I'll give
11 you all my rulings.

12 MS. CLARK: All right. The other thing --
13 but you said you are going to rule about the
14 letter?

15 THE COURT: Yes. You can make your offer of
16 proof at the end.

17 MS. CLARK: The other reason that the letter
18 should come in -- and I don't know if they're
19 trying to keep out the letter or all evidence in
20 the letter, but there is an indication in here
21 about money being stolen. Obviously, that money
22 was not in the possession of my clients when they
23 were arrested. And then there is some indication
24 of the value of the liquor, then \$135 taken from
25 the coffee shop. So -- and then there's a list of

1 what items were taken allegedly from 2397
2 University. It seems to me those facts should be
3 fair game, even if the Court keeps out the letter,
4 and I would like to make an offer of proof later.
5 I actually would like to reserve the opportunity
6 to reargue the motion which I didn't have time to
7 prepare for.

8 THE COURT: Well, here's the thing: If you
9 subpoena Mr. Brown to be a witness, you certainly
10 can ask him about his letter, it seems to me.
11 He's not on the witness list.

12 MS. CLARK: Had I had the motion in limine
13 earlier, I could have done that. It sounds like
14 the Court is saying it's okay for us to do that
15 now.

16 THE COURT: To subpoena, no, I read the
17 witness list. I think you can't.

18 MS. CLARK: But we haven't started the trial.
19 Couldn't we tell them one more name? In other
20 words, I didn't get the motion until today, so I
21 assumed this was fine to come in. It had been an
22 exhibit at the omnibus. Now the Court is saying I
23 can subpoena him, but now I need an opportunity to
24 do that. I don't know how else I could have done
25 it. If I had gotten the motions in limine from

1 the State last week -- do you see what I'm saying?

2 THE COURT: Okay.

3 MS. CLARK: And then just finishing up on the
4 last point, in criminal cases we don't get
5 depositions, and often our first and only time to
6 speak with the witness is during trial. So with
7 regard to the CRI issue, it seems an appropriate
8 question to ask him. I mean, what if the answer
9 is yes? It's not a fishing expedition to ask one
10 question. If he says no, we can move on.

11 THE COURT: You're talking about one of the
12 witnesses?

13 MS. CLARK: I'm talking about both English
14 and Nolan.

15 And then with regard to the physical
16 evidence, I need access to the physical evidence.
17 What if I want to put on physical evidence that
18 they're not going to put on? That's the whole
19 point.

20 THE COURT: Okay. Anything else?

21 MS. CLARK: Not for right now.

22 THE COURT: Okay. I believe -- and I'll
23 start with the physical evidence -- that you do
24 get to see it and examine it in the evidence room.
25 I don't know that anybody is allowed to just take

1 things out willy-nilly because then you have a
2 whole issue of chain of custody. So maybe I'm not
3 understanding what it is you need to do with the
4 physical evidence.

5 MS. CLARK: I'm not trying to break the
6 chain. Let me tell you how I usually do it. I
7 let the prosecutors know the evidence that I need,
8 they package it in their office, and then they
9 have it available for me to put in. And if a
10 particular witness is going to bring all of the
11 evidence over, then I need to know who that
12 witness is, and it should be packaged and
13 available to put in, just like the way they would
14 put it in.

15 THE COURT: Okay.

16 MS. CLARK: So I'm not trying to break the
17 chain. I just need access to it.

18 THE COURT: Okay. If it's here later before
19 it's introduced, is that an issue? Do you need to
20 have it like days in advance or were you talking
21 about the day of the trial? I mean, that's
22 usually the way I see it.

23 MS. LAMIN: And if you want to tell me what
24 it is you want to introduce, we'd be happy to get
25 it ready for you.

1 THE COURT: Package it up.

2 MS. CLARK: Well, I'm not sure what --

3 THE COURT: Well, I think any of the physical
4 evidence, you just need to bring it, I think is
5 what she's saying.

6 MS. CLARK: Yeah, and I can certainly meet
7 with the prosecution and then they can have it
8 available for me, that's all I'm talking about,
9 but I couldn't get that conversation going so I
10 had to make a motion.

11 THE COURT: All right. So that motion is
12 granted because the prosecutor will make available
13 in the most appropriate, feasible, convenient way
14 this -- the physical evidence, and it's something
15 that I would expect you to work out.

16 Okay. So we are done with the physical
17 evidence.

18 I think Ms. Lamin has also mentioned that she
19 can't give you the exact order of the witnesses,
20 anyway, because I think she is still working on
21 that. And since -- as I've seen these trials go,
22 it's always more witnesses are listed than
23 actually testify, and so there's a number of
24 different reasons why, I can imagine, that that
25 would be hard to pin down exactly. However, we

1 did get the witness list, and it is my
2 understanding that anybody on this witness list
3 can be called at any time. And so in preparation
4 for trial, it would seem to be something that
5 would have come up before in terms of figuring out
6 what each person would or would not have to say
7 and take it from there.

8 With regard to the CRI issue, it would seem
9 to me that the -- that if there's a question that
10 comes up, there'd be certainly objections about
11 relevance, et cetera. Am I right about that?

12 MS. LAMIN: Yes, Your Honor, and that's why
13 I'm bringing it up ahead of time. Because
14 sometimes when you open the door, it leaves
15 questions in minds when there's no basis. And the
16 defense, Your Honor, did interview -- the defense
17 investigator did interview Mr. Nolan. Again, they
18 had an opportunity to interview him and they --

19 THE COURT: And is the defense investigator
20 on this list?

21 MS. LAMIN: Yes, he is.

22 THE COURT: All right. I think that's one of
23 those issues that I was concerned about, was with
24 regard to the CRI, because it kept coming up. I
25 believe Sgt. Strickland also said that Nolan was

1 not a CRI for the St. Paul Police and said it in
2 testimony. So I'm going to -- if you can show the
3 basis for the evidence, then fine, but I have not
4 seen it and I did already deny that request in the
5 omnibus hearing.

6 And the letter by itself I think is confusing
7 and it's not dated.

8 And any questions about charging process, I
9 think, go way beyond relevance in this case.
10 Charging happens at different points and probable
11 cause was found in this case. So I am granting
12 the State's motion.

13 MS. CLARK: Your Honor, just a clarification
14 on that. I can still talk, obviously, about
15 things that are talked about in the letter, right,
16 that the computers were taken and money and things
17 like that?

18 MS. LAMIN: And the State intends to bring
19 that up.

20 THE COURT: Right, because that would
21 actually be part of the State's evidence.

22 MS. CLARK: Okay.

23 THE COURT: Yes. Okay. Now, pictures of
24 physical evidence, were there some issues about
25 that?

1 MS. CLARK: Well, I have an objection, just
2 so the Court knows, to Exhibit No. 1 that the
3 State has premarked. I think that pictures of
4 physical evidence was just me offering them to the
5 prosecutor. I don't think there's -- I think I'm
6 just going to show them to her. But the
7 prosecutor did premark their Exhibit 1, and we
8 object to the picture. It's not what was produced
9 to us. That is to say what was produced to us was
10 a picture with the building number shown, and what
11 they've done is they've blacked that out or whited
12 that out and then put in three different
13 addresses. See, they're trying to make the
14 argument that there's three counts of burglary,
15 but our argument is there's only one building, and
16 the JIG says building, not different parts of a
17 building. So we think this would be misleading to
18 the jury.

19 MS. LAMIN: And, Your Honor, if I can
20 approach, I have Exhibits 1 and 2. We did
21 disclose a map -- we've disclosed a couple maps.
22 One of the maps was this (indicating), this is
23 State's Exhibit 1 (indicating). So it shows the
24 full structure and then it shows where each is and
25 the address of each. And then this is kind of a

1 Google photo of them (indicating).

2 THE COURT: Of the entire building?

3 MS. LAMIN: Yes, and I think that's an issue
4 open to argument. You know, obviously, there'll
5 be testimony about the structure and how it's set
6 up, and that's something to argue, but it's
7 just -- Exhibit 1, it's an identification of the
8 whole structure that's marked and then --

9 MS. CLARK: It's their commentary. It's
10 misleading because it's the State's commentary.

11 MS. LAMIN: But it's a fact that each
12 business has a separate address, a separate name
13 in one building, and it shows that this is a very
14 large building. And there will be someone to
15 explain it.

16 THE COURT: And, Ms. Clark, are you saying
17 that there was a different photograph that you've
18 seen before that was supposed to --

19 MS. LAMIN: There was also one without these
20 markings (indicating) --

21 THE COURT: Okay.

22 MS. LAMIN: -- and then there was one with
23 those markings.

24 MS. CLARK: The one we got didn't have the
25 markings. It had -- for this building here

1 (indicating), it had one address. The building
2 only has one address, it's one building with one
3 address, and the fact that some people have -- I
4 mean, the Post Office only has one address for the
5 building.

6 MS. LAMIN: I've never heard that, Your
7 Honor. I mean, we're going to have witnesses
8 testify --

9 THE COURT: Right.

10 MS. LAMIN: -- that they have separate
11 addresses.

12 THE COURT: Okay.

13 MS. LAMIN: You're saying that -- I mean,
14 obviously, if the testimony comes in that they're
15 not separate addresses, we won't use it, but these
16 are three separate -- I mean, everywhere in the
17 complaint these are listed as three separate
18 addresses.

19 THE COURT: All right. Did we deal with
20 everything here? I ruled on these, okay.

21 And then I wanted to mention in the jury
22 instructions, because we have multiple defendants
23 and multiple charges, the two instructions that I
24 am going to read at the beginning and at the end
25 -- at the close of evidence. And so the one at

1 the beginning of the instructions -- and I think I
2 read this before, but listen up.

3 It's, in this case, multiple defendants have
4 been charged, and each defendant has been charged
5 with multiple offenses. You should consider each
6 offense and the evidence pertaining to it
7 separately. The fact that you may find defendant
8 guilty or not guilty as to one of the charged
9 offenses should not control your verdict as to any
10 other offense. That's to multiple offenses.

11 Now, here is the one about co-defendants.
12 You may consider the statement of -- and I'll read
13 this separately -- of Daniel Drljic only in the
14 case against him and not in the case against the
15 other defendant. This means that you may consider
16 defendant's statement in the case against him for
17 that purpose -- and for that purpose, relying on
18 it as much or as little as you think proper, but
19 you may not consider or discuss that statement in
20 any way when you are deciding that the State has
21 proven beyond a reasonable doubt its case against
22 the other defendant. So it's going to be separate
23 and I'm going to do each defendant by name in the
24 beginning.

25 MS. LAMIN: For both?

1 THE COURT: Yes, both, so one will be for
2 Daniel and then I'll go back and read the same
3 thing with regard to Tamika.

4 MS. LAMIN: Right away at the beginning, not
5 before our introduction statements?

6 MS. CLARK: I think she's asking before or
7 after opening.

8 THE COURT: Before opening? Oh, certainly
9 before opening. These are just general
10 instructions.

11 MS. LAMIN: Okay.

12 THE COURT: I want to make sure that they get
13 this instruction before we hear any testimony, and
14 they'll get it again at the end. Does that make
15 sense?

16 MS. LAMIN: Yes.

17 THE COURT: I want to make sure that we're
18 all on the same page with this.

19 MS. CLARK: Yes.

20 MS. LAMIN: Yes, thank you.

21 THE COURT: Okay. All right.

22 MS. LAMIN: Your Honor, one little thing, I
23 remember your court reporter mentioned something
24 about Ms. Clark hadn't passed the panel for cause
25 and we were going to address that.

1 THE COURT: Oh, yes, we need to do that, just
2 on the record, Ms. Clark, about the panel.

3 MS. CLARK: I had advanced to the bench to
4 make a motion to strike Mr. Cook for cause. And
5 then when we came up after the prosecution's voir
6 dire of him, the Court indicated that -- something
7 like that the Court thought that he had been
8 rehabilitated, and we accepted that ruling. So
9 other than that, we didn't make any other cause
10 motions.

11 THE COURT: And you did pass the panel for
12 cause?

13 MS. CLARK: Well, I didn't strictly pass them
14 for cause. I made one cause challenge.

15 THE COURT: But at this stage, like, he's
16 been rehabilitated and he is on the panel. Is he
17 passed for cause? I think you have to --

18 MS. CLARK: Well, I thought you ruled on it.
19 That's what I thought happened.

20 THE COURT: I can only rule for myself. You
21 have to state for yourself that you pass the panel
22 for cause.

23 MS. CLARK: I'm not familiar with that.
24 Since we did object to him for cause, my
25 understanding is then it's up to the Court to rule

1 on the cause motion. And I understood that you
2 had ruled against us on that. What am I missing?

3 MS. LAMIN: After that, Ms. Clark, is the
4 rest of the panel then passed for cause?

5 MS. CLARK: Oh, yes. If that's what you
6 wanted me to say, I'm sorry.

7 THE COURT: All right. Anything else?

8 MS. LAMIN: No, Your Honor. Thank you.

9 THE COURT: Okay. You know, I'm going to ask
10 you to unplug that for now. I don't want to mess
11 you up, but I think when the jurors come in, I
12 don't want them tripping over it.

13 MS. CLARK: It's quite loud, too, the fan.

14 MS. LAMIN: May we go off the record?

15 THE COURT: Yes.

16 (Whereupon, after a brief off-the-record
17 discussion, the clerk escorted the jurors into the
18 courtroom.)

19 THE COURT: Yesterday you were chosen to be
20 on this jury and today we will swear you in. So,
21 Ms. Amos, would you administer the oath, please?

22 THE CLERK: Will the jurors please rise?
23 Please raise your right hand. You do swear that
24 you will be attentive during this trial and follow
25 the instructions of the Judge so that you may

1 reach a fair and just verdict, that you will not
2 discuss this case with anyone until submitted to
3 you for deliberation and will keep your verdict
4 secret until it is delivered to the Court, so help
5 you God?

6 MEMBERS OF THE JURY: I do.

7 THE CLERK: You may lower your hands. Please
8 be seated.

9 THE COURT: Thank you. And then Ms. Amos
10 will hand out notepads, pens, and juror badges.

11 The person who didn't get a badge, we will
12 make sure you get one before the morning is over,
13 okay. Thank you. All right. If those pens don't
14 work, you know, just raise your hand. We might
15 want to put some extra pens out because these pens
16 are notoriously nonworking pens. I hope we have
17 thrown away the ones that don't work, okay.

18 Thanks.

19 So, members of the jury, this trial is about
20 to begin. You have now been sworn in. It is
21 important that you, members of the jury, be able
22 to hear and to see everything that takes place
23 during the trial. If you have any difficulty
24 hearing or understanding what a witness is saying
25 or if a witness or an attorney should block your

1 view, raise your hand immediately so we can
2 correct the problem.

3 And here's some basic rules about your job as
4 a juror. In this case, multiple defendants have
5 been charged and each defendant has been charged
6 with multiple offenses. You should consider each
7 offense and the evidence pertaining to it
8 separately. The fact that you may find defendant
9 guilty or not guilty as to one of the charged
10 offenses should not control your verdict as to any
11 other offense.

12 You may consider the statement of Defendant
13 Drljic only in the case as -- Daniel Drljic only
14 in the case against him and not in the case
15 against the other defendant. This means that you
16 may consider Defendant Drljic's statement in the
17 case against him and for that purpose rely on it
18 as much or as little as you think proper, but you
19 may not consider or discuss that statement in any
20 way when you are deciding if the State has proven
21 beyond a reasonable doubt its case against the
22 other defendant.

23 Likewise, you may consider the statement of
24 Defendant Tamika Suttles only in the case against
25 her and not in the case against the other

1 defendant. This means that you may consider
2 Defendant Suttles's statement in the case against
3 her and for that purpose rely on it as much or as
4 little as you think proper, but you may not
5 consider or discuss that statement in any way when
6 you are deciding if the State has proven beyond a
7 reasonable doubt its case against the other
8 defendant.

9 Your job will be to find what the facts are
10 in this case by considering the evidence. As
11 judge, I will apply the rules of evidence and tell
12 you what you can and cannot consider as evidence.

13 So what is evidence? Evidence is what
14 witnesses say on the stand; this is called
15 testimony. Evidence can be items like photographs
16 and documents; these items are called exhibits.
17 Evidence can be facts that the parties agree to;
18 this agreement is called a stipulation.

19 What is not evidence? The following is not
20 evidence: Nothing the attorneys say during the
21 trial, including opening statements and closing
22 arguments, is evidence. However, listen to any
23 statements the attorneys make. Those statements
24 are made to help you better understand the
25 evidence. The attorneys' questions are not

1 evidence; the witnesses' answers are.

2 Objections are not evidence. Attorneys may
3 object if they think a question or answer is
4 against the rules. I will sustain the objection
5 if I think it is against the rules and you should
6 ignore this question or answer. If I overrule the
7 objection, the question or answer is evidence like
8 the rest of the witness's testimony.

9 You cannot consider anything you hear or
10 learn about this case outside this courtroom. You
11 must follow the instructions on what you can
12 consider as evidence.

13 You may take notes during the trial. You do
14 not have to take notes. Do not let your
15 note-taking distract you. The most important
16 thing is to listen to the testimony as you hear
17 it. Your notes must stay in the courtroom during
18 the trial. You may take them into the jury room
19 during deliberations. Use your notes as an aid to
20 your memory and not as a substitute for your
21 memory. Fit the notes in with your total
22 recollection of the facts. A written note does
23 not necessarily make a piece of evidence more
24 important, whether you or another juror wrote it
25 down.

1 Wait until you've heard all the evidence
2 before you make up your mind. Your best guide is
3 your own good judgment, experience, and common
4 sense. You must decide what testimony to believe
5 and how much weight to give it.

6 In deciding this, you may consider the
7 following: Will a witness gain or lose if this
8 case is decided a certain way; what is a witness's
9 relationship to the party; how did the witness
10 learn the facts; how did he or she know, remember,
11 and tell the facts; what was his or her manner;
12 what was his or her age and experience; did the
13 witness seem honest and sincere; was the witness
14 frank and direct; is the testimony reasonable
15 compared with the evidence; are there any other
16 factors that bear on believability and weight.

17 You must decide the facts. You and only you
18 can decide the facts. Do not take anything I say
19 or do as a sign of what the verdict should be.
20 Once the facts are decided you must follow the
21 law. You must follow the law even if you don't
22 agree with it.

23 So how to act as a jury member. Do not let
24 outsiders influence you. Do not discuss this case
25 with other jury members during the trial. You

1 will have plenty of time to do this at the end of
2 the trial, once you have all the evidence and I
3 have sent you to the jury room with my
4 instructions and the verdict forms.

5 Do not talk to anyone involved in this
6 case -- the defendant, the lawyers, the witnesses.
7 If anyone tries to discuss this case with you
8 outside the courtroom, report this to me.

9 When you go home during the trial, do not
10 talk to your family and friends or others about
11 the case. You may tell them that you are a juror
12 on a criminal case, and that is all that you
13 should tell them.

14 Do not read or listen to news reports about
15 the case. Do not do your own investigation. Do
16 not ask people about this case. Do not visit any
17 of the locations mentioned in the trial. Do not
18 research issues in the case, and this is really
19 important: no internet, no Twitter, nothing of
20 that sort -- or anything. No research.

21 Keep an open mind until you've heard or seen
22 all of the evidence. Remember you cannot consider
23 anything you hear or learn about this case outside
24 this courtroom. If you do not follow these
25 instructions, you may jeopardize the trial.

1 Please keep the same chair throughout the
2 trial. When reporting for jury duty in the
3 morning and returning to the courthouse after
4 lunch, report directly to the conference room
5 where you were today and my clerk will check you
6 in -- you do not have to check in with the jury
7 office, okay -- and do not linger in the hallways.

8 And we will now start the trial. We will
9 have openings by the State. Go ahead.

10 MS. LAMIN: Burglary interrupted. On
11 December 6, 2009, 4:18 a.m., early Sunday morning
12 hours, a silent alarm was tripped at a liquor
13 store at University and Raymond, here in the city
14 of St. Paul, Ramsey County. Officer Gliske, the
15 first St. Paul police officer on the scene,
16 interrupted this burglary in progress of three
17 neighboring businesses: Sharrett's Liquor Store,
18 next to it a personal art studio located at 2397
19 University, and then the Edge Coffee House located
20 at 2399 University.

21 You will hear how Officer Gliske arrived on
22 the scene shortly after the silent alarm was
23 tripped and how he immediately saw something
24 suspicious. He saw a vehicle parked behind these
25 closed businesses in the early morning hours and

1 he saw the defendant, Tamika Suttles, standing
2 outside next to this vehicle. And as soon as she
3 saw Officer Gliske, she turned away. Officer
4 Gliske approached Ms. Suttles, and Ms. Suttles
5 told him her car broke down, she wanted to go pee,
6 could he just let her go? Given the facts of the
7 hour and Ms. Suttles appeared extremely nervous to
8 Officer Gliske -- she also had something bulging
9 out of her pockets, it was duct tape and gloves --
10 Officer Gliske called for backup and then actually
11 went over to the businesses to inspect to see what
12 was happening.

13 As he walked, he checked one door, and that
14 one door appeared to have had some pry marks on
15 it. And then he looked at the door that is the
16 back door of the art studio, and that door -- the
17 door frame was open, broken, and the door had been
18 pushed in.

19 As Officer Gliske walked back to his patrol
20 car to wait for backup to come, a man came out of
21 that broken door. As soon as Officer Gliske saw
22 that man, he yelled for him to stop, but he turned
23 around and ran back into the businesses that were
24 being burglarized. That man was Jermaine English.

25 You will hear how police then with a K-9

1 unit, not knowing what to expect inside, knowing
2 full well that there was at least one individual
3 inside the building, went in. They went in
4 through that broken door frame and began
5 searching. First, they went through the coffee
6 shop, the main floor, then the basement, and then
7 -- excuse me, first, they went through the art
8 studio, the main floor, then the basement -- the
9 one that had been broken. To get to the coffee
10 shop, one of the walls had been broken. The
11 officers then checked the coffee house. Then
12 another wall in the basement of the art studio had
13 been broken, and that is how the burglars got into
14 the liquor store.

15 Officers apprehended the defendant, Daniel
16 Drljic, inside Sharrett's Liquor Store at 4:18 in
17 the morning on early Sunday morning, December 6.

18 You will hear about the extensive damage done
19 to all those businesses, how the burglars,
20 Mr. English and Mr. Drljic, were found inside the
21 liquor store, how they broke the wall from the
22 basement of the art studio to get into the liquor
23 store, how they broke another old sealed door wall
24 to get into the coffee shop, how they ransacked
25 the coffee shop.

1 You will also hear about the items that were
2 removed from the coffee shop. \$150 was missing.
3 In addition, the muffins had been removed and were
4 stacked outside in the parking lot.

5 You will hear how items had been removed from
6 the art studio -- a computer, even a plastic kind
7 of shelf organizer had been removed and was
8 standing, again, outside in the parking lot.

9 You will hear how liquor had been stacked up
10 from the basement of the liquor store and some of
11 it had already been removed to the basement of the
12 art studio to, again, be removed from the
13 businesses.

14 You will hear how officers then searched
15 Ms. Suttles's vehicle and how inside this vehicle
16 in the trunk they found some of the items -- they
17 found some of the items that had been taken from
18 the art studio. They found parts of a computer, a
19 printer, and they also found a ruler. They also
20 found a duffel bag; a duffel bag that contained
21 crowbars, wire cutters; a duffel bag that
22 contained burglary tools.

23 Now, the State has the burden to prove, which
24 we gladly accept, beyond a reasonable doubt that
25 the defendants worked together and with their

1 accomplice, Jermaine English, and entered these
2 three businesses without permission, used tools to
3 gain access to property or money, and they did
4 this with intent to steal.

5 I'll briefly review some of the general
6 elements the State has to prove. The Judge will
7 instruct you on the law in this case at the end of
8 the trial. This is just something to keep in mind
9 as you're listening to the evidence. These are
10 the only things that the State has to prove beyond
11 a reasonable doubt.

12 First, that the defendants, Mr. Drljic and
13 Ms. Suttles, entered or helped each other in
14 entering, aided and abetted each other, entered
15 these businesses.

16 MS. CLARK: Object to the extent it misstates
17 the law.

18 THE COURT: Overruled. Please continue.

19 MS. LAMIN: That they didn't have permission
20 to be inside, that they did it without the consent
21 of the owners.

22 Second, that either they, aiding each other
23 as an accomplice, had tools to gain access into
24 the building or to gain access into property or
25 money.

1 MS. CLARK: Same objection.

2 THE COURT: Overruled.

3 MS. LAMIN: Third, that they did this with
4 the intent to steal.

5 And, finally, that this happened December 6,
6 2009, St. Paul, Ramsey County.

7 But for the silent alarm, the burglary would
8 not have been interrupted and we would not be here
9 today. This is, ladies and gentlemen, exactly
10 what it looks like. Mr. Drljic and Ms. Suttles
11 were interrupted while they were burglarizing
12 three businesses in the early morning hours of
13 Sunday morning.

14 Your job is to look at the facts that will be
15 presented, filter those facts through the laws the
16 Judge gives you and make a decision. It's simply
17 proof based on good judgment, your own experience,
18 and, most importantly, common sense.

19 At the end of this trial, I will stand before
20 you again and ask that you find the defendants
21 guilty of burglary. Thank you.

22 THE COURT: Ms. Clark.

23 MS. CLARK: Thank you, Your Honor. Good
24 morning to the Court and to Counsel and good
25 morning, jurors. It may not surprise you that

1 there is an entirely different story that you will
2 hear through witnesses, both those put on by the
3 State and those put on by the defense.

4 Tamika Suttles and Daniel Drljic are a
5 couple. They were a couple on December 6 and they
6 are a couple now. We expect that you'll hear
7 evidence that I'm going to talk about now and a
8 lot more. My goal now is give you a tree on which
9 to hang some of the things as you hear them during
10 the trial.

11 That Ms. Suttles and Mr. Drljic did tattoos,
12 worked for clients, originally met when they were
13 working in other people's shops, and then they
14 decided at the end of last year to get their own
15 shop. They worked hard to scrape up the money to
16 do that. And you'll hear that today they are
17 successful business owners of that kind of a shop.

18 You'll also hear that Mr. Drljic came to this
19 country from Bosnia, Herzegovina, a war-torn
20 country, where he had some experiences that still
21 impact him today. He is a survivor of war and in
22 that context had been shot at and otherwise faced
23 with firearms in a situation where his life was
24 very much in jeopardy.

25 On December 6 -- you'll hear that these are

1 night people and their clients tend to be night
2 people. These are stores that open later in the
3 day and stay open later. These are not people who
4 drive to work at 6:00 in the morning, like some
5 other Minnesotans. So they were up and then a
6 client of theirs, Jermaine English, telephoned and
7 said, I have a friend, he needs to move, can you
8 please bring your car so we can move some of his
9 stuff -- pleaded with them. They didn't really
10 feel like it. It's 4:00 in the morning, we don't
11 really want to go out, but he was a client and
12 they decided they'd help him out. And you'll hear
13 a little bit about the person that they at least
14 thought that they were helping.

15 The building -- and it is one building -- has
16 both stores in it and apartments above, and you'll
17 hear evidence that apartment renters could store
18 things down in the basement.

19 So Daniel Drljic walks over there. When he
20 gets there, he sees Jermaine. He does not at that
21 time know his past criminal history. So when he's
22 told, well, go to this storage unit, it doesn't
23 seem strange. He goes in. He doesn't see anybody
24 prying a door open. You may hear from Mr. English
25 that he did do that. He goes in and sees kind of

1 dusty rooms and they're dark. At first, it seems
2 a little weird, but maybe this is a storage
3 facility in the basement of the building.
4 However, at one point, Mr. Drljic sees some liquor
5 stacked and at that point says, well, what's going
6 on here, what is this about, I'm getting out of
7 here. At that point, Mr. Drljic went to leave the
8 building. I'm going to leave that part right
9 there and come back to it.

10 Ms. Suttles was supposed to bring the car --
11 she also begrudgingly agreed to do that and drove
12 the car over. You'll hear different stories,
13 different versions of what happened if you hear
14 Police Officer Gliske testify and then Ms. Suttles
15 will testify. So there are some disputes.

16 You will hear some factual disputes about
17 what actually was said in the parking lot.
18 Ms. Suttles is expected to tell you that when she
19 got there, a white male came and started putting
20 some things in the trunk. That's what she
21 expected. The car is going to have some objects
22 placed in it so they can be moved, so she thinks
23 nothing of it. She looks at the guy, doesn't
24 study his face, but gets a good look at it.

25 Shortly thereafter -- and you'll probably

1 hear a lot of testimony about that, but just to
2 kind of summarize it for the time being, shortly
3 thereafter, the police arrive and she says, yeah,
4 sure, you can look in the car. She doesn't think
5 anything's wrong.

6 So at that point, Mr. Drljic is starting to
7 come out of the building, police arrive, and
8 weapons are drawn. He sees the weapons, panics,
9 thinks he's going to be shot and decides, yes,
10 I'll come out of the building, but I'm not coming
11 out to be shot.

12 And so the next part, you'll probably hear
13 some testimony about it, you may see some other
14 evidence about it, but it's important for purposes
15 of my comments now that Mr. Drljic will explain to
16 you that once he realized that something bad was
17 happening, he simply wanted to come out and talk
18 to the police and explain it to them.

19 At that point, Jermaine English, who you will
20 likely hear testimony from, is a pro at this and
21 urges Mr. Drljic to come up into the liquor store.
22 And, oh, my gosh, they have cameras and, oh, my
23 gosh, you should, you know, put something over
24 your face. So Mr. Drljic, in his kind of panicked
25 state, goes up into the liquor store, tries to get

1 the attention of police outside. Eventually that
2 occurs, the police come in. Now all three are
3 arrested. However, you will hear that none of
4 them had the \$150 of cash on them, and so listen
5 for evidence of a fourth person who was not
6 arrested.

7 You will also hear that when Tamika Suttles
8 was arrested she had \$16,000 in cash on her. This
9 was money that they had put together -- taken out
10 of accounts to open this business. And although
11 around \$16,000 was initially seized from her, it
12 was later returned to her. And as I said earlier,
13 they did open their businesses.

14 You will also hear evidence about the quality
15 of the investigation that police did in this case.
16 We expect you will hear from a Sgt. Strickland,
17 who was the investigator on the case, and we
18 expect that you will hear that police made no
19 effort to do any forensic fingerprinting of the
20 physical steel objects they are claiming Tamika
21 Suttles put into the trunk of her car and didn't
22 preserve the evidence in a way so that the defense
23 could search for fingerprints.

24 So what you will not hear is, you will not
25 hear any evidence that there are any fingerprints

1 of either of these two individuals on any of the
2 physical objects that the police seized, had
3 control of, had the ability to test, and did not
4 test.

5 At the end of the evidence, we will be asking
6 you to bring in a verdict of not guilty for both
7 Tamika Suttles and Daniel Drljic. We thank you in
8 advance for listening carefully. We will try to
9 keep the evidence moving along, but we do know
10 that this is a service you are doing and we thank
11 you.

12 THE COURT: Are you ready with your first
13 witness?

14 MS. LAMIN: Yes.

15 (Whereupon, Ms. Lamin stepped out of the
16 courtroom briefly and returned with the State's
17 witness.)

18 MS. LAMIN: Your Honor, the State calls Peter
19 Brown to the stand.

20 THE COURT: Okay. Step forward, please.

21 THE CLERK: Please raise your right hand.
22 You do swear the testimony you give here today
23 will be true, so help you God?

24 THE WITNESS: Yes.

25 THE CLERK: Please lower your hand, and state

1 and spell your full name for the record.

2 THE WITNESS: Peter Jacob Brown; P-E-T-E-R,
3 J-A-C-O-B, B-R-O-W-N.

4 THE CLERK: Thank you.

5 THE COURT: And good morning, Mr. Brown.

6 THE WITNESS: Good morning.

7 THE COURT: Thank you for being here.

8 THE WITNESS: You're welcome.

9 THE COURT: And have you testified before?

10 THE WITNESS: No.

11 THE COURT: Okay. Well, there are certain
12 rules that we have, and let me start with this
13 one. If there's an objection, you wait for me to
14 rule on it and before -- I will either tell you to
15 answer or not answer.

16 THE WITNESS: Okay.

17 THE COURT: All right. The other thing is,
18 you need to speak directly into the mic --

19 THE WITNESS: Okay.

20 THE COURT: -- so everybody can hear you.

21 THE WITNESS: Okay.

22 THE COURT: And use words, not gestures.

23 THE WITNESS: Okay.

24 THE COURT: All right. Thank you. And you
25 may proceed.

1 MS. LAMIN: Thank you.

2 DIRECT EXAMINATION

3 BY MS. LAMIN:

4 Q Mr. Brown, where are you employed or how are you
5 employed?

6 A Part of my family business with my father. We own a
7 handful of buildings, including the one in St. Paul.

8 Q How many buildings do you own?

9 A Six altogether.

10 MS. LAMIN: Your Honor, may I approach?

11 THE COURT: Yes.

12 Q (By Ms. Lamin, continuing) Now, Mr. Brown, I'm going to
13 show you what's been marked, two maps, both marked as
14 Exhibits 1 and 2.

15 A Okay.

16 Q Are you familiar with those?

17 A Yes.

18 Q And, in fact, you looked at them in my office this
19 morning?

20 A Yes.

21 Q Are those maps fair and accurate photographs of -- maps
22 of one of your buildings?

23 A Yes.

24 MS. LAMIN: Your Honor, I move to admit

25 Exhibits 1 and 2.

1 THE COURT: Counsel?

2 MS. CLARK: Your Honor, no objection to 2.
3 Objection to 1, as stated prior.

4 THE COURT: And Exhibits 1 and 2 are
5 accepted.

6 Q (By Ms. Lamin, continuing) Mr. Brown, just to keep
7 things moving once we get going, I'm also showing you
8 what's been marked as Exhibits 3 to 16.

9 A Okay.

10 Q These are photographs of your business. Did you have a
11 chance to look at those this morning?

12 A Yes.

13 Q Okay. Are those photographs fair and accurate
14 depictions -- actually, I'm sorry, I misspoke. I'm
15 showing you Exhibits 3 to 14. Are those photographs
16 fair and accurate depictions of items in your business
17 and of what your business appeared like after the
18 burglary?

19 A Yes.

20 Q Okay. And you had a chance to look at those --

21 A I did, uh-huh.

22 Q You had a chance to look at those this morning in my
23 office?

24 A Yes, I did.

25 Q If you want to review them again quickly, go ahead.

1 A Okay. Yes, those are the same pictures.

2 Q And those pictures fairly and accurately depict items
3 from your business and the condition of your business?

4 A Yes.

5 MS. LAMIN: Your Honor, I move to admit
6 Exhibits 3 through 13.

7 MS. CLARK: I have a foundation objection.

8 THE COURT: Did you say no objection?

9 MS. CLARK: Foundation.

10 MS. LAMIN: I can go through each one, Your
11 Honor. I was just trying to move things along,
12 but that's okay. We'll take them one at a time.

13 THE COURT: Yes, take them one at a time.

14 MS. LAMIN: Okay.

15 Q (By Ms. Lamin, continuing) So, Mr. Brown, I'm also
16 showing you -- it's a pointer. You can push the red
17 button and point to what we're seeing.

18 A Okay.

19 Q So Exhibit 1, Mr. Brown, can you please explain to us
20 what we're looking at?

21 A We're looking at an aerial view of my building, which
22 is highlighted in pink, I guess. It's the corner of
23 Raymond and University Avenue.

24 Q And that's here, in St. Paul, Ramsey County?

25 A Yes.

1 Q Can you please describe this business?

2 A Yes. It's a three-story, multi-use building. It's
3 100 years old. We have retail spaces on the ground
4 floor, each of which has a basement, and then we have
5 offices on the second and third floors over the portion
6 of the building that faces University Avenue.

7 Q And I will show you Exhibit 2. Is that what you're
8 talking about?

9 A Yes. (Indicating throughout.) This section of the
10 building is offices, up here, including mine, and then
11 down here are retail stores. And then on the wing of
12 the building --

13 Q Back to Exhibit 1?

14 A Yes. (Indicating throughout.) This section has retail
15 on the ground floor again and then it has apartments on
16 the second and third floors, 11 apartment units.

17 Q And so let's start with the offices -- back to
18 Exhibit 2, start with the businesses on the side facing
19 University. So the first one we're looking at, that's
20 Sharrett's Liquor Store?

21 A Yes, Sharrett's Liquor. They're right on the corner.
22 They're actually the largest retail space I have in the
23 building.

24 Q And what is next to them?

25 A (Indicating throughout.) Next to them, this is actually

1 an entrance through a stairway to the second and third
2 floors, which is kept locked. We don't use that
3 entrance anymore. Next to that is my father's art
4 studio. My father, Joseph Brown, bought the building
5 in the '80s, as an artist, and uses this storefront for
6 his own personal work. Next to that is a coffee house
7 called the Edge Coffee. And next to that is a picture
8 frame supply store. That's all of the space on the
9 first floor.

10 Q Now, let's go through each business. The liquor store
11 on the corner, how do the entrances and exits work for
12 each business?

13 A (Indicating throughout.) Right here on the corner is
14 their main public entrance. They have -- around the
15 side of the building --

16 Q Back to Exhibit 1?

17 A Yes. (Indicating throughout.) Right over here, this is
18 the main entrance to my office building. When people
19 come here, there's a little lobby with an elevator and
20 a set of stairs and a back door to the liquor store,
21 which is kept locked. They use it only for deliveries
22 in the morning.

23 Q So are those the only two entrances and exits to that
24 liquor store?

25 A Yes.

1 Q What about, how is the basement portion?

2 A For the most part, each storefront in this entire
3 building has its own basement. They each have their
4 own set of stairs to a basement, which is isolated from
5 the rest of the space.

6 Q Let's go back to Exhibit 2.

7 A Uh-huh.

8 Q So the liquor store -- in the liquor store basement, is
9 that connected? Is there any mutual hallway or
10 anything?

11 A No, it's divided by walls from the neighboring
12 basements down below. So there's a stairway within the
13 liquor store which is the only access to their
14 basement.

15 Q So it's a completely separate, independent --

16 A Yes.

17 MS. CLARK: Objection, leading.

18 THE COURT: Overruled.

19 Q (By Ms. Lamin, continuing) Now, what about your
20 father's personal art studio?

21 A My father's personal art studio is the same thing.
22 He's got a stairway within his studio that goes down to
23 the basement, which is completely separate from his
24 neighbor's. They share walls in the basement, but no
25 access.

1 Q And what about the Edge Coffee House?

2 A Same thing with the Edge Coffee House. Now, one thing
3 about the Edge Coffee House, there are doors between
4 the Edge and my father's studio in the basement which
5 are old and boarded over, so there's that, otherwise
6 they have their own independent basement space as well.

7 Q Is there any mutual hallway that connects these
8 businesses?

9 A No.

10 Q How do you go from, let's say, the liquor store to the
11 art shop -- the art studio to the coffeehouse?

12 A You have to go outside and reenter the building, either
13 at the front or the back, to go down the stairs into
14 that space.

15 Q What about the tenants? What are these windows that
16 we're seeing in Exhibit 2, up here (indicating)?

17 A Those are all offices -- independent office rentals.

18 Q Okay. And how do these offices -- can they get in any
19 way down to the liquor store or how do they get from
20 their offices to the liquor store, the art studio, and
21 the coffee shop?

22 A They have to go outside and reenter the building
23 through the specific door to the space they want.

24 Q Let's go back to Exhibit 1. So where is the offices'
25 entrance to the building?

1 A (Indicating throughout.) It's right here. Right on
2 Raymond, there's an entrance to a small lobby with the
3 elevator and the stairs, and that provides access to
4 the second and third floors, which is where the offices
5 are.

6 Q Now, you also mentioned that there are apartments over
7 here (indicating)?

8 A Yes.

9 Q Can you explain how many units?

10 A Yes. (Indicating throughout.) We have 11 units here on
11 the second and third floors, again, and midway down the
12 building about here is a door that opens up to a set of
13 stairs which the tenants take up to their second- and
14 third-floor apartments. There's also an entrance at
15 the back, right over here. Again, it's a door that
16 only opens up to stairs and they go straight up.

17 Q How do the tenants in these apartments get to the
18 liquor store, the art studio or the coffeehouse?

19 A They have to go outside and reenter the building.

20 Q Reenter it where?

21 A Through the specific doors. Each of the ground floor
22 tenants has their own door and their own address.

23 Q And what about mail? Do they all get their own mail?

24 A They all get their own mail, yes.

25 Q Is there some sort of storage in the basement of that

1 -- of the building for the liquor store, art studio,
2 and coffeehouse?

3 A No storage aside from their own personal basement
4 space. I don't have any communal basement storage in
5 the basement.

6 Q Now, you mentioned that there was a door from the -- a
7 back door. Can you point out, again, where's the back
8 door to the apartment building?

9 A (Indicating throughout.) Yes, it's right here. Here's
10 the back door and then over here is the front door.
11 Again, each of those doors opens up to a set of stairs
12 going up, and the apartments don't have access to our
13 elevator. They just use the stairs. They have no
14 access to our basement.

15 Q So there is a basement in that building, as well?

16 A There is. But, again, it's accessible only to the
17 individual retail tenants. So we've got retail tenants
18 on this side of the building, as well, and each of them
19 has their own basement.

20 Q Now, can you describe the parking lot?

21 A (Indicating throughout.) In this little alcove here, we
22 squeeze two cars and a couple of Dumpsters in. Our
23 building occupies our entire lot. This parking lot
24 belongs to the people who own this building next to us
25 there. So there is an alley around our building to

1 access that parking lot and our building parking space.

2 Q And you mentioned that alcove. So that's a little --
3 can you describe that opening there?

4 A Yes. The building is L-shaped, mostly, but right here
5 there's a little opening from the alley. The back of
6 the building forms a U-shape, and there's a back door
7 to different retail businesses along that alcove.

8 Q So where's the back door for the art studio?

9 A The back door for the art studio is actually right here
10 (indicating).

11 Q Where is the back door for the Edge Coffee House?

12 A That would be about 15 feet further over.

13 Q And where's the back door for the liquor store?

14 A The liquor store's back door is within our lobby, over
15 here (indicating). That's their only back door.

16 Q And can anyone from the apartment building get to the
17 back door of the liquor store?

18 A Only if they go outside and come back into our lobby.

19 Q Now, turning your attention to December 6, 2009, how
20 did you become involved in this incident?

21 A I got a phone call from Dana, who is one of the owners
22 of the liquor store, telling me that --

23 MS. CLARK: Objection, hearsay.

24 MS. LAMIN: I can try to rephrase.

25 THE COURT: Yes, please rephrase it.

1 Q (By Ms. Lamin, continuing) Based on your conversation
2 with the owner of the liquor store, what did you do?

3 A I drove over to the building. I live about 20 minutes
4 away.

5 Q And about what time of day or night is this?

6 A It was the middle of the night. I don't remember
7 exactly, but it was early morning.

8 Q Were any of the businesses open at that time?

9 A No.

10 Q So what did you see when you got there?

11 A Police cars around the building with their lights
12 shining on it. Some of the -- I think I saw Dana, the
13 liquor store tenant, outside. I went to park in back
14 and was approached by a police officer. I saw police
15 officers near a car in the parking area behind the
16 building.

17 Q Now, Mr. Brown, I'm showing you what's been marked as
18 Exhibit 3. Can you please tell me what that is?

19 A That would be the front door to the art studio.

20 Q Is that a fair and accurate picture of how that art
21 studio looked that night?

22 A Yes.

23 MS. LAMIN: Your Honor, I move to admit

24 Exhibit 3.

25 MS. CLARK: May I voir dire the witness?

1 THE COURT: Yes, you may.

2 VOIR DIRE

3 BY MS. CLARK:

4 Q With regard to Exhibit 3, do you recall which one this
5 is?

6 A I'm sorry?

7 Q Do you recall what it is a picture of?

8 A As I look at it, yes.

9 Q And did you take this picture?

10 A No.

11 Q Do you know who took the picture?

12 A No.

13 Q Do you know when it was taken?

14 A No.

15 THE COURT: Do you want to lay that
16 foundation?

17 MS. CLARK: Yeah, objection, foundation.

18 Q (By Ms. Lamin, continuing) Mr. Brown, what is this a
19 picture of (indicating)?

20 A It's a picture of the top portion of the door at the
21 entrance on University Avenue to my father's art
22 studio, and it shows the number 2397, which is his
23 address.

24 Q Okay. And is that a fair and accurate photo of how the
25 top of your father's art studio looked that evening?

1 MS. CLARK: Objection, foundation.

2 Q (By Ms. Lamin, continuing) Did you go to your father's
3 art studio that evening?

4 A Yes.

5 Q Did you walk around the outside of the building?

6 A Yes.

7 Q Did you examine the door of your father's art studio?

8 A Yes.

9 Q Is that a fair and accurate photo of how the outside
10 door of your father's art studio looked that evening?

11 A Yes.

12 MS. LAMIN: I move to admit Exhibit 3.

13 THE COURT: And Ms. Clark?

14 MS. CLARK: No objection.

15 THE COURT: Exhibit 3 is admitted.

16 Q (By Ms. Lamin, continuing) Mr. Brown, Exhibit 4, can
17 you please tell me what that is?

18 A That is a picture of the back door of my father's art
19 studio.

20 Q Did you go to the back door of your father's art studio
21 on December 6, 2009?

22 A Yes.

23 Q Did you examine the back door of your father's art
24 studio?

25 A Yes.

1 Q Is that a fair and accurate photo of how your father's
2 art studio looked on December 6, 2009?

3 A Yes.

4 MS. LAMIN: I move to admit Exhibit 4.

5 MS. CLARK: May I voir dire?

6 THE COURT: Yes.

7 VOIR DIRE

8 BY MS. CLARK:

9 Q Are you saying this is how it looked when you arrived?

10 A Yes.

11 MS. CLARK: No objection.

12 THE COURT: Exhibit 4 is accepted.

13 MS. LAMIN: Your Honor, I move to display
14 Exhibit 4, please?

15 THE COURT: All right.

16 (Whereupon, Ms. Lamin displayed a photograph
17 for the members of the jury.)

18 Q (By Ms. Lamin, continuing) Now, Mr. Brown, can you
19 explain what we're looking at? And you can use the
20 highlighter.

21 A Sure. (Indicating throughout.) This is the back door
22 to that same space, 2397 University Avenue, which is my
23 father's studio. It's tucked into that alcove, as I
24 showed you on the previous photo.

25 Q And if we take a second, I'll just click back to

1 Exhibit 1.

2 A That's right about here (indicating), okay.

3 (Whereupon, Ms. Lamin displayed a different
4 photograph for the members of the jury.)

5 THE WITNESS: There's a paint bucket with
6 something sitting on top of it, I'm not sure what
7 that is. This being the back of our building, we
8 do sometimes have paint cans sitting there. But
9 the door was broken open.

10 Q (By Ms. Lamin, continuing) And what are we looking at
11 on the left portion of Exhibit 4?

12 A (Indicating throughout.) This right here would be a
13 door -- a service door that my janitor and I use that
14 gets us to the back side of our elevator. It's kept
15 locked at all times.

16 Q Does that service door go up to -- where does that go?

17 A That service door leads to a hallway which is about
18 four by six feet, at the end of which is an elevator.
19 If you have a key, you can call the elevator to open on
20 that ground floor rear door and from there you can go
21 to the second or third floors.

22 Q You can go back to Exhibit 1, if you want to show that
23 for us.

24 A (Indicating throughout.) Okay. It's right here. Our
25 elevator is where this box is, that's the roof profile

1 of the elevator. So we're looking at this little
2 hallway here on the ground level. The elevator does
3 not go down. It only goes up for one, two, and three
4 floors.

5 Q From there, where can you go in your buildings?

6 A Well, if I have a key and I open my elevator, I could
7 go up to the second or third floor or I could in fact
8 open the front door, which would bring me to the lobby
9 again.

10 Q Does that in any way connect to the apartments?

11 A No.

12 Q Mr. Brown, I'm showing you Exhibit 5. Did you -- did
13 you go and inspect the back door, the previous
14 Exhibit 4, of your father's art studio?

15 A Yes.

16 Q And did you examine what was done to it?

17 A Yes.

18 Q And is Exhibit 5 a fair and accurate depiction of how
19 that door or the wood frame looked that night?

20 A Yes.

21 MS. LAMIN: Your Honor, I move to admit
22 Exhibit 5.

23 MS. CLARK: May I voir dire?

24 THE WITNESS: Yes.

25 VOIR DIRE

1 BY MS. CLARK:

2 Q Do you know when the picture in Exhibit 5 was taken?

3 A No.

4 Q Are you sure that the door looked like this when you
5 arrived?

6 A Yes.

7 Q When's the first time you saw this picture?

8 A I believe it was this morning.

9 Q Well, how can you be sure from December '09 until this
10 morning of exactly what a door -- part of a door looked
11 like?

12 A I can't tell you if the splinters are all in the exact
13 same place, but I can tell you that I saw a splintered
14 doorjamb, and that's what I'm looking at there.

15 MS. CLARK: With that modification to his
16 testimony, no objection.

17 THE COURT: And Exhibit 5 is accepted.

18 Q (By Ms. Lamin, continuing) So, Mr. Brown, this is back
19 to Exhibit 4, your father's art studio, the back door?

20 A Yes.

21 Q And now Exhibit 5, what is that?

22 A Well, this would be the doorjamb. So right in here
23 (indicating) is where the wood was -- the wooden jamb
24 was split and the door was open. It would no longer
25 close.

1 Q And now -- so that's -- if you want to focus in on
2 Exhibit 4, what are we looking at in Exhibit 5?

3 A We're looking at this space, right here (indicating).

4 Q A blowup of that area?

5 A Yes.

6 Q And what condition was that door in before December 6,
7 2009?

8 A It locked -- it closed properly and it locked properly.
9 It was functional.

10 Q Mr. Brown, I'm also showing you Exhibit 6.

11 A Uh-huh.

12 Q Again, when you were there on December 6, did you
13 examine both sides of the doorjamb that was broken?

14 A Yes.

15 Q Does this damage to the doorjamb -- to the door frame
16 fairly and accurately depict the damage that you saw on
17 December 6?

18 A Yes.

19 MS. LAMIN: I move to admit Exhibit 6.

20 MS. CLARK: May I, Your Honor?

21 THE COURT: Yes.

22 VOIR DIRE

23 BY MS. CLARK:

24 Q I assume also that your memory of Exhibit 6 is that you
25 saw some splintering of a doorjamb, but you don't know

1 if it looked exactly like this?

2 A That'd be correct.

3 MS. CLARK: With that modification, no
4 objection.

5 THE COURT: And Exhibit 6 is accepted.

6 Q (By Ms. Lamin, continuing) Let's go back to Exhibit 4.

7 And then what are we looking at in Exhibit 6?

8 A Okay. (Indicating throughout.) So right here, this is
9 where the lock bolt would have slid into the doorjamb.
10 This broken piece is probably the doorstop, the wooden
11 trim that the door pushes up against. The strike plate
12 is missing, the metal plate that should be there, and
13 you can see the jamb itself is split.

14 Q And what condition was the door in -- when had you
15 previously been at the building? Do you recall?

16 A Within a couple of days, at the most, and it was
17 functional at the time that I had seen it last. The
18 strike plate was in place, the door locked.

19 Q And if there's any problems with the door, would you
20 have known about it?

21 A Yes, that's my job.

22 Q I am showing you now what's been marked as Exhibit 7.

23 A Okay.

24 Q Did you -- in addition to examining the damage done to
25 the door, did you also walk through your various

1 businesses?

2 A Yes.

3 Q Okay. And this is on December 6, 2009?

4 A Yes.

5 Q Okay. And does this picture fairly and accurately
6 depict what was done to your business? And this is --
7 what is this exactly a picture of?

8 A We're looking at the -- one of the walls that divides
9 the art studio from the liquor store, and a large
10 section of plywood has been ripped off of that.

11 Q Does this picture fairly and accurately depict what you
12 saw on December 6?

13 A Yes.

14 MS. LAMIN: Your Honor, I move to admit
15 Exhibit 7.

16 MS. CLARK: No objection.

17 THE COURT: And Exhibit 7 is accepted.

18 MS. LAMIN: Thank you.

19 Q (By Ms. Lamin, continuing) Now, can you point out to
20 the jury what we're looking at?

21 A Yes. So right now the photo vantage point is from my
22 father's art studio in the basement. We're looking at
23 a wood frame and plywood wall that separates a portion
24 of his basement from the liquor store basement.

25 There's a section of plywood that's been broken and

1 pulled back to the side, this allows access to one of
2 the liquor store's storage rooms, and then it looks
3 like some boxes of liquor have been moved to my
4 father's studio side of the basement wall.

5 Q Is there a doorway there?

6 A No, no, there wasn't.

7 Q Was -- before December 6, was your father's basement
8 wall in that condition?

9 A No.

10 Q And do you know how the silent alarm was tripped that
11 night?

12 A (Indicating throughout.) The liquor store has an
13 extensive alarm system in their space. In this
14 particular wall, they've got copper wires that zigzag
15 across their side of the wall, and you can see a couple
16 of them here. And so my assumption is that one of
17 those wires --

18 MS. CLARK: Objection, move to strike,
19 speculation.

20 THE COURT: Overruled, you may answer.

21 THE WITNESS: One of the wires was broken in
22 that wall.

23 Q (By Ms. Lamin, continuing) Did you have any alarms in
24 the art studio?

25 A No.

1 Q To your knowledge, was there an alarm in the coffee
2 shop?

3 A No.

4 Q Did you have any surveillance cameras in the art
5 studio?

6 A No.

7 Q To your knowledge, were there any surveillance cameras
8 in the coffeehouse?

9 A No.

10 Q Was there a surveillance camera, to your understanding,
11 in the liquor store?

12 A Yes.

13 Q Mr. Brown, was there other damage done to the art
14 studio?

15 A Yes.

16 Q Can you please explain what that was?

17 A (Indicating throughout.) Besides the hole in the wall
18 here, on the other side where the wall separates the
19 art studio basement from the coffeehouse basement,
20 there was an old set of double doors that were boarded
21 over that had been broken open so that it was open
22 between the two spaces. Additionally, it looked like
23 stuff had been tossed around in the art studio and much
24 of it was -- or some of it was taken or missing.

25 Q Now, these doors, we don't have a picture of these, but

1 Q (By Ms. Lamin, continuing) Now, Mr. Brown, Exhibit 8,
2 what are we looking at?

3 A We're looking at a storage tower on wheels. It's a
4 typical studio furniture item. It's got drawers. It's
5 full of paints and tools and art supplies. It's
6 sitting outside in that alcove of the building outside
7 of my father's studio door.

8 Q And just going back to Exhibit 1, if you can point out
9 where it's sitting?

10 A Right in here (indicating).

11 Q Was it inside your father's studio?

12 A Prior to this, it was. But the night that I got there,
13 it was outside.

14 Q Had you or your father moved it outside?

15 A No.

16 Q Mr. Brown, I'm showing you Exhibit 9. Do you recognize
17 Exhibit 9?

18 A Yes.

19 Q What do you recognize in Exhibit 9?

20 A I recognize assorted property from my father's studio
21 in a jumble on the floor with a couple of other things
22 thrown in.

23 Q And is that on December 6, 2009?

24 MS. CLARK: Object to the witness testifying
25 as to the contents of the exhibit before it's in

1 evidence.

2 THE COURT: Overruled.

3 Q (By Ms. Lamin, continuing) On December 6, 2009, when
4 you went to the scene, did you retrieve some of your
5 father's property?

6 A Yes.

7 Q Were those some of the items that you retrieved?

8 A Yes.

9 Q And does this photo fairly and accurately depict the
10 items -- some of the items that you retrieved?

11 A Yes.

12 MS. LAMIN: Your Honor, I move to admit
13 Exhibit 9.

14 MS. CLARK: May I voir dire, Your Honor?

15 THE COURT: Yes.

16 VOIR DIRE

17 BY MS. CLARK:

18 Q Do you know who took this picture, Exhibit 9?

19 A No.

20 Q Did you see this scene as it was being -- as the
21 picture was being taken?

22 A No.

23 Q Did you see this scene exactly like this before you saw
24 the picture in the prosecutor's office this morning?

25 A I'm not sure.

1 Q You don't have a recollection of seeing --

2 A That exact -- I don't recall seeing that exact jumble
3 of stuff, no.

4 Q Okay. You're just saying you recognize some of the
5 items as having been at some point in your father's
6 studio?

7 A And I remember seeing a jumbled pile, and it looks very
8 familiar. I can't say if it was exactly like that.

9 Q And you don't know what -- where these objects are when
10 the picture was taken, correct?

11 A No.

12 MS. CLARK: Okay. I would object to
13 Exhibit 9 on foundation.

14 MS. LAMIN: Your Honor, I'll withdraw it and
15 introduce it later.

16 THE COURT: All right. Introduce it later.

17 Q (By Ms. Lamin, continuing) Mr. Brown, what were some of
18 the items in addition to the file cabinet that you
19 recovered that night that had been removed from your
20 father's studio?

21 A Stuff that we recovered that night included a cordless
22 drill, a couple of straight-edges, artist tools. There
23 was a light box which is used for viewing slides. I
24 think that's what I recall at the moment.

25 Q Mr. Brown, I'm showing you what's been marked as

1 Exhibit 12. Do you recognize what that is?

2 A Yes.

3 Q What is that?

4 A That's a computer printer.

5 Q Do you recognize that computer printer?

6 A Yes.

7 Q What do you recognize it as?

8 A That was in my father's studio.

9 Q Is that a fair and accurate picture of your father's
10 computer printer?

11 A Yes.

12 Q Okay. Did you retrieve this printer?

13 A Yes.

14 Q Okay.

15 MS. LAMIN: Your Honor, I move to admit

16 Exhibit 12.

17 MS. CLARK: May I?

18 THE COURT: Yes.

19 VOIR DIRE

20 BY MS. CLARK:

21 Q From our previous discussions, I assume you did not
22 take the picture?

23 A That is correct.

24 Q You don't know when it was taken or where?

25 A No, correct.

1 Q And what do you mean when you say retrieved?

2 A There were a couple of items that were given to me by
3 Sgt. Strickland.

4 Q On December 6?

5 A No.

6 Q You're saying at a later date you retrieved them?

7 A Correct.

8 Q So you don't -- strike that. Would it be accurate to
9 say you don't know where this printer was on December 6
10 when you arrived?

11 A No, I don't know. There were a couple of items that
12 were returned to me a week or two later and then there
13 were some items returned to me that night.

14 Q Some items returned to you on the 6th?

15 A Yes.

16 Q Okay. Well, I'll ask you about that a little bit
17 later.

18 A Okay.

19 MS. CLARK: For right now, we do object to 12
20 on foundation.

21 MS. LAMIN: Your Honor, may we approach?

22 THE COURT: Yes.

23 (Whereupon, a brief off-the-record discussion
24 was held.)

25 MS. LAMIN: Offer Exhibit 12.

1 THE COURT: Exhibit 12 is accepted.

2 Q (By Ms. Lamin, continuing) Now, Mr. Brown, I'm showing
3 you now Exhibit 12. Was that your understanding -- was
4 that one of the items taken from the studio that night?

5 A Yes.

6 Q And when did you get that item back?

7 A I'm not sure, either that night or a week or two later.

8 Q Mr. Brown, I'm showing you what's been marked as
9 Exhibit 13. Can you please tell me what that is?

10 A That's a computer scanner.

11 Q Do you recognize that scanner?

12 A Yes. That was in my father's studio, as well.

13 Q Okay. Was that item taken on December 6?

14 A Yes.

15 Q The item -- is that a fair and accurate photo of your
16 father's computer scanner?

17 A Yes.

18 MS. LAMIN: Your Honor, I move to admit

19 Exhibit 13.

20 MS. CLARK: May I?

21 THE COURT: Yes.

22 VOIR DIRE

23 BY MS. CLARK:

24 Q I assume from our prior discussions that you do not
25 know who took the picture, where or when?

1 A Correct.

2 Q And you -- is it accurate that you only know because
3 someone told you that this was taken from the art
4 studio?

5 A No, I do recall that being taken.

6 Q Well, you didn't see it taken, correct?

7 MS. LAMIN: Your Honor, objection. This is
8 not foundation.

9 THE COURT: Sustained.

10 Q (By Ms. Clark, continuing) I may have some additional
11 questions for you at a different time. But is it safe
12 to say you're not aware of precisely the condition this
13 was in when it was either removed from the studio or
14 moved at a later date?

15 A The condition it was in? I'm not sure what you're
16 asking.

17 Q Well, you don't know what fingerprints were on it, et
18 cetera, right?

19 A No.

20 MS. CLARK: Okay. With that understanding,
21 no objection.

22 THE COURT: And Exhibit 13 is accepted.

23 Q (By Ms. Lamin, continuing) Exhibit 13, now, was this
24 one of the items removed from your father's art studio?

25 A Yes.

1 MS. CLARK: Objection, foundation.

2 Q (By Ms. Lamin, continuing) Was this one of the items
3 missing from your father's art studio on December 6?

4 A Yes.

5 THE COURT: All right. I'll allow that
6 answer.

7 Q (By Ms. Lamin, continuing) And did you retrieve this
8 item from the police?

9 A Yes.

10 Q And this is, in fact, your father's scanner?

11 A Correct.

12 Q Just to be perfectly clear, Exhibits 12 and 13 were not
13 given away as gifts to anyone?

14 A No.

15 Q Mr. Brown, I'm showing you Exhibit 14. Can you please
16 tell me what that is?

17 A It's two boxes related to the computer equipment from
18 my father's studio.

19 Q Now, does this picture fairly and accurately depict
20 those boxes?

21 A Yes.

22 Q Were those boxes missing from your father's studio on
23 December 6?

24 A Yes.

25 Q Did you retrieve those boxes from the police?

1 A Yes.

2 MS. LAMIN: Your Honor, I move to admit
3 Exhibit 14.

4 THE COURT: Ms. Clark?

5 MS. CLARK: I just have a couple voir dire
6 questions.

7 THE COURT: Yes.

8 VOIR DIRE

9 BY MS. CLARK:

10 Q How do you know these boxes were in your father's art
11 studio?

12 A They were from his most recent computer purchase, and
13 he keeps everything. I've seen them around. They look
14 familiar.

15 Q Did you know where they were kept?

16 A Not exactly, no.

17 Q I'll have some additional questions for you later.

18 MS. CLARK: But with that understanding, no
19 objection.

20 THE COURT: And Exhibit 14 is accepted.

21 MS. LAMIN: Thank you.

22 Q (By Ms. Lamin, continuing) Now, Mr. Brown, we've gone
23 through some of the items that were recovered. Was
24 there anything not recovered that was missing on
25 December 6, 2009?

1 A Yes. The most important piece was the computer that
2 had been -- or once fit in that box on the top. That
3 was the Mac mini. It's a small cube computer. And
4 that was gone and it has not been recovered.

5 Q Mr. Brown, did you give Tamika Suttles permission to
6 enter the art studio that night?

7 A No.

8 Q Did you give Tamika Suttles permission to take any of
9 those items?

10 A No.

11 Q Did you give Daniel Drljic permission to enter your art
12 studio that night?

13 A No.

14 Q Did you give him permission to take any of those items?

15 A No.

16 Q Did you give Jermaine English permission to enter the
17 art studio that night?

18 A No.

19 Q Did he have permission to take any of those items?

20 A No.

21 MS. LAMIN: No further questions.

22 THE COURT: All right. And Ms. Clark.

23 MS. CLARK: Thank you.

24 CROSS-EXAMINATION

25 BY MS. CLARK:

1 Q Now, I take it from our discussions earlier, you were
2 not present at the point that, apparently, someone
3 entered the building?

4 A Correct.

5 Q And it is one building, correct?

6 A Yes.

7 Q You talked a little bit on direct about some apartments
8 in the building, but I wasn't totally clear what you
9 were speaking about. It sounds like some of the
10 upstairs units are rented for office space; is that
11 right?

12 A Correct.

13 Q And then at the other end of the building, then there
14 are some rental units for residential living?

15 A Yes.

16 Q And how many apartments?

17 A 11.

18 Q And at the time, were any of them occupied by white
19 men?

20 A Yes.

21 Q And at some point, Sgt. Strickland came to meet with
22 you at the building to talk about those tenants,
23 correct?

24 A Yes.

25 Q And he asked you for a list of tenants, including in

1 particular white men that fit a particular description,
2 right?

3 A He asked me for a list of tenants. I don't recall him
4 specifying white men only.

5 Q Okay. Did you give him a list of the tenants?

6 A Yes, I did.

7 Q Do you know the name Thomas Nolan? Was he a tenant?

8 A Yes.

9 Q And is he a white male?

10 A Yes.

11 Q Do you know his middle name?

12 A No, I don't.

13 Q Now, isn't it true that when Sgt. Strickland came to
14 the building, your understanding was he was doing some
15 investigation, right?

16 A Yes.

17 Q And isn't it true that you got angry with him for
18 trying to check out the stories that had been told to
19 him by Tamika Suttles?

20 MS. LAMIN: Well, Your Honor --

21 THE COURT: Approach.

22 (Whereupon, a brief off-the-record discussion
23 was held.)

24 THE COURT: You may proceed.

25 MS. CLARK: Thank you, Your Honor.

1 Q (By Ms. Clark, continuing) So the rental units, the
2 residential ones, are they all the same or are they
3 different?

4 A No, there's some variety.

5 Q Do they all look out the same way?

6 A No.

7 Q Do some of them look down on the parking lot?

8 A Yes.

9 Q And I take it that when you said earlier you made a
10 presumption about what tripped the silent alarm, you
11 don't actually know what tripped the silent alarm; is
12 that right?

13 A No, I'm not an alarm technician.

14 Q Sure. And you don't know exactly when it was tripped?

15 A No.

16 Q And you don't know whether there was a 9-1-1 call,
17 correct?

18 A No -- I have been told -- I have been told that the
19 police were called that night.

20 MS. LAMIN: Your Honor --

21 MS. CLARK: What did he say?

22 THE WITNESS: That the police were called
23 that night.

24 Q (By Ms. Clark, continuing) By someone?

25 A By someone, yes.

1 Q All right. And I think you were asked some questions
2 earlier about these apartments and what they can access
3 in the building?

4 A Yes.

5 Q Right?

6 A Uh-huh.

7 Q There are some -- are there some storage units in the
8 basement?

9 A Not for the apartment tenants, no. There's not really
10 any storage units in the basement, no.

11 Q I guess, I'm sorry, I could have been more precise. I
12 wasn't restricting my question to residential tenants,
13 but are there any storage units down there?

14 A Each storefront with its own address has its own
15 storage unit space in the basement.

16 Q So what's directly underneath the residential units?

17 A Most of it is the Keys Cafe and their basement.
18 There's also an art studio -- or, I'm sorry, an art
19 gallery with a basement.

20 Q So I just want to kind of get the visual.

21 A Sure.

22 Q So right underneath the residential apartments is the
23 storage for the little coffee shop or cafe? Yes?

24 A No, that's not quite right.

25 Q Okay.

1 A First, I want to distinguish between the coffeehouse
2 that we were talking about on University Avenue and the
3 Keys Restaurant, which is on Raymond Avenue.

4 Q Okay. Thank you.

5 A So directly beneath the residences, most of that space
6 is the Keys Restaurant, and they have basement space
7 there separate from everybody else. You have to go
8 through the restaurant to get down to their basement.

9 Q You indicated on direct that you owned six buildings.
10 Do some of those have storage units in the basement for
11 residential people?

12 A Yes.

13 Q Fairly common thing for rental buildings?

14 A Yes.

15 Q Now, you were asked some questions about these pictures
16 and Exhibit No. 4 with the tray of muffins sitting in
17 it?

18 A Yes.

19 Q I take it you don't know who put the muffins there?

20 A No.

21 Q Or when?

22 A No.

23 THE COURT: Counsel, could you approach?

24 (Whereupon, a brief off-the-record discussion
25 was held.)

1 THE COURT: Please continue.

2 MS. CLARK: Thank you.

3 Q (By Ms. Clark, continuing) With regard to Exhibit Nos.
4 5 and 6, these were the ones of the door-- the
5 doorjamb?

6 A Yes.

7 Q You indicated on direct that when you came, you
8 examined this area?

9 A Yes.

10 Q Did you have some light when you did that?

11 A The studio was lit on the inside. I don't recall if I
12 had a flashlight in my pocket or not.

13 Q Okay. So was the door open to the inside and some of
14 the studio light came out?

15 A Yes.

16 Q And what, in general, is the lighting in the parking
17 area?

18 A Parking area is fairly dark. It catches some light
19 from the street lights. I guess that's about it.

20 Q And I assume from your prior testimony, you don't know
21 when this door was splintered or how?

22 A No. All I know is that it wasn't like that a day or
23 two earlier.

24 Q A day or two earlier?

25 A Right.

1 Q Okay. With regard to Exhibit 8 -- and this is the one
2 of the -- I don't know what you called it. What did
3 you call this?

4 A It's a studio storage tower.

5 Q Okay. Some kind of a plastic thing with drawers?

6 A Yes, correct.

7 Q Had you earlier seen this in your father's studio?

8 A Yes.

9 Q So it looked out of place to you?

10 A Yes.

11 Q But would you agree that someone seeing this hallway
12 for the first time would not -- there's nothing that
13 would indicate that it had been moved from someelse?

14 A Except that it looks out of place on the outside of the
15 building in the winter.

16 Q It looks out of place to you?

17 A Yes.

18 Q Oh, it's outside the building?

19 A It's outside the building.

20 Q This is not an inner hallway basement?

21 A That is the hallway of the -- that is the alcove on the
22 outside of the building. You're looking at it right
23 outside the studio door.

24 Q Let me ask you, then, with regard to Exhibit 1, which
25 was the overview --

1 A Yes.

2 Q -- can you just explain to us -- and this is an
3 odd-shaped building. I don't even know if my
4 ninth-grade geometry gives me a name for this. What do
5 you call it?

6 A An odd-shaped building.

7 Q Okay. Thank you. Do your best to describe for us --

8 A Sure.

9 Q -- where you saw this plastic unit in Exhibit 8?

10 A Okay. It was outside the studio back door, and that
11 would be right in the alcove of the building, that dark
12 rectangular space in the middle of the back of the
13 building. That is outside and that's where it was.

14 Q Are you talking about something that looks actually
15 black on the picture?

16 A Yes. In the middle of the building, the trapezoidal
17 building, there's a rectangle that projects into the
18 middle of it that's dark, that's the alcove that's
19 outside of our building walls.

20 THE COURT: If it's more helpful, Ms. Clark,
21 you can approach the witness and have him point it
22 out.

23 MS. CLARK: Is it all right if he marks on
24 here?

25 MS. LAMIN: That's fine.

1 THE COURT: Okay.

2 Q (By Ms. Clark, continuing) I'm going to have you just
3 use a Sharpie and give us an X for where you saw that.

4 A Okay (complying).

5 Q Okay. And for the record, you marked an X on
6 Exhibit 1?

7 A Yes.

8 MS. CLARK: And may I publish briefly?

9 THE COURT: No, I think we've already seen
10 it.

11 Q (By Ms. Clark, continuing) The X is kind of in a little
12 narrow area, right?

13 A Yes.

14 Q And that is not well lit?

15 A Correct.

16 Q With regard to Exhibit 7, which is the kind of sliced
17 wood -- what's the word? Plywood, I guess?

18 A Plywood, yes.

19 Q Do you yourself use tools?

20 A Yes.

21 Q Do you know what kind of tool it would take to slice
22 plywood like that?

23 A It's not actually sliced, it's ripped, and I would say
24 that somebody used a crowbar or a hammer to pull the
25 sheet away from the frame. That's my guess.

1 Q Now, in the pictures that we had of the printer
2 equipment, there was one of an Epson printer, that was
3 Exhibit 12, and then there was one of a -- apparently,
4 another printer as Exhibit 13. Do you recall those?

5 A Yes.

6 Q Now, I want to ask you, do you think it's possible that
7 the police gave these back to you on December 6?

8 A It's possible, yes.

9 Q So they were just handed to you?

10 MS. LAMIN: Your Honor, may we approach?

11 THE COURT: Okay.

12 (Whereupon, a brief off-the-record discussion
13 was held.)

14 Q (By Ms. Clark, continuing) So it sounds like some
15 objects were just kind of handed to you at some point
16 when you got there on the 6th?

17 A At some point during that time, yes.

18 Q And do you recall who gave them to you?

19 A The metal strips, the straight edges that were in one
20 of those pictures, I believe, were handed to me by a
21 police officer. There was a police officer who walked
22 through the whole building with me and asked me
23 questions and wanted me to point out what was missing
24 and what was damaged.

25 Q Do you remember that officer's name?

1 A I do not.

2 Q Was he taking notes?

3 A Yes.

4 Q Male or female?

5 A Male.

6 Q Okay. So you started that sentence, though, answering
7 that you were given some straight edges?

8 A Yes.

9 Q That day?

10 A That day, yes. And then the plastic tower of stuff, I
11 believe, we just moved right back into the studio.

12 Q We meaning you and whom?

13 A Me and -- probably just me.

14 Q Okay. All right. And did you see any police officers
15 touch the plastic thing?

16 A I don't recall.

17 Q Did you see any -- did a police officer touch the
18 straight edge?

19 A The one officer that handed me the straight edge must
20 have touched it.

21 Q Okay. Was he wearing gloves?

22 A I don't know. I don't recall.

23 Q And with regard to the Epson printer in Exhibit 12, you
24 said you think you could have been given this back as
25 well on the 6th?

1 A Yes, it's possible.

2 Q And also handed to you by a police officer?

3 A If I got it back that night, it would have been handed
4 to me by a police officer, yes.

5 Q All right. And did you see any police officers at the
6 scene dusting for fingerprints -- dusting anything for
7 fingerprints?

8 A I don't recall seeing that, no.

9 Q And then finally with regard to Exhibit 13, is this
10 like an HP printer?

11 A It's a printer/scanner. The other one is more of a
12 photo-quality printer. So, yes.

13 Q Okay. Thank you. And you believe that police officer
14 also handed this back to you on the 6th?

15 A I think so.

16 Q And I take it from the earlier questions that you
17 didn't see anyone dusting this for fingerprints?

18 A I don't recall.

19 Q Now, I think you said also on direct that you were --
20 that Sgt. Strickland gave you back some additional
21 objects at a later date?

22 A Yes, uh-huh.

23 Q Do you remember what those were?

24 A I remember the two boxes that were in one of those
25 pictures -- computer boxes. I remember --

1 Q These (indicating)? Exhibit 14?

2 A Yes, thank you. And I remember a jigsaw. And I think
3 one of those printers -- I think I got one of those
4 printers back from him, as well.

5 Q Okay. So one of the printers was apparently handed to
6 you on the 6th and one handed to you later on by Sgt.
7 Strickland?

8 A I think so, yes.

9 Q Now, when you say you got the boxes back that are
10 depicted in Exhibit 14, it sounds like from your
11 testimony on direct that one of them was simply a box?

12 A Yes.

13 Q In other words, it didn't have the computer inside of
14 it?

15 A Correct.

16 Q Even though it appears to show a computer on the front?

17 A Right.

18 Q Was that located anywhere outside the building that
19 morning?

20 A The computer?

21 Q Yes.

22 A No, we have not seen that since.

23 Q You were asked on direct whether you gave permission to
24 Tamika Suttles to enter the building. You don't have
25 any information she ever was in the building, do you?

1 A No.

2 Q And you don't know whether someone else gave her
3 permission to enter the building, I take it?

4 A No.

5 Q With regard to Daniel Drljic, I take it you don't have
6 any personal knowledge whether he was in the building
7 that night?

8 A No.

9 Q And you don't know whether someone else gave him
10 permission to enter it?

11 A No.

12 Q And also with regard to Jermaine English, do you know
13 whether he was in the building that night?

14 A I do not.

15 Q And when I'm asking, I mean of your personal knowledge.

16 A Yes, I do not know.

17 Q Do you know whether someone gave him permission to
18 enter the building?

19 A No, I don't know.

20 MS. CLARK: I have nothing further.

21 THE COURT: Ms. Lamin.

22 REDIRECT EXAMINATION

23 BY MS. LAMIN:

24 Q Just to clarify, Mr. Brown, in terms of someone else,
25 the art studio of yours and your father's, there was no

1 permission for any of those three people to enter that
2 art studio?

3 A Correct.

4 MS. CLARK: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: Correct.

7 Q (By Ms. Lamin, continuing) No one with authority to
8 give permission gave permission?

9 MS. CLARK: Objection, foundation, leading.

10 THE COURT: You can rephrase that question.

11 Q (By Ms. Lamin, continuing) Did anyone with authority,
12 you or your father, give the defendants, Ms. Suttles
13 and Mr. Drljic, permission to enter the building?

14 MS. CLARK: Same objections -- I mean, same
15 foundation objection.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: I'm sorry, could you please
18 repeat it?

19 Q (By Ms. Lamin, continuing) Was the building at 4:18 in
20 the morning -- by building meaning you and your
21 father's art studio -- was that locked?

22 A Yes.

23 Q Anyone have a right to go in there at that time?

24 A No one besides my father and I have the right or even a
25 key to get into that space.

1 Q Any signs that a key was used to get in that night?

2 A No.

3 Q Did you or your father give anyone the right to go into
4 that art studio that night?

5 A No.

6 Q Defense counsel mentioned something about a hallway.
7 Is there a hallway connecting the businesses?

8 A No.

9 Q What's your view in terms of them being three separate
10 businesses or one?

11 A They are definitely three separate businesses. They
12 each have their own doors, they each have their own
13 mailing address on University Avenue, and there is no
14 connection between the two -- or the three.

15 MS. LAMIN: No further questions, Your Honor.

16 Thank you.

17 THE COURT: Okay.

18 MS. CLARK: I just have a couple.

19 THE COURT: Okay.

20 RE-CROSS-EXAMINATION

21 BY MS. CLARK:

22 Q You don't know whether the building was locked at 4:00
23 in the morning, do you?

24 A I'm not sure how to answer that. I know that the
25 building should be locked, I know that we do lock it

1 every night, and my dad's studio certainly is locked
2 every night when he leaves. I've never found it
3 unlocked when he's not there.

4 Q Let me ask it slightly differently. You don't know if
5 the door was already open because someone else pried it
6 open around 4:00 in the morning?

7 A That's correct, I do not know that.

8 Q And I take it you don't have any way to test -- you
9 don't have any personal knowledge of what Mr. Drljic
10 believed as to any permission to enter that building
11 that evening, correct?

12 MS. LAMIN: Objection, Your Honor, beyond the
13 scope of redirect and beyond the scope of
14 Mr. Brown's personal knowledge.

15 THE COURT: I'm going to sustain that
16 objection, so don't answer it.

17 Q (By Ms. Clark, continuing) When you said a moment ago
18 that your habit is to lock the building, did you say
19 something about it's your father's habit to lock his
20 art studio?

21 A I didn't use that word, but yes, I said he locks it
22 every night when he leaves.

23 Q You don't have personal knowledge as to whether he
24 locked it that night?

25 A No. I wasn't with him, no.

1 Q Well, what is the internal door -- is there an internal
2 door to the art studio?

3 A There's a front and a back door, the front door being
4 the glass one facing University -- it has the address
5 on it -- and the back one being the wooden door that
6 was opened. So an internal door, there is a small
7 office partition in the space that you can get into
8 from within the studio. It's just a little -- like a
9 closet, essentially, in the studio, yes.

10 Q Okay. Thank you.

11 MS. CLARK: Nothing further.

12 THE COURT: Ms. Lamin.

13 MS. LAMIN: Nothing from the State, Your
14 Honor.

15 THE COURT: Okay. Thank you. Well, thank
16 you, and you may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Counsel, approach.

19 (Whereupon, a brief off-the-record discussion
20 was held.)

21 THE COURT: Okay. Well, I was trying to
22 figure out our schedule, but I think right now
23 let's stand and stretch. You still will go at
24 noon for lunch, okay? So if you want to just
25 stretch in place, that would be good.

1 (Whereupon, after a brief off-the-record
2 discussion, a short break was held.)

3 THE COURT: All right. Ms. Lamin, you may
4 proceed.

5 MS. LAMIN: Thank you, Your Honor.

6 (Whereupon, the prosecutor stepped out of the
7 courtroom briefly and returned with the State's
8 next witness.)

9 MS. LAMIN: Your Honor, the State calls
10 Officer Gliske to the stand.

11 THE CLERK: Please raise your right hand. Do
12 you swear that the testimony you give here today
13 will be true, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: You can lower your right hand.
16 Please state and spell your full name for the
17 record.

18 THE WITNESS: Jonathan C. Gliske;
19 J-O-N-A-T-H-A-N, C., G-L-I-S-K-E.

20 THE CLERK: Thank you.

21 THE COURT: And you may be seated, Officer.
22 And have you testified before?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Okay. So you know the rules. If
25 there's an objection, do not answer until I let

1 you know you can, all right? And I'll let you
2 know whether or not to answer the question. Thank
3 you.

4 You may proceed.

5 MS. LAMIN: Thank you.

6 DIRECT EXAMINATION

7 BY MS. LAMIN:

8 Q Officer Gliske, where are you presently employed?

9 A St. Paul Police Department.

10 Q And what is your present assignment?

11 A Western District, midnight patrol.

12 Q Are you a licensed peace officer?

13 A Yes, ma'am.

14 Q How long have you been licensed?

15 A Three years.

16 Q What is your educational background?

17 A I have a four-year bachelor's at Mankato State and
18 summer Skills course through Hibbing.

19 Q Can you please explain what is the skills course?

20 A It's mostly all hands-on stuff -- driving, shooting,
21 criminal investigation, accidents, that type of stuff.

22 Q And what did you have to do to become licensed?

23 A Schooling, skills, and then a POST test.

24 Q Is that a written test?

25 A Yes, ma'am.

1 Q And you've been employed with the City of St. Paul your
2 full time?

3 A Yes, I have.

4 Q Can you explain the training you went through as part
5 of being a St. Paul police officer from the beginning?

6 A Through St. Paul or with my college?

7 Q Through St. Paul.

8 A Through St. Paul, we're put through a 12-week academy,
9 which went through criminal investigations --
10 everything from driving to shooting, how to handle
11 calls, accidents, reports.

12 Q And what happened after those 12 weeks?

13 A I went through a four-month field training where I had
14 to ride with a senior officer who brought me along on
15 calls, worked me how to go through calls, take calls,
16 write reports.

17 Q And what about since that initial 12-week and 4-month
18 period?

19 A As far as training?

20 Q Yes.

21 A I've been to many different training opportunities that
22 they allow us to go to, mostly hands-on stuff for me --
23 shooting, vehicle-type stuff, driving, contraband, and
24 drugs training.

25 Q Did you have some other training for becoming a police

1 officer aside from what you've just mentioned?

2 A Some.

3 Q What was that?

4 A Crime scene, fingerprinting, other -- I can't remember
5 right now.

6 Q You said you work as a patrol officer. Do you work in
7 uniform, as you appear today?

8 A Yes, ma'am.

9 Q Do you drive a marked squad car?

10 A Yes, I do.

11 Q Are you alone or with a partner?

12 A It depends on the day. If we have enough cars, I'll
13 ride alone, and sometimes I ride with a partner.

14 Q And you said you work in the Western District?

15 A Yes.

16 Q What area of town is that?

17 A It's mostly Frogtown, which is from Larpenteur to Rice
18 Street to Fort Snelling to Highway 280 -- or to the
19 Minneapolis border, rather.

20 Q And you said you worked the midnight shift?

21 A Yes.

22 Q When do you begin?

23 A I start at 10:00 p.m. and I end at 8:00.

24 Q Did you work last night?

25 A Yes, I did.

1 Q As part of your duties as a patrol officer -- explain
2 what some of your duties as a patrol officer are.

3 MS. CLARK: Objection, relevance.

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: I'm assigned a certain grid,
6 that's my squad number. I'm supposed to take
7 calls in that grid, but I'm allowed to go
8 throughout my entire district. I take calls, I
9 pull people over, I look for crime, and I arrest
10 people.

11 THE COURT: Before you proceed, can you hear
12 back there? Is it harder to hear?

13 (Whereupon, several members of the jury
14 indicated difficulty hearing.)

15 THE COURT: Use the microphone a little bit.

16 THE WITNESS: Better?

17 (Whereupon, several members of the jury
18 nodded affirmatively.)

19 THE COURT: Thank you.

20 THE WITNESS: All right.

21 Q (By Ms. Lamin, continuing) What are some of the calls
22 that you take?

23 A It ranges from domestics to civil disputes to alarms to
24 burglaries to shootings, homicides.

25 Q Burglaries, how many do you -- is that a frequent call

1 in your area?

2 A Yes.

3 Q Okay. You said you work in a certain grid. What
4 specific grid do you work in in the Western District?

5 A It's considered grid one, which is Snelling to Summit
6 and then west to the Minneapolis border. So it's a lot
7 of industrial properties, a lot of businesses.

8 Q So given your grid patrol assignment, you just said you
9 respond to a lot of burglaries?

10 A Yes.

11 Q Okay. Approximately how many burglaries have you
12 responded to in your career?

13 MS. CLARK: Objection, relevance.

14 THE COURT: Overruled, you may answer.

15 THE WITNESS: In a week? In a year?

16 Q (By Lamin, continuing) We can start with in a week.

17 A It depends on the week. Sometimes there's a lot of
18 burglaries. Sometimes I've been to about 10 or 20,
19 sometimes there's maybe one or two. It just depends on
20 the week.

21 Q Approximately how many do you think you've had over
22 your three years? Is it more than 50, 100?

23 A A lot. Over 100, I would have to say.

24 Q And as part of your experience responding to
25 burglaries, do they involve tools at times?

1 A Most of the time.

2 Q Okay. What kind of tools do you frequently see?

3 MS. CLARK: Objection, Your Honor. May we
4 approach?

5 (Whereupon, a brief off-the-record discussion
6 was held.)

7 THE COURT: You may proceed.

8 MS. LAMIN: Thank you.

9 Q (By Ms. Lamin, continuing) I'm sorry, we were talking
10 about tools that you find at some of these burglaries.

11 A Most of the tools that I find at burglaries are cutting
12 instruments or prying instruments to manipulate a lock
13 or manipulate a door frame to pop it open or to flex it
14 enough to where they can defeat the lock and gain
15 entry. So pry bars, screwdrivers, bolt cutters,
16 anything you can name that would work as a pry bar to
17 break in some place or bend something.

18 Q Let's talk about -- how do you frequently process a
19 burglary?

20 MS. CLARK: Objection, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Burglaries come out in two
23 different ways. They come out as alarms, which an
24 alarm company calls in and then they call our
25 dispatch and then they send us, or they come out

1 as somebody sees something, which then they call
2 us and we have to investigate.

3 So we get to the perimeter, we set up, we
4 look around and make sure there's no forced entry,
5 anything like that. If the building is secure,
6 then we call -- sometimes call a keyholder to make
7 sure everything inside is okay, because burglars
8 are good enough nowadays where they can break into
9 a lock and then still shut the door and be able to
10 make it look like it's fully locked and they can
11 be inside for hours and then leave whenever they
12 want.

13 And if there is forced entry, then we set up
14 a perimeter and we wait for a dog to go in and
15 clear the building and then we contact the owner
16 and make sure nothing's missing or to find out if
17 something's missing.

18 Q (By Ms. Lamin, continuing) Typically what happens if
19 something's missing?

20 A If something's missing inside?

21 Q Yes.

22 A We take a report. If anything is touched or moved, I
23 fingerprint and see if there's any latent prints I can
24 find, any other evidence inside the business that the
25 suspects could leave. We've found IDs inside of

1 businesses, gloves, mail -- anything that would lead to
2 someone's name or video or anything like that.

3 Q After your initial arrival on the scene, do you do
4 follow-up investigation personally?

5 A Once I do my report and I sign my report, then it's
6 handed off to an investigator -- or a sergeant
7 investigator to investigate and it's out of my hands
8 from there.

9 MS. CLARK: I'm having a little difficulty
10 hearing.

11 THE COURT: I'm sorry?

12 MS. CLARK: I'm having a little difficulty
13 hearing the witness.

14 THE COURT: Yes. Could you speak right into
15 the mic?

16 THE WITNESS: Okay.

17 THE COURT: Okay. That's good. Did you hear
18 the last answer?

19 MS. CLARK: Yes.

20 THE COURT: Okay.

21 Q (By Ms. Lamin, continuing) So, Officer Gliske, turning
22 your attention to December 6, 2009, were you working
23 that day?

24 A Yes, I was.

25 Q Were you working your normal shift?

1 A Yes.

2 Q And you were working in a marked patrol car?

3 A Yes.

4 Q And you were working your regular area?

5 A Yes.

6 Q Okay. Do you recall being dispatched?

7 THE COURT: Before we continue, I'm keeping
8 my eye on the clock, so approach.

9 (Whereupon, a brief off-the-record discussion
10 was held.)

11 THE COURT: Okay. I'm trying to keep my
12 promise. We are going to stop now. Officer, you
13 have to come back, I'm sorry.

14 THE WITNESS: That's fine.

15 THE COURT: All right. Okay. So we'll be in
16 recess. Have lunch, come back at 1:00, and we'll
17 continue from there. And you can leave your
18 notes, please.

19 (Whereupon, the jurors were escorted from the
20 courtroom.)

21 THE COURT: So Ms. Clark wanted to make a
22 quick record.

23 MS. CLARK: Thank you. When we came to the
24 bench during the testimony of Peter Brown, the
25 State objected that -- I'm actually not sure

1 exactly the wording of the State's objection, but
2 the Court ruled that the questions I was starting
3 to ask were outside the scope of direct.

4 My understanding of the law is that the cross
5 is never limited to the scope of direct. The only
6 testimony that's limited is after the cross has
7 occurred. If there's redirect, then the recross
8 is limited to the redirect. But it just wouldn't
9 make any sense if you couldn't impeach witnesses
10 with evidence. During the cross-examination,
11 that's the whole point. That's what you get to
12 do, is assess -- attack their credibility, attack
13 their knowledge, motivation, et cetera.

14 So we were trying to elicit from Peter Brown
15 who we had on the stand, having learned from Sgt.
16 Strickland -- and I'm summarizing now, but this is
17 both by way of a record and an offer of proof --
18 that Strickland went over to the building, spoke
19 with Peter Brown, and that Peter Brown -- he was
20 trying at that time to determine -- to check out
21 the story that had been told him by Suttles and
22 Drljic and to find the white guy, and he said that
23 Peter Brown was getting pissed at him because he
24 was trying to prove or disprove whether there was
25 another guy. It's very, very important

1 information for the defense.

2 I will pull some law, Your Honor. I believe
3 we are correct on this, and I do believe it's
4 reversible error. Thank you for letting me make a
5 record.

6 THE COURT: Okay. You certainly made your
7 record. I believe that Sgt. Strickland hadn't
8 been introduced, even, at this point, for any of
9 this information, and it was sort of hanging out
10 there totally irrelevant and not part of the
11 direct, I do find, but you made your record.
12 That's it.

13 MS. LAMIN: Your Honor, I would say it was
14 inadmissible hearsay in terms of it was what Sgt.
15 Strickland was telling to him and extremely
16 argumentative. That's why I asked to approach.
17 Defense is free to call Sgt. Strickland to the
18 stand, but defense wasn't asking -- defense is
19 trying to get in statements that other people
20 made, including -- it was double hearsay --
21 including Sgt. Strickland, without actually having
22 those people on the stand.

23 MS. CLARK: That's the whole point.

24 THE COURT: All right.

25 MS. CLARK: If I could just respond to that?

1 That objection was not made at the bench. The
2 whole point is I have Peter Brown --

3 THE COURT: That objection was not made. I
4 made my ruling before that.

5 MS. CLARK: The point was, we had Peter Brown
6 on the stand. I should be able to ask him what he
7 said to Strickland, otherwise I'll pull a hearsay
8 objection when I ask Strickland what Peter Brown
9 said.

10 Thank you.

11 THE COURT: Very well, that's it. Thanks.

12 THE CLERK: Court stands in recess.

13 (Whereupon, court stood in recess until
14 1:00 p.m.)

15 THE COURT: I just wanted to clarify what my
16 ruling was earlier on the cross-examination. You,
17 of course, can bring in on cross evidence that's
18 relevant to the case and are admissible, but it
19 can't be some -- well, it's not everything that is
20 relevant and admissible.

21 MS. CLARK: Can I just ask a question about
22 that? I heard Your Honor to say when we were at
23 the bench that I can't ask any questions outside
24 the scope of direct.

25 THE COURT: And I'm clarifying at this point,

1 because you said you could bring anything you want
2 in, and, in fact, you may not. It has to be
3 relevant to the case and admissible.

4 MS. CLARK: And, obviously, I would agree
5 with that, but it was the scope issue that I had
6 an issue with.

7 THE COURT: Okay.

8 MS. CLARK: I hadn't even finished my
9 question at the point -- of this Peter Brown at
10 the point that the prosecutor objected. I didn't
11 even get the question out, so I don't know how we
12 could have had a ruling on relevance. But thank
13 you, I do appreciate that clarification.

14 THE COURT: Okay. Thank you. All right.
15 Let's bring them in.

16 (Whereupon, the clerk stepped out of the
17 courtroom briefly and returned with the jury.)

18 THE COURT: Ms. Lamin, you may proceed.

19 MS. LAMIN: Thank you.

20 Q (By Ms. Lamin, continuing) Officer Gliske, you're still
21 under oath from earlier this morning.

22 A Yes, ma'am.

23 Q So we were turning your attention to December 6, 2009.
24 Do you recall being dispatched to the area of Raymond
25 and University?

1 A Yes, I do.

2 Q Do you remember about what time?

3 A Around 4:15, 4:20, somewhere in that area.

4 Q Do you recall why you were dispatched?

5 A We had an alarm at a business at Raymond and
6 University.

7 Q Mr. Gliske, I'm going to ask you to speak up a little
8 bit.

9 A We had an alarm at a business at Raymond and
10 University.

11 Q And you were driving by yourself that night?

12 A Yes, I was.

13 Q Okay. So what did you do?

14 A Came off of westbound University to Raymond, went north
15 to an alley which goes to the rear of the business.
16 The business is a large building that has like three or
17 four different businesses in it and apartments next to
18 it. I went into the alley towards the west, towards
19 the back end of the business.

20 Q Okay. Officer Gliske, can you please use that pointer
21 and show us on Exhibit 1 where you drove?

22 A (Indicating throughout.) I came off of University, went
23 north, blacked out, came into the alley here, and
24 parked the car right there.

25 Q And as you came into the alley -- well, how about --

1 describe this area for us.

2 A It's very industrial. There's really no -- the only
3 apartments in the area are located right here
4 (indicating). The nearest house from there is up in
5 St. Anthony Park, about four or five blocks north. The
6 rest of it is banks, restaurants, hair salons, and
7 that's about it -- a liquor store. It's all businesses
8 and everything is absolutely dead at 4:00 in the
9 morning, obviously.

10 Q So -- at what time do you think approximately -- do you
11 recall when you might have arrived there? Was it a
12 long time after? A short time?

13 A I don't recall.

14 Q Okay. But at some time after you were dispatched, 4:15
15 to 4:20?

16 A Yes.

17 Q Okay. So when you drove through that alley, what did
18 you see?

19 A I saw a vehicle parked approximately right here
20 (indicating), legally parked, facing westbound, with a
21 female standing next to the vehicle.

22 Q And did you make any observations at that time?

23 A I did. When she saw my marked squad, she became very
24 nervous.

25 MS. CLARK: Objection, foundation.

1 THE COURT: Just lay the foundation, please.

2 Q (By Ms. Lamin, continuing) Did you have an opportunity
3 to observe the female that was standing next to the
4 vehicle parked in the parking lot?

5 A Yes.

6 Q Okay. Did you have a clear view of her?

7 A Yes.

8 Q Was that view obstructed in any way?

9 A No, because the second I saw her I lit her up with
10 light -- with my spotlight so I could see her better.

11 Q Mr. Gliske, if I can just remind you to try to speak
12 up, if you can, into the microphone.

13 A Okay.

14 Q Thank you. So you saw her and put a spotlight on her?

15 A Yes.

16 Q And then what did you see?

17 A When she saw that I was a police officer, she
18 immediately turned away and started pacing back and
19 forth. She had her driver's side door open and was
20 just pacing back and forth by the driver's side of her
21 vehicle.

22 Q And based on your observation, training, and
23 experience, what was your impression at that point?

24 MS. CLARK: Objection, relevance.

25 THE COURT: Overruled, you may answer.

1 THE WITNESS: Well, due to the time of night
2 and that we had an alarm at a business which is
3 right there and knowing that this area is
4 completely -- there's no one around from about
5 2:00 a.m. to about 6:00 a.m., I wanted to talk to
6 her to see if she either saw anything or was a
7 suspect that could be possibly burglarizing the
8 business.

9 Q (By Ms. Lamin, continuing) Did you make any
10 observations -- so what did you do next?

11 A I approached her and got out of my squad and started
12 talking to her about why she was in the area and what
13 she was doing.

14 Q And what did she say?

15 A She told me that her car broke down and she was just
16 waiting for -- I can't remember exactly what she said
17 -- a ride or a friend or something like that to come
18 and get her, but her vehicle had broke down.

19 Q What else did she say?

20 A I don't recall. She had said she had to pee really bad
21 and she just wanted me to leave her alone and let her
22 go.

23 Q And can you again identify where that vehicle was on
24 Exhibit 1 and where were you?

25 A (Indicating throughout.) I don't recall exact location,

1 but my squad would have been parked right about here,
2 facing towards the back of her vehicle, which was
3 backed either in this stall or this stall, one of these
4 right in here.

5 MS. LAMIN: Your Honor, may I approach?

6 THE COURT: Yes.

7 Q (By Ms. Lamin, continuing) I'm showing you, Officer
8 Gliske, what's been marked as Exhibit 17. Can you
9 identify what that is?

10 A That's the liquor store that the alarm was -- that I
11 was sent to.

12 Q And did you take this photograph that's Exhibit 17?

13 A No, I did not. Officer -- another officer did.

14 Q Okay. Were you with the officer when he took this
15 photo?

16 A Yes, I was. I showed her around and showed her exactly
17 what to take photos of because she wasn't at the scene
18 initially. When she arrived, I had to show her what to
19 take photos of.

20 Q Does this photo fairly and accurately depict that
21 liquor store on December 6, 2009?

22 A Yes.

23 MS. LAMIN: I move to admit Exhibit 17.

24 MS. CLARK: Voir dire?

25 THE COURT: Yes.

VOIR DIRE

1

2 BY MS. CLARK:

3 Q Was this photograph taken at 4:56?

4 A I'm not sure. I didn't take the photograph.

5 Q I'm sorry, were you with the person who took the
6 photograph?

7 A Yes, I was.

8 Q At the time they were taking the photographs?

9 A Yes, I was.

10 Q Was the clock correct?

11 A I did not notice. I was with the person, but I didn't
12 make a time stamp of every single photograph that the
13 officer took.

14 Q Who actually took the photographs?

15 A Officer Alvarez, Amber.

16 MS. CLARK: No objection.

17 THE COURT: And Exhibit 17 is admitted.

18 Q (By Ms. Lamin, continuing) While we're there, we'll do
19 some more photographs. Officer Gliske, I'm showing you
20 what's been marked as Exhibit 18. Can you identify
21 what that is?22 A That was the vehicle I saw parked in the parking lot.
23 The defendant said that her car broke down.24 Q Now, you were again with -- is that a fair and accurate
25 depiction of how that vehicle looked on December 6,

1 2009?

2 A Yes. I'm not sure about location, but yes. Yeah, it
3 is facing westbound, so it should be.

4 MS. CLARK: I couldn't hear that.

5 THE WITNESS: It should be, it was facing
6 west, but I know we moved the vehicle when we had
7 to have it towed because the tow truck couldn't
8 get in that tight spot. So I was just making sure
9 that it was actually in the direction that it was
10 facing when I approached it.

11 Q (By Ms. Lamin, continuing) But this photograph fairly
12 and accurately depicts the vehicle on that night?

13 A Yes.

14 MS. LAMIN: Your Honor, I move to admit
15 Exhibit 18.

16 THE COURT: Counsel.

17 MS. CLARK: Voir dire?

18 THE COURT: Yes.

19 VOIR DIRE

20 BY MS. CLARK:

21 Q You just said that you're not sure that the vehicle was
22 in the same location when you arrived, correct?

23 A No.

24 Q I thought you just said that.

25 A I said we moved the vehicle from its original location

1 so the tow truck could pick it up because it was a
2 tight space.

3 Q Okay.

4 A And I wasn't sure when I first looked at the photograph
5 if it was before or after we moved it.

6 Q All right. Well, let me rephrase, then, because I
7 don't think we're disagreeing. Is it true that
8 Exhibit 18 does not necessarily depict the car in the
9 exact location that you saw it when you first arrived?

10 A Rephrase. I'm not getting what you're saying.

11 Q Is it accurate to say that you don't know whether the
12 picture, Exhibit 18, was taken before or after the car
13 had been moved?

14 A It looks like the vehicle -- that picture was taken
15 before the vehicle was moved, because that fence is a
16 western border of where that parking lot is.

17 Q Okay. The question was, is it true that you can't be
18 sure whether the photograph was taken before or after
19 the car was moved?

20 A Not 100 percent, you're correct.

21 MS. CLARK: Okay. With that, no objection.

22 THE COURT: And Exhibit 18 is accepted.

23 Q (By Ms. Lamin, continuing) I'm showing you, Officer,
24 what's been marked as Exhibit 19. Can you identify
25 what that is?

1 A It's the same vehicle from the trunk.

2 Q And is this a fair and accurate photograph of the
3 vehicle that night?

4 A Yes.

5 MS. LAMIN: I move to admit Exhibit 19.

6 MS. CLARK: I just have a couple voir dire
7 questions.

8 THE COURT: Okay.

9 VOIR DIRE

10 BY MS. CLARK:

11 Q Officer, is it true also for Exhibit 19 that you're not
12 sure whether this picture was taken before or after the
13 car was moved?

14 A Yes.

15 MS. CLARK: With that, no objection.

16 THE COURT: And Exhibit 19 is accepted.

17 Q (By Ms. Lamin, continuing) And, Officer, I'm showing
18 you Exhibit 20. Can you identify who that is?

19 A Ms. Suttles, the defendant.

20 Q And is that how she looked that evening when you saw
21 her?

22 A Yes.

23 MS. LAMIN: I move to admit Exhibit 20.

24 MS. CLARK: No objection.

25 THE COURT: Exhibit 20 is accepted.

1 MS. LAMIN: Thank you, Your Honor.

2 Q (By Ms. Lamin, continuing) Now, Officer Gliske, can you
3 please explain what we're looking at here in
4 Exhibit 18?

5 A That's the defendant's vehicle that was parked in the
6 parking lot in the rear of the business with the door
7 open.

8 Q And is that -- do you recall -- was that the door that
9 was open when you arrived?

10 A Yes.

11 Q And where was the defendant?

12 A Standing right outside the driver's side door.

13 Q And by the defendant, you're talking about Monica (sic)
14 Suttles?

15 A Yes, ma'am.

16 Q Is the person who was standing outside the driver's
17 side door here in the courtroom today?

18 A Yes, ma'am.

19 Q Okay. Can you please identify where she's sitting and
20 what she's wearing?

21 A (Indicating) Black suit, black pants, black bow.

22 MS. LAMIN: Let the record reflect that the
23 officer has identified Ms. Suttles as the
24 defendant.

25 THE COURT: And the record will so reflect.

1 Q (By Ms. Lamin, continuing) Did you make any
2 observations about this vehicle in relation to the
3 other vehicles?

4 A It was the only one in the parking lot that seemed like
5 it had been running for a long time. It didn't have
6 any frost. There was no condensation anywhere, the
7 windows were perfectly clear, and all of the other
8 vehicles in the entire lot had a lot of frost and a lot
9 of ice on the windows.

10 (Whereupon, Ms. Lamin displayed a photograph
11 for the members of the jury.)

12 Q (By Ms. Lamin, continuing) What are we looking at here?

13 A Same vehicle.

14 Q This is Exhibit 19 now. And so when you approached the
15 vehicle, you parked your vehicle somewhat behind this
16 vehicle?

17 A Yes, I did.

18 Q And Exhibit 20, that's Ms. Suttles when you saw her?

19 A Yes, ma'am.

20 Q So after you approached Ms. Suttles and spoke to her
21 initially, what did you do next?

22 A After I initially spoke to her?

23 Q Yes. We -- or, I'm sorry, we left off that she had
24 said that her car broke down and she had to go pee.

25 A Well, she led me to believe by the way she was acting

1 and fidgeting and just confused about her story that
2 she was hiding something, that she was lying about
3 something. I wasn't sure what it was.

4 MS. CLARK: Objection, move to strike.

5 THE COURT: And the basis for your objection?

6 MS. CLARK: May we approach?

7 THE COURT: Yes.

8 (Whereupon, a brief off-the-record discussion
9 was held.)

10 THE COURT: All right. Rephrase your
11 question.

12 MS. LAMIN: Thank you.

13 Q (By Ms. Lamin, continuing) How would you characterize
14 Ms. Suttles' statements to you?

15 MS. CLARK: Objection -- same objection.

16 MS. LAMIN: Your Honor, I'll try to rephrase
17 again. I'm sorry, I guess I'm being very unclear.

18 Q (By Ms. Lamin, continuing) Did Ms. Suttles tell you one
19 thing or multiple things?

20 MS. CLARK: Objection, leading.

21 THE COURT: You can rephrase it yet again.

22 MS. LAMIN: I'll keep trying, Your Honor.

23 Q (By Ms. Lamin, continuing) Based on your training and
24 experience, what was your impression of what Ms.
25 Suttles told you?

1 MS. CLARK: Same objection.

2 THE COURT: I'm going to allow this question.

3 You may answer.

4 THE WITNESS: Please rephrase so I remember
5 this one.

6 Q (By Ms. Lamin, continuing) Officer Gliske, what was
7 going through your mind?

8 A She was lying.

9 Q Why do you say that?

10 A By the way she was acting, by the way she wouldn't look
11 at me, by the way her story just kept on changing, by
12 the way she couldn't answer a simple question.

13 Q If I can just ask, what do you mean her story kept
14 changing?

15 A She kept on changing her story whenever I asked her a
16 question. If I asked her a simple question like what
17 her name was, she would answer, just let me go, I have
18 to pee, I have to pee, leave me alone, that her car
19 broke down and she was waiting for a ride, or I believe
20 she said a couple times her car broke down and she was
21 going to walk. I can't remember exactly what she said,
22 but she just acted extremely nervous and she just
23 wanted to leave, she just wanted to walk away from me.
24 She kept saying, I'll leave my car here, I'll just go
25 someplace, I just have to pee, let me go.

1 Q Was there anyplace open for her to go pee?

2 A Not around there.

3 Q So based on that, what did you do next?

4 A I believed that she was trying to deceive me in some
5 way so I secured her in my car so I could --

6 MS. CLARK: I'm having difficulty hearing the
7 witness.

8 THE WITNESS: I secured Ms. Suttles in my
9 vehicle so I could investigate the alarm that I
10 was sent to to make sure it wasn't actually
11 burglarized.

12 Q (By Ms. Lamin, continuing) And let me stop you here,
13 Mr. Gliske -- Officer Gliske, I'm sorry. When you go
14 to a burglary alarm and find someone in the area of a
15 burglary alarm, what's going through your mind?

16 A Either they work there or they're breaking into it.

17 Q Was there any indication to you that she worked there?

18 A No.

19 Q Before you secured her in your vehicle, did you do any
20 type of pat search?

21 A Yes, I did.

22 Q And what did you find when you pat-searched her?

23 A She had duct tape and I believe Neoprene gloves in her
24 coat pocket on both sides.

25 Q So after -- after you secured the defendant, Ms.

1 Suttles, in your vehicle, what did you do next?

2 A Walked over to the business to check the doors and
3 windows to see if it was burglarized.

4 (Whereupon, a diagram was displayed for the
5 members of the jury.)

6 Q (By Ms. Lamin, continuing) Okay. Officer Gliske, can
7 you please tell us where you went? Please use the
8 pointer and show us, please.

9 A (Indicating throughout.) I went from my squad, which
10 was parked here, into the alley to check the rear door
11 of the liquor shop and all of the other businesses
12 along this wall.

13 Q And at that point, besides Ms. Suttles, have you seen
14 anyone else in the area?

15 A I saw someone looking at me through his bedroom window
16 -- or the window of his apartment which was located
17 right here (indicating) on the corner of this apartment
18 building.

19 Q When did you see that?

20 A After I secured Ms. Suttles in my vehicle, I turned
21 around and I saw him looking at me through the window
22 and I shined my flashlight at him and he opened up his
23 window to say something to me.

24 Q And at that time, did you have a lengthy or brief
25 conversation with him?

1 A Fairly brief, because as I was talking to him, I was
2 walking towards the business, keeping my eyes on the
3 business to make sure there's nobody in there or
4 nothing wrong with the business.

5 Q At what point did you call for backup?

6 A When I got into the alley here (indicating), I noticed
7 that the far door was forced and broken into, and
8 that's when I backed off and requested squads to
9 surround the building and then waited for K-9.

10 MS. LAMIN: I'm sorry, if I can have one
11 minute?

12 (Whereupon, a brief off-the-record discussion
13 was held.)

14 MS. LAMIN: I apologize for the technical
15 difficulty.

16 Q (By Ms. Lamin, continuing) Officer Gliske, I'm showing
17 you Exhibit 4. Can you identify where you went and
18 what you saw?

19 A That was the last door --

20 Q Can you use the pointer, as well, sir?

21 A Sorry. (Indicating throughout.) This was the last door
22 on the west -- or south wall of the business that I
23 checked, and it appeared to be forced/broken into.

24 Q So let's step back a second. Where did you begin
25 checking the businesses?

1 A (Indicating throughout.) It would have been to the west
2 of the west wall, it extended out here, and I believe
3 there's another door here and a couple windows and a
4 Dumpster that were fine. And then I got to this door
5 that was the last door towards the end of the alley,
6 that was forced.

7 Q What made you believe it was forced?

8 A The lock was closed, there was fresh damage, the wood
9 frame was completely smashed, and it was open.

10 Q What do you mean it was open?

11 A The door was open. It wasn't locked, it wasn't shut,
12 it was propped open. You could see into the business.

13 Q And were those items there?

14 A Yes.

15 Q Can you see that (indicating)?

16 A Yes.

17 Q It appears to be some sort of doughnuts or muffins?

18 A It appears to be, yes.

19 Q And Exhibit 5, this is a close-up of that door?

20 A It's hard to see, but it looks like the frame of the
21 door -- not the door, but the actual frame, the jamb.

22 Q Now, based on your training and experience, the damage
23 that you see in Exhibit 5, what is that consistent
24 with?

25 A A combination of prying and either kicking or

1 shouldering. What burglars will do is they'll take a
2 pry bar or any kind of crowbar and get it into where
3 the lock area is and they'll use their shoulder and pry
4 bar at the same time to break the wood or the lock so
5 they can gain entry.

6 Q And Exhibit 6, the inside view of that door looking
7 out, what is that consistent with?

8 A That's the door frame. You can see where the actual
9 frame has actually been blown out from somebody prying
10 it out and the lock actually pushing -- the metal lock
11 pushing through the wood because it's weaker.

12 Q When you looked in, were the lights on inside the
13 business?

14 A Yes.

15 Q What did you do next?

16 A I went back towards my squad and told the other
17 assisting squads where to set up around the perimeter
18 and then told the K-9 which side I was, for him to come
19 and assist me clear the building.

20 Q What happened next?

21 A The -- I saw the person in the window still staring out
22 at me, so I shined my flashlight on him again and we
23 had another brief conversation, I believe, and then K-9
24 arrived and we went into the building to clear it.

25 Q Did you have any encounters before other squads

1 arrived?

2 A Yes. As I was walking back, I saw a shadow in the back
3 part of the alley where that open door was.

4 Q The open door meaning this door that had been forced
5 open (indicating)?

6 A Yes, he came out and then stood right about here
7 (indicating).

8 Q Could you describe him?

9 A It was a black male, dark clothing, and I saw like a
10 red either do-rag or hat.

11 Q What happened when you saw him?

12 A I shined my flashlight on him, said please stop, to
13 look at me and my uniform, and he ran back inside the
14 building.

15 Q So after the squad cars -- and this happened before the
16 other squad cars arrived?

17 A As they were arriving.

18 Q Okay. After the other squad cars arrived, you said you
19 set up a perimeter?

20 A Yes.

21 Q Okay. Can you describe how many officers or vehicles
22 were there, if you recall?

23 A If I recall with this burglary -- we kind of know when
24 there's a good burglary or not a good burglary because
25 of the trips in the alarm.

1 MS. CLARK: I can't understand this witness.

2 THE COURT: Can you speak directly into the
3 mic? I'm sorry we keep doing this, but it's
4 important that everybody can hear.

5 THE WITNESS: I'm sorry.

6 THE COURT: Thank you.

7 THE WITNESS: After you get numerous alarms,
8 you kind of figure out which alarms possibly could
9 be a good burglary and which ones couldn't be. So
10 there was squads --

11 Q (By Ms. Lamin, continuing) I'm sorry, can you explain
12 what's a good burglary and not a good burglary?

13 A There's a lot of false alarms. Like animals setting
14 off house alarms, the weather being super cold setting
15 off a business alarm, the paperboy throwing a paper at
16 the window and it sets off the alarm, those would be
17 false alarms. Good alarms would be true burglaries or
18 thefts.

19 Q What made you believe this was a true burglary?

20 A There were multiple trips inside of the liquor store.
21 Normally if you get like a paperboy that throws a paper
22 at the front door, it'll say front glass break and
23 that'll be the only trip. If I recall, this one had
24 like a couple different trips inside the actual
25 business, including the office.

1 Q What happened after other squads arrived?

2 A Brady, our K-9, came to the back, and myself and
3 Alvarez's partner, Lance, went inside the building to
4 clear it.

5 Q What does that mean, to go inside the building and
6 clear it?

7 A Secure it. I mean, we obviously knew that there was
8 one that -- I saw one person who ran back into the
9 building, so he was obviously in there. And then we
10 just secure the building until we can further our
11 investigation and see if anything is missing or see if
12 it's a true burglary or if it's somebody that works
13 there or anything like that.

14 Q What's going through your mind at this point?

15 A It's a good burglary. The person that came back out
16 and ran back inside is actively burglarizing this
17 business and he ran back inside to get away from me.

18 Q Do you have any concerns going into this building?

19 A A lot of burglars carry weapons, tools that could be
20 used as weapons. So I was concerned for my safety as
21 well as my partner and the dog.

22 Q And how many of you went inside this building?

23 A Three of us: a K-9 handler, myself, and Lance.

24 Q So how did you secure the building? Walk through the
25 steps with us.

1 A We pretty much just follow the K-9. We stay behind him
2 and he lets his dog lead. Wherever the dog leads him
3 is where we go. It's obviously where the dog smells
4 human scent or any other kind of scent. So we just
5 followed him around the business.

6 Q So where did you begin?

7 A I believe that door was the art studio. We started in
8 the art studio and then we went to the basement and
9 then I believe we went from the basement to the west
10 through a wall that was broken into a coffee shop and
11 then we went back into the art studio and then towards
12 the liquor store.

13 Q And how did you get into the liquor store?

14 A Part of the wall was ripped off and we walked through
15 the open wall.

16 Q What happened when you went to the liquor store?

17 A As we were walking up the stairs to go to the liquor
18 store, my sergeant got on the air and said he was on
19 the phone with suspects inside.

20 MS. CLARK: Objection, hearsay, move to
21 strike.

22 MS. LAMIN: I can rephrase.

23 THE COURT: I'll sustain that objection and
24 you can rephrase.

25 Q (By Ms. Lamin, continuing) So did you learn any

1 information as you were walking through the liquor
2 store?

3 A Yes.

4 MS. CLARK: Objection to the extent it calls
5 for hearsay.

6 MS. LAMIN: Your Honor, I'll move on, I'm
7 sorry.

8 THE COURT: Okay.

9 Q (By Ms. Lamin, continuing) Did you locate anyone within
10 the liquor store?

11 A Yes, we did.

12 Q Okay. And how many people did you locate?

13 A Two.

14 Q One of the people you located, is he here today?

15 A Yes, ma'am.

16 Q Can you please identify him and what he's wearing?

17 A It's the defendant with the checkered sweater and
18 colored shirt.

19 Q Do you know his name?

20 A Daniel Drljic. I'm not sure if I pronounced his last
21 name correct, sorry.

22 DEFENDANT DRLJIC: That's okay.

23 MS. LAMIN: Let the record reflect that the
24 officer identified Mr. Drljic as the defendant.

25 THE COURT: The record will so reflect.

1 MS. LAMIN: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q (By Ms. Lamin, continuing) Now, Officer Gliske, I'm
4 showing you what's been marked as Exhibit 22. Do you
5 recognize yourself and the people you were with in that
6 photo?

7 A I can see Sully, which is the K-9, Brady, which is
8 behind him, and it looks like it's either me or Lance
9 to his left behind him and then there's two people
10 laying on the ground in front of the liquor store by
11 the front door.

12 Q And does this photo capture your encounter with the
13 suspects in the liquor store on December 6, 2009?

14 A Yes, it does.

15 Q And this photo is a still from the surveillance video,
16 but is this photo a fair and accurate depiction of you
17 and the suspects on that day?

18 A Yes.

19 MS. LAMIN: I move to admit Exhibit 22.

20 MS. CLARK: May we approach, Your Honor?

21 THE COURT: Yes.

22 (Whereupon, a brief off-the-record discussion
23 was held.)

24 Q (By Ms. Lamin, continuing) Officer Gliske, I'm showing
25 you Exhibit 24. Is that the individual that was in the

1 liquor store that night?

2 A One of them.

3 Q Okay. Is that Mr. Drljic?

4 A Yes, ma'am.

5 Q And that's a photo of how he looked in the liquor
6 store?

7 A Yes.

8 MS. LAMIN: Your Honor, I move to admit
9 Exhibit 24.

10 MS. CLARK: Voir dire?

11 THE COURT: Yes.

12 VOIR DIRE

13 BY MS. CLARK:

14 Q In this Exhibit 24, Mr. Drljic has his hands behind his
15 back?

16 MS. LAMIN: Your Honor, may we approach?

17 THE COURT: Yes.

18 (Whereupon, a brief off-the-record discussion
19 was held.)

20 Q (By Ms. Clark, continuing) In the photograph,
21 Mr. Drljic has his hands behind his back, right?

22 A Yes, ma'am.

23 Q Crossed and behind his back?

24 A Yes, ma'am.

25 Q When you first saw him in the liquor store, did he have

1 anything on his hands?

2 A On his hands?

3 Q Yeah.

4 A I believe gloves.

5 Q Okay. And then did he have anything on his head when
6 you first saw him in the liquor store?

7 A I don't recall. I believe he had a stocking hat on,
8 but I'm not positive. That's what the -- that's the
9 picture of him at the jail in a holding cell.

10 Q There was no question before you.

11 MS. CLARK: Move to strike that, Your Honor.

12 THE COURT: Yes, strike that answer.

13 Q (By Ms. Clark, continuing) I'm just asking you about
14 what he was -- you testified that this accurately
15 depicts what he looked like when you were in the liquor
16 store, so I'm just trying to clarify that piece of it,
17 okay.

18 Is the clothing the same in the picture in
19 Exhibit 24 to when you first saw Mr. Drljic in the
20 liquor store?

21 A Not entirely.

22 Q What's different?

23 A He had gloves and a hat, I believe.

24 Q Anything else you can recall?

25 A He didn't have cuffs on him yet.

1 Q Okay. So that's why his arms are crossed behind his
2 back?

3 A Yes, ma'am.

4 Q Anything else different about the clothing?

5 A I don't recall.

6 Q Okay.

7 MS. CLARK: With that clarification, no
8 objection.

9 THE COURT: All right. Well, I will accept
10 this exhibit, if you still are offering it?

11 MS. LAMIN: I am, Your Honor.

12 THE COURT: Okay.

13 Q (By Ms. Lamin, continuing) And, Officer Gliske, where
14 is Exhibit 24 taken?

15 A At a holding cell at the LEC.

16 Q So this is after he was removed from the burglarized
17 liquor store?

18 A Yes, ma'am.

19 Q Officer Gliske, I'm showing you Exhibits 15 and 16, two
20 photos of Mr. English. Is that how Mr. English looked
21 on December 6, 2009?

22 A (Witness did not respond.)

23 Q Let's clarify. Where were these photos taken?

24 A Jail.

25 Q Okay. So this was taken after he was apprehended in

1 the liquor store?

2 A Yes, ma'am.

3 Q Okay. These are fair and accurate photos of
4 Mr. English in jail?

5 A Minus, I believe, gloves --

6 Q I'm asking you --

7 A -- and the stocking hat.

8 Q I'm sorry, Officer Gliske, I'm just asking you, when
9 these photos were taken, this is the way he looked, not
10 comparing them to the liquor store?

11 A Yes.

12 Q Okay. So this is a fair and accurate photo of
13 Mr. English -- Exhibit 15 is a front profile,
14 Exhibit 16 a side profile of how he looked when those
15 photos were taken at the jail?

16 A Yes, minus a few accessories.

17 MS. CLARK: I'm sorry, what was that?

18 THE WITNESS: Minus a few accessories. I
19 believe he had a hat and some gloves on. I'm just
20 waiting for future questions.

21 Q (By Ms. Lamin, continuing) Thank you, Officer Gliske.

22 MS. LAMIN: I move to admit Exhibits 15 and
23 16.

24 MS. CLARK: I'm just a tad confused on
25 something, I'm sorry.

VOIR DIRE

1

2 BY MS. CLARK:

3 Q This is Mr. English?

4 A Yes, ma'am.

5 Q And it's your testimony that this is what he looked
6 like when he was at the jail?

7 A That is what he looked like at jail.

8 Q Did you take these pictures?

9 A No, I did not.

10 Q Were you in the room when they were taken?

11 A Yes, I was.

12 MS. CLARK: No objection.

13 MS. LAMIN: Exhibits 15 and 16, Your Honor.

14 THE COURT: Exhibits 15 and 16 are accepted.

15 Q (By Ms. Lamin, continuing) And that's the gentleman
16 that you saw coming out of the broken doorframe?

17 MS. CLARK: Objection, leading.

18 THE COURT: Just rephrase that question.

19 Q (By Ms. Lamin, continuing) Is that the individual you
20 saw leaving the door -- the broken door?21 A That is the individual that ran from me back inside the
22 business.23 Q Thank you. And that is Exhibit 16. Now, after
24 Mr. English and the defendant, Mr. Drljic, were
25 apprehended, what happened next?

1 A After they were apprehended inside the liquor store,
2 what did we do?

3 Q Yes.

4 A They were secured in separate squads and then we
5 transported them to the LEC.

6 Q And what happened to Ms. Suttles?

7 A She was transported to the LEC, also.

8 Q Before she was transported to the LEC, what happened to
9 her vehicle?

10 A It was towed and I talked to her a little bit more.

11 Q I'm sorry, at what point did you talk to Ms. Suttles a
12 little bit more?

13 A After the two suspects inside the business were secured
14 in vehicles, I went back outside to talk to Ms. Suttles
15 and then I towed her -- or Officer Kane -- Sgt. Kane
16 towed her vehicle.

17 Q And what did she say when you spoke to her?

18 A She changed her story of what she was doing in the back
19 alley.

20 Q How did she change it?

21 A She told me she wasn't -- her car didn't break down,
22 but she was waiting to pick up some friends who
23 said that she would -- that they would give her money
24 to just pick them up.

25 Q So did she -- she told you that her car didn't break

1 down?

2 A Yes. She now said that her car was just fine and she
3 was just there to pick up some people.

4 Q So she told you that she had lied to you earlier?

5 A Yes.

6 Q What did you do next?

7 A I informed her she was under arrest and brought her
8 down to the jail for booking.

9 Q And what did you do next?

10 A Before I brought her down to booking, I talked to the
11 resident of the building that talked to me briefly as I
12 walked inside the business.

13 Q And did you identify who that person was?

14 A Yes, ma'am.

15 Q Okay. What did you identify his name to be?

16 A I can't remember for sure. If you let me look at my
17 notes, I can look up his name.

18 Q Would looking at a copy of your report help to refresh
19 your recollection?

20 A Yes.

21 MS. LAMIN: Do you want to see what I'm
22 showing him?

23 MS. CLARK: Yes.

24 (Whereupon, Ms. Clark perused a document.)

25 Q (By Ms. Lamin, continuing) Officer Gliske, I am showing

1 you your report from December 6, 2009. It looks like a
2 16-page report.

3 (Whereupon, Officer Gliske perused a
4 document.)

5 THE WITNESS: His name is Thomas Joseph
6 Nolan.

7 Q (By Ms. Lamin, continuing) Thank you, sir. And when
8 you spoke to him, did you speak to him outside in the
9 parking lot or where did you speak to him?

10 A No, I spoke to him in the hallway behind a closed door
11 so no one would be able to see us.

12 MS. CLARK: I couldn't get the full sentence.
13 Hallway behind?

14 THE WITNESS: I talked to Mr. Nolan in the
15 hallway outside of his apartment with a closed
16 door so no one would be able to see us.

17 Q (By Ms. Lamin, continuing) Do you recall, was he on the
18 main floor or second or third floor apartment?

19 A He was upstairs in apartment 305 and I talked to him
20 downstairs in the main hallway.

21 Q This was after all three suspects had been secured?

22 A Yes, ma'am.

23 Q Okay. Before Ms. Suttles' car was towed, was there a
24 search done on her vehicle?

25 A Yes, ma'am.

1 Q And how was the search performed?

2 A How was it?

3 Q Yes.

4 A I searched her vehicle.

5 Q Can you explain how did you do that?

6 A I systematically go through the outside of the vehicle
7 and then the inside of the vehicle, starting normally
8 with the driver's side.

9 Q And did you find any suspicious items during your
10 search?

11 A Yes, I found ammunition, more gloves, tools,
12 electronics, a large T-square, and a long metal ruler.

13 Q And were these items photographed?

14 A Yes, they were.

15 Q And you were present during that photographing?

16 A Yes. I also found Ms. Suttles' purse containing a
17 large amount of cash.

18 Q Now, I'm showing you what's been marked as Exhibit 21.
19 What is that a photograph of?

20 A It looks like three screwdrivers, a Kenwood faceplate,
21 a couple pairs of gloves, and a roll of duct tape.

22 Q Is that the duct tape that you found in Ms. Suttles'
23 pocket earlier? Do you recall?

24 A I don't recall.

25

MS. CLARK: Objection, leading.

1 MS. LAMIN: I'll withdraw it, Your Honor, I'm
2 sorry.

3 THE COURT: Yes, please.

4 Q (By Ms. Lamin, continuing) Is that a fair and accurate
5 photo that was taken that night?

6 A Yes.

7 MS. LAMIN: Your Honor, I move to admit
8 Exhibit 21.

9 THE COURT: Counsel.

10 VOIR DIRE

11 BY MS. CLARK:

12 Q I'm sorry, did you say you were present when this
13 photograph was taken?

14 A Yes.

15 Q Were you in the car?

16 A When the photo was taken?

17 Q Yes.

18 A I don't believe so.

19 Q Well, is this the -- were the photographs taken of the
20 evidence in the car in the precise condition in which
21 that evidence was found?

22 A No.

23 Q Things were moved around?

24 A Yes.

25 Q Who moved them?

1 A I did. When I find something that I think is
2 pertinent, I put it someplace where I can have it all
3 together.

4 Q Okay. So the items in Exhibit 21 were not found in the
5 location in which they're depicted in Exhibit 21, they
6 were found elsewhere in the car?

7 A Yes.

8 Q In a number of different places?

9 A I don't recall.

10 Q Are you sure they were all found in the car?

11 A Yeah.

12 Q But you don't recall where they were found in the car?

13 A No.

14 MS. LAMIN: Your Honor, I'm sorry, this is
15 just general cross. I'm just trying to admit a
16 photograph.

17 MS. CLARK: We object to Exhibit 21 -- well,
18 actually, I'm going to withdraw that. We'll
19 stipulate to Exhibit 21.

20 THE COURT: All right.

21 Q (By Ms. Lamin, continuing) Can you identify those
22 items?

23 A It looks like three screwdrivers, a remote, a couple
24 pairs of gloves, duct tape, and a Kenwood faceplate.

25 Q And do you recall, were those items found in the trunk

1 or in the main compartment of the vehicle?

2 MS. CLARK: Objection, foundation, leading.

3 THE COURT: I think she's trying to lay the
4 foundation. You may answer.

5 MS. CLARK: He's already disqualified
6 himself.

7 THE COURT: I think he didn't know exactly
8 where they were found, but they were found in the
9 car. He can answer the question.

10 THE WITNESS: Yes?

11 THE COURT: Yes.

12 THE WITNESS: To the best of my knowledge,
13 they were found in the main cabin of the Cadillac.

14 Q (By Ms. Lamin, continuing) Did Ms. Suttles have an
15 explanation for the duct tape and gloves that you found
16 on her when you initially searched?

17 A No.

18 Q Officer Gliske, I'm showing you Exhibit 46. This is
19 another photograph from your search of the vehicle. Is
20 that a fair and accurate photograph of some of the
21 items you found in the vehicle?

22 A Yes.

23 Q You were present when the individual taking the
24 photograph took that?

25 A Yes.

1 MS. LAMIN: Your Honor, I move to admit
2 Exhibit 46.

3 VOIR DIRE

4 BY MS. CLARK:

5 Q Officer, were the items in Exhibit 46 also moved by you
6 before the picture was taken?

7 MS. LAMIN: Your Honor, I'm sorry, may we
8 approach?

9 THE COURT: Yes.

10 (Whereupon, a brief off-the-record discussion
11 was held.)

12 MS. LAMIN: Your Honor, I move to admit
13 Exhibit 46.

14 MS. CLARK: No objection.

15 THE COURT: I'm sorry, what did you say?

16 MS. CLARK: I'm sorry. No objection, Your
17 Honor.

18 THE COURT: Exhibit 46 is admitted.

19 Q (By Ms. Lamin, continuing) Officer Gliske, can you
20 point out, please, what we are looking at?

21 A It looks like three plastic Baggies, one Neoprene
22 glove, two pink mechanic gloves, and a piece of bling.

23 Q Were those items that you found, do you recall, in the
24 front or back portion -- I mean, in the main
25 compartment of the vehicle or in the trunk?

1 A They were in the main compartment of the vehicle.

2 Q And you found these items during the search of Ms.
3 Suttles' vehicle?

4 A Yes, ma'am.

5 Q Officer Gliske, I'm showing you Exhibit 48. Can you
6 please identify what that is?

7 A The trunk of Ms. Suttles' vehicle.

8 Q Is that an accurate photograph of the trunk of
9 Ms. Suttles' vehicle as you were standing next to the
10 individual taking the photograph?

11 A Yes, ma'am.

12 MS. LAMIN: I move to admit Exhibit 48.

13 MS. CLARK: No objection.

14 THE COURT: And 48 is admitted.

15 Q (By Ms. Lamin, continuing) Officer Gliske, can you
16 please point out what are we looking at in Exhibit 48?

17 A A duffel bag, some boxes, and some electronics.

18 Q Did you open up that duffel bag?

19 A Yes, ma'am.

20 Q Officer Gliske, I'm showing you Exhibit 49. Are those
21 the items that you located when you opened up the
22 duffel bag?

23 A Yes, ma'am.

24 Q Is that a fair and accurate photograph as you were
25 standing next to the individual taking the photograph

1 of what you saw when you opened up that duffel bag?

2 A Yes, ma'am.

3 MS. LAMIN: I move to admit Exhibit 49.

4 MS. CLARK: No objection.

5 THE COURT: And is this Exhibit 49?

6 MS. LAMIN: It is, Your Honor.

7 THE COURT: Okay. That's admitted.

8 Q (By Ms. Lamin, continuing) Can you please identify what
9 we're looking at in Exhibit 49?

10 A It looks like a bolt cutter.

11 Q Officer Gliske, can I ask you to use the pointer,
12 please?

13 A (Indicating throughout.) The A-frame is a bolt cutter
14 used to cut locks, bolts, anything metal. This is a
15 crowbar, a wonder bar or flat bar, and then the blue
16 one looks like a cat's paw, another type of crowbar.

17 Q And these items were located in Ms. Suttles' vehicle?

18 A Yes, ma'am.

19 Q And these items, are they consistent with the damage
20 you saw done to the door frame of the art studio?

21 MS. CLARK: Objection, compound.

22 THE COURT: Overruled, you may answer.

23 THE WITNESS: The bolt cutter, no, because I
24 didn't see anything clipped. As far as all of the
25 pry bars and wonder bars, yes.

1 Q (By Ms. Lamin, continuing) Those were the items you
2 would use to --

3 A Those are items that I would use to burglarize a
4 business, yes.

5 Q What about, how are those items consistent with the
6 damage you saw to the basement walls of the art studio?

7 A In order to get the panel off of the wall, you would
8 have to use either a crowbar or a wonder bar or a
9 screwdriver of some kind to pry underneath the panel
10 and then rip it off, using leverage with another
11 crowbar or hands.

12 Q And when you say these are items to rip the panel off
13 the wall, are you talking about the basement wall of
14 the art studio going into the liquor store?

15 A Yes, ma'am.

16 Q Okay. What about in terms of the damage that you saw
17 done to the basement wall heading into the coffeehouse?

18 A Same.

19 Q Now, Officer Gliske, what else do we see in Exhibit 48?
20 Can you identify what some of these items appear to be?

21 A Electronics of some kind, computers.

22 Q Did you remove the duffel bag to take a closer look at
23 the items underneath the duffel bag?

24 A Yes, ma'am.

25 Q Officer Gliske, I'm showing you Exhibit -- I'm showing

1 you Exhibit -- well, let me just clarify. I'm showing
2 you Exhibit 50. Can you identify what that is?

3 A Those are the items inside the duffel bag that I
4 recovered.

5 Q And you removed those items from the duffel bag?

6 A Yes, ma'am.

7 Q Okay. Is that a fair and accurate photo that was taken
8 of those items as you were standing next to the
9 individual taking the photo?

10 A Yes.

11 MS. LAMIN: Move to admit Exhibit 50.

12 MS. CLARK: No objection.

13 THE COURT: Exhibit 50 is accepted.

14 Q (By Ms. Lamin, continuing) And so can you identify what
15 we're looking at in Exhibit 50?

16 A A wonder bar, a flat bar, a bolt cutters, and what
17 appears to be a long gooseneck pry bar.

18 Q When you removed those items, did you use gloves?

19 A Yes, ma'am.

20 Q Did you test those items for fingerprints?

21 A I did not.

22 Q Why not?

23 A The suspects were wearing gloves and it's -- on that
24 kind of a surface, especially with it being so rusty,
25 you'd never, ever be able to pull a fingerprint off of

1 it.

2 MS. CLARK: I can't understand what you're
3 saying.

4 THE COURT: Slow down. Just go ahead and
5 repeat that, please.

6 THE WITNESS: Sorry. The pry bar is so rusty
7 that you would never be able to pull a fingerprint
8 off of it. The bolt cutter has grooves, which
9 wouldn't give you a very good print, and where you
10 actually hold it is rubber so it would not give a
11 print at all. As far as the gooseneck crowbar,
12 it's rusting out, so you wouldn't be able to get a
13 good fingerprint off of it at all. And the
14 suspects were also wearing gloves, so I didn't
15 think they would have left any fingerprints.

16 Q (By Ms. Lamin, continuing) And if you can go through
17 what this item -- this type of crowbar, is that
18 consistent with the damage you saw to the entry door of
19 the art studio?

20 A Yes, ma'am, that or the crowbar.

21 Q I'm sorry, what kind of crowbar is this?

22 A (Indicating throughout.) This is called a wonder bar or
23 a flat bar. This is called a crowbar, a gooseneck
24 crowbar, probably like a 36-inch crowbar.

25 Q Did you also physically remove that duffel bag from the

1 trunk of Ms. Suttles' car?

2 A Yes, ma'am, to look to see what's under it.

3 Q Okay. I'm showing you what's been marked as

4 Exhibit 10. Can you identify what that is?

5 A That was what was underneath the duffel bag in Ms.
6 Suttles' trunk.

7 Q Is that a fair and accurate picture of what you saw?

8 A Yes, ma'am.

9 MS. LAMIN: I move to admit Exhibit 10.

10 MS. CLARK: No objection.

11 THE COURT: And Exhibit 10 is admitted.

12 Q (By Ms. Lamin, continuing) Officer Gliske, I'm also
13 showing you Exhibit 9. Can you please explain what
14 that is?

15 A That was the items underneath the duffel bag in
16 Ms. Suttles' trunk.

17 Q Is that a fair and accurate picture of those items?

18 A Yes, ma'am.

19 Q I'm also showing you Exhibit 11. Can you explain what
20 that is?

21 A That is the left side of the trunk. Exhibit 9 should
22 be the right side of the trunk.

23 Q Is that also a fair and accurate picture of what you
24 saw?

25 A Yes, ma'am.

1 MS. LAMIN: I move to admit both Exhibits 9
2 and 11.

3 MS. CLARK: No objection.

4 THE COURT: And Exhibits 9 and 11 are
5 admitted.

6 Q (By Ms. Lamin, continuing) So now, Officer Gliske,
7 let's talk -- let's talk for a second about Exhibit 9.
8 What are we looking at there?

9 A It looks like a T-square. Do you want me to point it
10 out?

11 Q Yes, please.

12 A Okay. (Indicating throughout.) This is a T-square used
13 commonly with drywalling or artistry. This is a long
14 ruler -- a metal ruler, just a straightedge, a drill,
15 numerous electronics, a bag, a magazine, and some
16 delicious M & Ms.

17 Q Did -- you met with Mr. Peter Brown that night?

18 A Yes, ma'am.

19 Q I'm sorry, the owner of the art studio or the owner of
20 the buildings?

21 A The building, yes, ma'am.

22 Q And did you return any items to him?

23 A Yes, ma'am, I did. His father actually owns or uses
24 that art studio, and he said that the items --

25 MS. CLARK: Objection, hearsay.

1 MS. LAMIN: Your Honor, Mr. Brown testified.

2 THE COURT: I'm going to let it in. It's
3 overruled. You may answer.

4 THE WITNESS: He said that the T-square and
5 the straightedge and I believe the drill were all
6 his father's that were taken from inside the
7 business.

8 Q (By Ms. Lamin, continuing) And is it unusual to return
9 items that are stolen --

10 MS. CLARK: Objection. May we approach?

11 THE COURT: You may.

12 (Whereupon, a brief off-the-record discussion
13 was held.)

14 Q (By Ms. Lamin, continuing) Officer Gliske, is it
15 unusual to return items to victims who have been
16 burglarized?

17 THE WITNESS: May I answer the question?

18 THE COURT: You may answer, yes.

19 THE WITNESS: Okay. We normally don't put
20 stuff in property if the owner can claim ownership
21 of it. Just because it saves him a trip to go
22 back down there and get his own property back, we
23 just release it to him. It's easier for the
24 victim.

25 Q (By Ms. Lamin, continuing) Did you fingerprint these

1 items before you returned them to Mr. Brown?

2 A No, ma'am.

3 Q Why not?

4 A The suspects were wearing gloves, so I figured there
5 was no fingerprints on them, and they were really
6 dusty.

7 Q Now, Exhibit 10, what are we looking at here?

8 A More stuff inside the trunk, towards the left side of
9 the trunk, the T-square, the straightedge, the drill, a
10 printer, it looks like some boxes of electronics.

11 (Whereupon, a photograph was displayed for
12 the members of the jury.)

13 Q (By Ms. Lamin, continuing) And, finally -- oops, sorry.
14 Exhibit 11 -- oops, I'm sorry, we skipped too far
15 ahead. I lost one there, but that's okay.

16 Now, Officer Gliske, I'm showing you Exhibit 53.
17 Can you identify what that is, please?

18 A It's my squad with the T-square, Ms. Suttles' purse, a
19 large sum of cash, her wallet on my hood, and me.

20 MS. CLARK: What number is this? I'm sorry.

21 MS. LAMIN: Exhibit 53.

22 MS. CLARK: Thank you.

23 Q (By Ms. Lamin, continuing) And so is this a fair and
24 accurate photo -- fair and accurate copy of the photo
25 that was taken of what you saw that night?

1 A Yes, ma'am.

2 MS. LAMIN: I move to admit Exhibit 53.

3 MS. CLARK: No objection.

4 THE COURT: Exhibit 53 is admitted.

5 Q (By Ms. Lamin, continuing) What are we looking at,
6 Officer Gliske?

7 A A T-square that I gave back to Mr. Brown from the art
8 studio, Ms. Suttles' wallet, a large amount of cash,
9 her purse, and me and my squad.

10 Q And this cash, it appears to be in a plastic bag. Is
11 that -- where did you find that cash?

12 A Inside Ms. Suttles' purse.

13 Q And it was packaged like that?

14 A Yes, ma'am.

15 Q Now, the -- now, the duffel bag with the crowbars, did
16 you take that property into inventory?

17 A Yes, ma'am.

18 Q Okay.

19 A I physically did not put it in property, my partner
20 did, but I was with him when we all packaged it
21 together, just to be clear.

22 THE COURT: Counsel, I need to see you.

23 (Whereupon, a brief off-the-record discussion
24 was held.)

25 THE COURT: Okay. Officer Gliske, I promised

1 that we would end at 2:30 today, given the weather
2 and given the fact that it's the day before
3 Thanksgiving. So we're going to have to have you
4 continue your testimony on Monday. I'm going to
5 release the jury to go on your Thanksgiving break
6 or whatever and then we'll be back here on Monday.

7 Now, we have some other -- I have a couple
8 things on Monday. So I think I'm going to have
9 you come at 10:00 so that you're not feeling that
10 you're sitting around waiting, because there are a
11 number of things that we will need to take care
12 of. Does that make sense?

13 (Whereupon, the members of the jury responded
14 affirmatively.)

15 THE COURT: Okay. Now, same warnings, okay.
16 You have to leave all of your notes here. When
17 you go home, you are not to talk to your family or
18 your friends or others about this case.

19 Officer, you may step down.

20 You may tell them you're a juror on a
21 criminal case, and that's all you should tell
22 them.

23 Again, do not read or listen to news reports
24 about this case. Do not do any research of any
25 kind, and I am very serious about it. Do not try

1 to investigate, don't ask people about this case,
2 do not visit any of the locations that are
3 mentioned in the trial, and do not research any of
4 the issues in the case. You must keep an open
5 mind until you've seen or heard all of the
6 evidence. Remember you cannot consider anything
7 you learn about this case outside of this
8 courtroom.

9 So if you do not follow these instructions,
10 you may jeopardize the trial. I understand it's
11 going to be a long break, but it's -- we'll be
12 ready to go again on Monday.

13 So thank you, and happy Thanksgiving.

14 THE CLERK: All rise, please.

15 THE COURT: And leave your notes. You can
16 keep your badges, just leave your notes.

17 (Whereupon, the jury left the courtroom.)

18 THE COURT: Are we going to do it in front of
19 the officer or do you want him to step out?

20 MS. CLARK: Well, I think he should be here.

21 THE COURT: All right.

22 MS. CLARK: I don't want to tell him what the
23 testimony was this morning, but the defense has a
24 belief that this officer took notes at the scene,
25 contemporaneous notes, and I asked him in the hall

1 if he was the gentleman who was with -- I, Jill
2 Clark, asked Officer Gliske if he was the
3 gentleman who talked to Peter Brown and went
4 through the building and took notes about what was
5 missing, and he said yes. I said, where are your
6 notes? And he said, I have them with me. Now,
7 those are notes that I had seen him pull out on
8 the witness stand. We have a right to see
9 whatever he brought with him to refresh his
10 recollection, and we are now asking for production
11 of the notes. He referred to them himself in his
12 own testimony earlier. He said, if I checked my
13 notes it would refresh my recollection. So we're
14 asking for production of the notes. I'd like to
15 see what he has with him.

16 THE COURT: Ms. Lamin.

17 MS. LAMIN: Your Honor, Officer -- I mean,
18 Officer Gliske has notes with him.

19 INQUIRY

20 BY MS. LAMIN:

21 Q Do you have any notes besides --

22 MS. LAMIN: Can I ask him?

23 THE COURT: You may.

24 Q (By Ms. Lamin, continuing) Do you have any notes
25 besides your police report?

1 A I do not have any personal notes.

2 Q And when you said notes, what did you mean?

3 A The police report I printed off prior to the trial.

4 MS. CLARK: Does it have anything written on
5 it?

6 Q (By Ms. Lamin, continuing) Does it have any personal --
7 anything written on it beyond the police report?

8 A The defendants' names and --

9 MS. CLARK: We'd like to see it, if it's
10 multiple pages. I'm not sure it's just his
11 supplement. We have a right to know this.
12 Anything he brings with him to trial and puts out
13 on the witness stand, we're entitled to see.
14 That's clear under the law. We'd like the State
15 to follow the law.

16 MS. LAMIN: Your Honor, I guess I never saw
17 the defendant refer to any notes. When the --
18 when Officer Gliske was testifying and couldn't
19 recall something, I handed him a copy of his
20 police report. I never saw him put anything -- or
21 read from anything. He is testifying from his own
22 recollection.

23 THE COURT: All right. Here's what I'm going
24 to say, if there are notes that were personal,
25 contemporaneous notes, other than your police

1 reports from that night, then yes. If there are
2 not such, then no.

3 And I'm going to ask you, Officer Gliske,
4 what are your notes?

5 THE WITNESS: They are the police reports
6 that I printed off earlier today. The only thing
7 with my handwriting on here is the defendants'
8 names at the top of the page and that's it.

9 THE COURT: All right. And I just want to
10 remind -- I know we didn't put you on the stand,
11 but you're still under oath.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. And that's -- maybe I
14 should look at these notes.

15 MS. CLARK: I think you should. I think
16 we're entitled to know if he had supplements of
17 other officers, for example, that he read before
18 he came.

19 (Whereupon, the Court perused a document.)

20 THE COURT: I have looked through these
21 notes. I'll tell you how many pages they are so
22 we make a complete record. One, two, three, four,
23 five, six -- seven pages. They are an Incident
24 Report dated 12/6/2009 and then in handwriting are
25 the names of Suttles, Tamika, and Drljic, Daniel.

1 That's all these are. So I do --

2 MS. CLARK: Are there supplements from other
3 officers in there? We're entitled to know that,
4 if he was reading other officers' recollections
5 before he testified.

6 THE COURT: I do recall, and I think, Ms.
7 Clark, you remember, Ms. Lamin gave him her report
8 to look at -- so it was not this report -- to
9 refresh his recollection.

10 MS. CLARK: Are we not entitled to see them?
11 What I'd like to check to see is if he brought
12 with him -- I saw him take them out and put them
13 on the stand and he referred to them and wanted to
14 refresh his recollection. If he was looking at
15 other police officers' reports, that's relevant to
16 my cross.

17 THE COURT: Right. And let me just say, I
18 saw him put it up there, but when he'd refreshed
19 his recollection, he refreshed his recollection
20 from the police report that Ms. Lamin handed him
21 and not from these (indicating).

22 MS. CLARK: So the defense cannot see what he
23 brought with him?

24 THE COURT: No. I've described it already.
25 Let's go off the record for a minute.

1 (Whereupon, after a brief off-the-record
2 discussion, the officer was excused and Tom
3 Handley stepped forward.)

4 THE COURT: Mr. Handley.

5 MR. HANDLEY: Mr. English is not present in
6 court at this time. I got word yesterday that
7 Mr. English might be called as a witness in these
8 proceedings. I did represent Mr. English
9 previously in connection with this matter. I
10 think my representation does still continue.

11 Mr. English pled guilty to one count of
12 burglary in the third degree on June 30. He was
13 originally set for sentencing on September 14, but
14 he didn't appear at sentencing on the 14th of
15 September. He was arrested and brought before
16 Judge Smith, who sentenced him on November 4.

17 At the time of sentencing, Mr. English
18 received 24 months in prison. He's currently in
19 prison serving that time. The period for an
20 appeal has not run. I don't know what appeal --
21 what could be appealed. Mr. English has not
22 initiated an appeal that I'm aware of. Also, the
23 issue of restitution was reserved for 60 days
24 after sentencing. I'm just throwing those issues
25 out there.

1 I did meet with Mr. English earlier today.
2 I've advised him of all of his rights. I don't
3 know exactly what to expect when Mr. English is
4 called as a witness.

5 One thing I can tell the Court is, I don't
6 have any indication right now that he's going to
7 assert the Fifth Amendment; however, I guess that
8 it could occur. The reason I say that is, I'm not
9 putting counsel for the State or the defense on
10 notice that he's definitely going to assert the
11 Fifth Amendment, which I think might present some
12 problems. I just can't rule it out for sure.

13 So I just wanted the record to reflect that I
14 have met with Mr. English, I have given him a copy
15 of the transcript of his plea of guilty which
16 could be referred to during the course of his
17 testimony, so he does have a copy of that, and I
18 have advised him of all of his rights.

19 I know he'd love to go back to St. Cloud,
20 too. He'll be very disappointed if he has to stay
21 here in the LEC for Thanksgiving. The reason I
22 bring that up is, I don't know what to expect next
23 time I meet with Mr. English. He might be very
24 upset if he's held here in the LEC for the next
25 four days.

1 THE COURT: So, I'll have to defer to the
2 deputies on this. Can we send him back and have
3 him come back?

4 THE DEPUTY: Yes, as long as you --

5 THE COURT: Writ him out again?

6 THE DEPUTY: -- writ him out again.

7 THE COURT: Can we have a continuing writ?

8 THE DEPUTY: I believe so. Just to kind of
9 cover the Court, though, I would almost writ him
10 in again.

11 THE COURT: Okay. We have to do it by today,
12 then, because of the holidays, all right. He
13 should go back.

14 MR. HANDLEY: Thank you. I have nothing
15 further, Your Honor.

16 THE COURT: All right. So we will writ him
17 in again for Monday.

18 MS. CLARK: I have something from the
19 defense. My understanding was that it was a
20 testimonial deal -- a testimonial plea, that he
21 agreed to testify as part of his plea.

22 MR. HANDLEY: Your Honor, there was no
23 agreement regarding testimony in connection with
24 Mr. English's plea of guilty. He pled guilty
25 straight up to one count of burglary with no

1 sentencing agreement.

2 MS. CLARK: Well, it was also my
3 understanding that he would testify. And if he is
4 going to assert the Fifth because -- is he still
5 within the 90 days?

6 THE COURT: 60 days.

7 MS. CLARK: It's 90 days for a felony, Your
8 Honor.

9 MR. HANDLEY: He was just sentenced on
10 November 4.

11 THE COURT: Yes, he was just sentenced on
12 November 4.

13 MS. CLARK: See, I didn't even know he was
14 sentenced. My understanding was that he was
15 waiting to be sentenced until after this trial.
16 So if he now --

17 THE COURT: There was a bench warrant for
18 him. He was supposed to be sentenced on
19 September 14 and he didn't show, so.

20 MS. CLARK: But I didn't --

21 THE COURT: They picked him up on November 4.

22 MS. CLARK: I did not know he had been
23 sentenced and I didn't know he had just been
24 sentenced or we -- we would have needed that
25 information, I think, to calculate whether or

1 not -- you know, for the timing of the trial. But
2 if there's going to be some assertion of the Fifth
3 Amendment by him because he's within the 90 days
4 to appeal, we need to know that.

5 THE COURT: We don't know. Mr. Handley?

6 MS. CLARK: That's part of my problem now.
7 I'm thanking Mr. Handley for the information. I'm
8 just saying I anticipate some potential problems.

9 THE COURT: Well, sometimes there are
10 self-fulfilling prophecies, but I don't think this
11 is one of those that anybody could anticipate in
12 terms of when he was sentenced.

13 MS. CLARK: Well, I'm certainly not blaming
14 Mr. Handley, I'm not saying that at all. I'm just
15 saying, here it is the day before Thanksgiving and
16 we're in the middle of trial and -- I guess we'll
17 rock and roll.

18 THE COURT: You know, that's what makes this
19 job so interesting. There's something new -- I
20 was going to say every day, but I'm going to say
21 every half-hour. I'll just leave it at that.

22 MS. CLARK: Yes.

23 THE COURT: Do we need to do anything else
24 with Mr. English, Mr. Handley?

25 MR. HANDLEY: Not at this time. We

1 appreciate the Court allowing him to go back to
2 St. Cloud.

3 THE COURT: Oh, yes.

4 MR. HANDLEY: Thank you. I will be available
5 next week whenever the Court needs me.

6 THE COURT: Okay. And we will writ him in
7 for Monday, right? Monday?

8 MS. LAMIN: Yes.

9 MR. HANDLEY: I'm available in the morning on
10 Monday; however, I have one thing in court in the
11 afternoon.

12 MS. LAMIN: We'll be in contact with you,
13 Mr. Handley, and the clerk can let you know.

14 MR. HANDLEY: Sure, I'll be in touch with the
15 clerk. Thank you.

16 THE COURT: Okay. All right. Now it looks
17 like it stopped. I thought it was precipitating.

18 MS. CLARK: Yeah, it looked really bad there.

19 THE COURT: Yeah, yeah. So the whole idea
20 was that you could get home safely --

21 MS. LAMIN: It's still snowing.

22 THE COURT: It's still snowing -- and still
23 have Thanksgiving. So have a good weekend and
24 I'll see you on Monday.

25 MS. CLARK: Thank you for your patience, Your

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Honor. Sorry we're such a rowdy bunch.

THE COURT: That's what I get paid to do.

MS. LAMIN: Thank you, Your Honor.

(Whereupon, court stood in recess until
Monday, November 29, 2010.)

* * *

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