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STATE OF MINNESOTA

IN SUPREME COURT

A18-0828

Hennepin County

McKeig, J.
Concurring in part, dissenting in part, Anderson and Hudson, JJ.
Concurring in part, dissenting in part, Thissen, J.

State of Minnesota,

Respondent,

vs.

Filed: July 15, 2020
Office of the Appellate Courts

Joshua Chiazor Ezeka,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant State Public Defender, Saint Paul, Minnesota for appellant.

S Y L L A B U S

1. A 14-day break in custody ends the protection of an individual's invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution.

2. The district court did not abuse its discretion when it denied appellant's motion to suppress his post-*Miranda* statements.

3. The error in the district court's jury instruction on the elements of premeditated murder was not plain.

4. The district court's failure to give a jury instruction on accomplice testimony did not affect appellant's substantial rights.

5. The district court erred when it imposed a 360-month sentence on the attempted first-degree premeditated murder conviction because the sentence exceeds the statutory maximum of 240 months.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

MCKEIG, Justice.

After waiving his *Miranda* rights during a custodial interrogation in January 2017, appellant Joshua Ezeka admitted that he fired multiple shots at a rival gang member and that one of his bullets fatally struck an innocent bystander. A grand jury indicted Ezeka for several offenses, including first-degree premeditated murder. Ezeka moved to suppress his post-*Miranda* statements, asserting three arguments. First, he argued that the protection of an earlier invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution was still in effect in January 2017. Second, he argued that his post-*Miranda* statements were inadmissible under *State v. Bailey*, 677 N.W.2d 380 (Minn. 2004). Third, he argued that his post-*Miranda* statements were involuntary. The district court denied the motion, and, on appeal, Ezeka argues this was error. Ezeka also argues that he is entitled to a new trial based on an erroneous jury instruction on the elements of premeditated murder and because the district court failed to give a jury instruction on accomplice

testimony. Further, he asserts his 360-month sentence for attempted first-degree premeditated murder was error because it exceeded the statutory maximum. Because we conclude that Ezeka's statements were admissible and that the jury instructions were not plain error, we affirm Ezeka's convictions. But because Ezeka's 360-month sentence exceeded the statutory maximum, we reverse that sentence and remand for resentencing.

FACTS

This case arises from the death of Birdell Beeks, who died as a result of a shooting on May 26, 2016. That day, at 6:03 p.m., a gunman fired nine shots at a gold Toyota Corolla driven by D.G., a known member of the "Highs" gang. One of the bullets struck and killed Beeks, who was sitting in a nearby van with her granddaughter.

Police suspected the gunman had fired the shots from a grass-covered vacant lot behind the house where appellant Joshua Ezeka lived with his parents. A K-9 unit tracked a scent from the vacant lot to the back door of Ezeka's house. Concerned that the gunman fled into the house, the police set up a perimeter and conducted a protective sweep of the house.

In the course of the sweep, four of Ezeka's family members and four of his friends were removed from the house. Ezeka was not in the house. The police obtained and executed a search warrant. In a kitchen cupboard, the officers found ammunition with Ezeka's fingerprints; in Ezeka's bedroom, they found a live .380 cartridge and a revolver; and in the basement, the officers found more .380 caliber ammunition.

Ezeka was a member of a rival gang of the Highs called the "Lows." Security camera footage from a nearby intersection captured images of a vehicle driven by Lows

gang member Freddy "Little Zoe" Scott leaving the crime scene immediately after the shooting. Cellphone records showed that the cellphones of Scott and Ezeka connected at 6 p.m. on May 26, 2016, near the crime scene.

Scott testified at trial that, during a police interview, he told police that he had called Ezeka before the shooting to tell him that D.G. was driving a gold car toward Ezeka's house and was planning to "slide," i.e. shoot someone. Scott also told police that he met Ezeka in front of Ezeka's house immediately after the shooting and they drove away in Scott's vehicle.

On June 2, 2016, police investigators conducted a custodial interrogation of Ezeka. During the interrogation, Ezeka invoked his right to counsel under Article I, Section 7 of the Minnesota Constitution and the Fifth Amendment to the United States Constitution. The investigators disregarded the invocation and continued to question Ezeka. Throughout the interrogation, Ezeka maintained that he was not involved in the shooting. Ezeka was released from custody 22 days later, on June 24, 2016.

Between July 1, 2016, and December 29, 2016, Ezeka was intermittently incarcerated on unrelated matters. Ezeka had been out of custody for 24 days—beginning on December 30, 2016, and ending on January 23, 2017—when the State filed a criminal complaint charging Ezeka with second-degree intentional murder for the shooting death of Beeks. That same day, police arrested Ezeka at gunpoint and transported him to the Hennepin County jail.

After Ezeka arrived at the jail, he was interrogated in the same room and by the same investigators as the June 2016 interrogation. Unlike the June interrogation, Ezeka

did not demand an attorney. The investigators greeted Ezeka in a cordial manner, saying, "Hi Josh" and "What's going on Josh?" The investigators then asked if Ezeka remembered the earlier interrogation. Ezeka said he did. The first investigator told Ezeka they had "some additional questions." He explained that they had talked "to a lot of people," they knew "what happened," and they believed it "wasn't an intentional act on [his] part." In response to these statements, Ezeka said, "I didn't do it."

The investigators then discussed the evidence against Ezeka. They explained the charges and the fact that Ezeka was facing 60 years in prison. When Ezeka said, "It's a long time," the second investigator replied, "it's a long time, you're too young for this." The first investigator then said, "Before we start showing you any of these pictures [from our file] and talking about that, um, we gotta read you your rights." But before the first investigator could proceed, the second investigator interjected that drive-by shootings directed at Ezeka's house might end if he talked. Expressing disbelief, Ezeka asked how an admission would stop the shootings. The first investigator told Ezeka that he did not know if it's "the [H]ighs or if it's some people that are affiliated with [Beeks] . . . who [are] shooting up your house but if you can provide us with some answers, maybe some explanations here, maybe that stuff will stop."

After reminding Ezeka that he was facing 60 years in prison, the second investigator said, "The prosecutor, I think will entertain an explanation of what happened." Ezeka then asked, "So, about this person that's in this gold car that I shooting at, what's his name, you said, Sto?" When the first investigator repeated the name "Sto," Ezeka replied, "[w]ho told you guys that?" After explaining that he could not disclose the names of witnesses, the

first investigator read Ezeka the *Miranda* warning. The pre-*Miranda* portion of the January 2017 interrogation lasted 13 minutes.

Ezeka waived his *Miranda* rights. He then told the investigators he wanted to see the evidence in their file. The investigators showed Ezeka an aerial photograph of the crime scene and asked him to point to the location of his house. After discussing who was present in the house, the investigators showed Ezeka records that placed his cellphone at the crime scene and documented a call from Freddy Scott's cellphone at approximately 6 p.m. on May 26, 2016. Ezeka repeatedly denied that the caller was Scott. In the end, however, Ezeka provided the investigators a detailed description of his conduct. During his post-*Miranda* statements, he admitted receiving the phone call from Scott (who told him that D.G. was driving toward his house), leaving the backdoor of his house with a handgun, firing nine bullets at D.G.'s car, and then running to the front of his house, where he fled the scene with Scott.

In March 2017, a Hennepin County grand jury indicted Ezeka with several offenses, including first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2018). The charge of first-degree premeditated murder alleged that Ezeka, "acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, caused the death of [Beeks], a human being, with premeditation and with intent to effect the death of that person, or another, while using a firearm."[1] The indictment also charged Ezeka with second-degree intentional murder of

[1] The "intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime" language comes from Minn. Stat.

Beeks, attempted first-degree premeditated murder of D.G., attempted second-degree murder of D.G., and second-degree assault of Beeks' granddaughter. Each of these charges included an aiding and abetting theory of criminal liability.

In May 2017, Ezeka moved to suppress the post-*Miranda* statements he made to the investigators during the January 2017 custodial interrogation.[2] Ezeka argued that the district court should suppress his statements for three reasons. First, he argued that the investigators obtained the statements in violation of his right to counsel under Article I, Section 7 of the Minnesota Constitution. Second, he argued that his statements were inadmissible under *State v. Bailey*, 677 N.W.2d 380 (Minn. 2004). Third, he argued that his statements were involuntary.

At a suppression hearing, the district court heard testimony from Ezeka and both investigators and also admitted a video recording and transcript of the January 2017 custodial interrogation. After considering the evidence, the district court denied Ezeka's motion to suppress as to the post-*Miranda* statements.

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§ 609.05, subd. 1 (2018), which articulates the aiding and abetting theory of criminal liability. For more than 50 years, Minnesota has recognized that "aiding and abetting" is *not* a separate substantive offense, but rather is "a theory of criminal liability." *See, e.g.*, *Dobbins v. State*, 788 N.W.2d 719, 729–30 (Minn. 2010) ("[A]ccomplice liability is a theory of criminal liability, not an element of a criminal offense or separate crime."); *State v. Britt*, 156 N.W.2d 261, 263 (Minn. 1968) ("[T]here is no separate crime of criminal liability for a crime committed by another person.").

[2] Ezeka also argued that the district court should suppress his pre-*Miranda* statements and his statements from June 2, 2016. Because the court suppressed these statements, neither of these arguments are relevant on appeal.

The court found that immediately before the January 2017 custodial interrogation, Ezeka had been out of custody for 24 days. Relying on *Maryland v. Shatzer*, 559 U.S. 98, 110 (2010), and *State v. Scanlon*, 719 N.W.2d 674, 683 (Minn. 2006), the court concluded that the June 2016 invocation of Ezeka's right to counsel had ended before the January 2017 custodial interrogation. With regard to Ezeka's argument that his post-*Miranda* statements were inadmissible under *Bailey*, the court began its analysis by quoting the following passage from the case:

> [W]here a suspect is apprehended under coercive circumstances, is subjected to lengthy custodial interrogation before being given a *Miranda* warning, does not have the benefit of a significant pause in the interrogation after the *Miranda* warning is given, and essentially repeats the same inculpatory statements after the *Miranda* warning as before, the statements made after the *Miranda* warning are inadmissible.

Bailey, 677 N.W.2d at 392. The district court concluded that the facts of Ezeka's case were materially distinguishable from the facts of *Bailey* because the investigators did not subject Ezeka to a lengthy custodial interrogation before the *Miranda* warning was given, and because Ezeka did not simply repeat the same inculpatory statements after the *Miranda* warning. Finally, the court concluded that Ezeka's statements were voluntary. The court found that the two investigators were "cordial and encouraging during the interview, and never threatening or coercive in their demeanor." The court also found that Ezeka contributed to the 13-minute delay in the reading of the *Miranda* warning and that the investigators did not deprive Ezeka of any physical needs.

Ezeka's case proceeded to trial. During the trial, Scott testified that he called Ezeka and ordered the death of D.G. Without objection, the district court instructed the jury that,

in connection with the charge of first-degree premeditated murder, the State was required to prove, among other things, that "[Ezeka], or someone he intentionally aided and abetted, acted with premeditation," even though the evidence presented at trial indicated that Ezeka was acting as a principal when he fired the shots. Also without objection, the district court failed to instruct the jury on corroboration of accomplice testimony. During closing argument, the prosecutor emphasized Scott's involvement in calling Ezeka and "order[ing] the hit" on D.G. The jury found Ezeka guilty as charged, and the district court convicted him of all counts with the exception of two lesser-included offenses.

The district court imposed separate sentences for each victim. For the first-degree premeditated murder of Beeks, the court imposed a sentence of life without the possibility of release. For the attempted first-degree premeditated murder of D.G., the court imposed a 360-month sentence. And, for the second-degree assault committed against Beeks' granddaughter, the court imposed a 36-month sentence. The court ordered that all three sentences be served consecutively.

ANALYSIS

On appeal, Ezeka makes five arguments. First, he asks us to hold that an invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution provides greater protection than an invocation of the right to counsel under the Fifth Amendment to the United States Constitution, which ends after the suspect has been out of custody for 14 days. Second, he argues that the district court abused its discretion when it denied his motion to suppress his post-*Miranda* statements. Third, he argues that the district court committed plain error in its jury instructions on the elements of first-degree premeditated

murder. Fourth, he argues that the district court erred by its failure to instruct the jury on accomplice testimony. Fifth, he argues that his 360-month sentence for attempted first-degree premeditated murder was error because it exceeded the statutory maximum sentence. We consider each argument in turn.

I.

Ezeka asks us to hold that an invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution provides greater protection than an invocation of the right to counsel under the Fifth Amendment to the United States Constitution, which ends after the suspect has been out of custody for 14 days. We decline to do so.

The interpretation and application of the Minnesota Constitution is a legal question, which we review de novo. *State v. Castillo-Alvarez*, 836 N.W.2d 527, 534 (Minn. 2013). We acknowledge that "state constitutions are a separate source of citizens' rights and that state courts may reach conclusions based on their state constitutions, independent and separate from the U.S. Constitution." *Kahn v. Griffin*, 701 N.W.2d 815, 824 (Minn. 2005). Generally, however, we do "not construe our state constitution as providing more protection for individual rights than does the federal constitution unless there is a principled basis to do so." *Id.* Because we favor uniformity with the federal constitution, we will not reject the Supreme Court's interpretation of the Constitution merely because we desire a different result. *Id.*

Under the Fifth and Fourteenth Amendments to the United States Constitution, procedural safeguards protect an individual who is in custody and subjected to questioning. Such an individual "must be warned prior to any questioning that he has the right to remain

silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966). The Supreme Court has said an individual must unequivocally and unambiguously invoke his or her right to counsel before the police are required to stop the questioning. *See Davis v. United States*, 512 U.S. 452, 461–62 (1994). Under our constitution, however, when an individual makes an equivocal request for counsel, "officers must cease questioning the suspect except as to narrow questions designed to clarify the suspect's true desires respecting counsel." *See State v. Ortega*, 813 N.W.2d 86, 98 (Minn. 2012) (citation omitted) (internal quotation marks omitted).

Importantly, "when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards v. Arizona*, 451 U.S. 477, 484 (1981). But an individual's request for counsel does not forever bar police questioning. *See Shatzer*, 559 U.S. at 108–09 (noting that, absent some limitation, "every *Edwards* prohibition of custodial interrogation of a particular suspect would be eternal"). To avoid an eternal prohibition, the Supreme Court held in *Shatzer* that once an individual has been out of custody for 14 days or longer, the right to counsel must be unequivocally and unambiguously invoked again, even if properly invoked previously. *Id.* at 110. The Supreme Court reasoned that 14 days was "plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior

custody." *Id.* In other words, when an individual who was in custody and cut off from his or her normal life is out of police custody for a period of time, a 14-day break in questioning is sufficient to "preserve the integrity of an accused's choice to communicate with police only through counsel." *Id.* at 106 (quoting *Patterson v. Illinois*, 487 U.S. 285, 291 (1988)). At this point, the likelihood of a coerced confession is greatly reduced. *See id.* at 106–07.

Ezeka asks us to provide greater protection for the people of Minnesota than that provided by the federal constitution and hold that a 14-day break in custody does not end the protection of a suspect's invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution. According to Ezeka, such a holding is necessary because the *Shatzer* rule is unsound. More specifically, he argues that the 14-day period is arbitrary and that a totality-of-the-circumstances test is necessary to ensure that any residual coercive effects of a prior custody have been shaken off. We disagree.

We consider the *Shatzer* Court's analysis to be well-reasoned, including its justification for rejecting a totality-of-the-circumstances test.[3] Specifically, the *Shatzer* Court explained that "clarification in future case-by-case adjudication" is impractical because "law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful." *Id.* at 110. We agree with that reasoning.

Consequently, in this context, there is no principled basis to construe the right to counsel under Article I, Section 7 of the Minnesota Constitution as providing greater

[3] The majority of states have adopted and applied the 14-day rule under *Shatzer*. *See, e.g.*, *State v. Yonkman*, 297 P.3d 902, 904 (Ariz. 2013); *Smith v. Commonwealth*, 520 S.W.3d 340, 347–48 (Kan. 2017); *State v. Wessells*, 37 A.3d 1122, 1130 (N.J. 2012); *State v. Edler*, 833 N.W.2d 564, 566 (Wis. 2013).

protection than the right to counsel under the Fifth Amendment to the United States Constitution. Additionally, our conclusion is consistent with our case law, both before and after the 2010 *Shatzer* decision. *See Scanlon*, 719 N.W.2d at 683 (holding that a break in custody of several months between the defendant's invocation of the right to counsel and his subsequent statements meant that he was not protected from interrogation under the *Edwards* rule); *see also State v. Borg*, 806 N.W.2d 535, 546 n.3 (Minn. 2011) (relying on the 14-day rule, post-*Shatzer*, when discussing the shortcomings of the dissent's theory). We therefore hold that a 14-day break in custody ends the protection of an individual's invocation of the right to counsel under Article I, Section 7 of the Minnesota Constitution.

II.

We next consider whether the district court abused its discretion by denying Ezeka's pretrial motion to suppress his post-*Miranda* statements. For the reasons that follow, we conclude the district court did not abuse its discretion.

When reviewing a pretrial order denying a motion to suppress, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018). "A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law." *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016). When a defendant claims a confession was not voluntary, we "independently determine, on the basis of all the factual findings that are not clearly erroneous, whether or not the confession was voluntary." *State v. Anderson*, 396 N.W.2d 564, 565 (Minn. 1986).

As discussed above, there is no principled basis to construe the right to counsel under Article I, Section 7 of the Minnesota Constitution as providing greater protection in this context than the right to counsel under the Fifth Amendment to the United States Constitution, which ends after the suspect has been out of custody for 14 days. The district court's finding that Ezeka had been out of custody for 24 days before the January 2017 interrogation is not clearly erroneous. Because this break in custody exceeds 14 days, we conclude that the district court did not abuse its discretion when it determined that the protection of Ezeka's invocation of his right to counsel had ended before the January 2017 interrogation.

But, Ezeka argues, his post-*Miranda* confession was also inadmissible under *Bailey*, 677 N.W.2d 380. Ezeka's reliance on *Bailey* is misplaced. In *Bailey*, we explained that, in the absence of "any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will," it is an unwarranted extension of *Miranda* to hold that the investigatory process is so tainted that "a subsequent voluntary and informed waiver is ineffective for some indeterminate period." 677 N.W.2d at 391 (quoting *Oregon v. Elstad*, 470 U.S. 298, 309 (1985)). In *Bailey*, we noted that the pre-Miranda interrogation "was accompanied by actual coercion." *Id*.

Here, the district court found there was no actual coercion during the pre-*Miranda* portion of the January 2017 custodial interrogation. After reviewing the video recording and transcript of the custodial interrogation, we conclude that the district court's findings regarding the absence of actual coercion are not clearly erroneous because they have evidentiary support in the record. This case is therefore materially different from *Bailey*.

Rather than *Bailey*, the more apposite case is *State v. Scott*, 584 N.W.2d 412 (Minn. 1998) (discussed in *Bailey*, 677 N.W.2d at 391–92). There, we said that the defendant "was not disabled from waiving his rights and confessing after he was given the requisite *Miranda* warning," simply because he "responded to [15 minutes of] unwarned yet noncoercive questioning." *Id.* at 420. The facts here are comparable to what happened in *Scott*. Ezeka responded to 13 minutes of unwarned, noncoercive questioning. By comparison, Scott responded to 15 minutes of unwarned, noncoercive questioning. *See Scott*, 584 N.W.2d at 415. Moreover, like the defendant in *Scott*, Ezeka did not make any incriminating statements during the pre-*Miranda* portion of the January 2017 custodial interrogation. *See id.* Because the facts of Ezeka's case are materially indistinguishable from the facts of *Scott*, the admission of his post-*Miranda* statements did not violate *Bailey*. *See* 677 N.W.2d at 392.

We next consider Ezeka's argument that his post-*Miranda* statements were not voluntary. "The central question in determining whether a confession is voluntary is whether the defendant's 'will was overborne at the time he confessed.' " *State v. Nelson*, 886 N.W.2d 505, 509 (Minn. 2016) (quoting *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007)). Our inquiry is not whether "police actions contributed to the utterance of inculpatory statements," but "whether [the] actions, together with other circumstances surrounding the interrogation, were so coercive, so manipulative, so overpowering that [the defendant] was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). Relevant factors include: the defendant's age, maturity, intelligence, education, experience,

and ability to comprehend; the nature of the interrogation; the lack of or adequacy of warnings; the length and legality of the detention; and whether the defendant was deprived of physical needs or denied access to friends. *Farnsworth*, 738 N.W.2d at 373.

According to Ezeka, the following factors demonstrate that his post-*Miranda* statements were not voluntary:[4] he was 20 years old at the time of the interrogation; he stuttered until eleventh grade; his family experienced police harassment in the past; he was unfamiliar with custodial interrogation; the investigators who conducted the January 2017 custodial interrogation ignored his June 2016 request for counsel; the investigators also suggested that, if he talked, he might receive a more lenient sentence and the shootings directed at his house might end; and he was deprived of his physical needs as evidenced by the fact that he urinated into a trashcan before the investigators entered the room.

The record shows that Ezeka was 20 years old at the time of the January interview. Although he was a young man, he was not a child. *See Pilcher*, 472 N.W.2d at 333–34 (discussing a defendant who was "twenty years old, high school educated, and had prior experience with the criminal justice system"). The record also suggests that Ezeka was familiar with the collateral consequences of a felony conviction, and his demeanor in the interrogation suggests that he was aware of the investigators' adversarial role. *See Nelson*, 886 N.W.2d at 510; *see also Pilcher*, 472 N.W.2d at 334. Although Ezeka makes credible points about his family history and his experiences with law enforcement, particularly the

[4] A challenge to the voluntariness of a confession is not the same as a challenge to the waiver of *Miranda* rights. Ezeka does not claim that his *Miranda* waiver was invalid and we observe that, during the January 2017 custodial interrogation, Ezeka was advised of his *Miranda* rights, indicated he understood his rights, and agreed to waive those rights.

investigators involved in this case, we cannot say that these factors make his statement involuntary.

As for the nature of the interrogation, we conclude that the investigators did not engage in coercive tactics. The first allegedly coercive tactic was implying that Ezeka's sentence would be more lenient if he confessed. The district court found that the investigators told Ezeka "that the prosecutor might entertain what he had to say" and informed him of the maximum sentence for the charges. Ezeka argues that, in informing him of the 60-year maximum sentence, the investigators implied that there was room for leniency in the sentence, and that a confession might have consequences for his sentence and trial.

Investigators may "inform a defendant of the possible charges or evidence marshalled against the defendant," *Pilcher*, 472 N.W.2d at 334, but "police invite suppression of [a] statement when they use promises, express or implied, in seeking to persuade a suspect to confess to a crime." *State v. Thaggard*, 527 N.W.2d 804, 811 (Minn. 1995); *see also State v. Jungbauer*, 348 N.W.2d 344, 346–47 (Minn. 1984). Not all offers to help are coercive promises, however, and promises do not render a confession involuntary in all cases. *See generally Farnsworth*, 738 N.W.2d at 374–75 (collecting cases); *Thaggard*, 527 N.W.2d at 811.

In *State v. Clark*, investigators said they knew that the defendant "didn't plan this," that his future could be "spotless," and that he might not receive life without parole if he confessed. 738 N.W.2d 316, 333–34 (Minn. 2007). The investigators appealed to the defendant's morality, and encouraged him to "get every f*ckin' demon off [his] back." *Id.*

at 334. We held that their conduct was not so coercive as to render the defendant's confession involuntary. *Id*. at 336. Similarly, in *State v. Nelson*, we concluded that appeals to the defendant's conscience and personal integrity were not coercive. 886 N.W.2d at 510. We found especially persuasive that the defendant was aware of the officers' "adversarial role" and that "he did not confess until he was confronted with the likelihood that the physical evidence would not match his story." *Id.*

There are strong parallels to *Nelson* and *Clark* here. Most importantly, the investigators did not promise that Ezeka would be charged with a lesser offense or imply that the investigators could control the prosecution. *See Clark*, 738 N.W.2d at 335 ("[I]t is important to distinguish between comments identifying the potential sentences imposed for different degrees of murder and express promises that a defendant will be charged with a lesser offense in exchange for his confession."). Moreover, the record shows that Ezeka was fully aware of the investigators' adversarial role. *See Nelson*, 886 N.W.2d at 510; *see also Pilcher*, 472 N.W.2d at 334 (concluding that the defendant was not fooled by the empathic approach because he continued to display "wariness of the police and their tactics").

Applying the principles that we articulated in *Nelson* and *Clark*, we conclude that the investigators' comments to Ezeka about the charges were not coercive. The statements were used to encourage Ezeka and appeal to his conscience, but they were not the kind of promises that would make an innocent person confess. *See State v. Slowinski*, 450 N.W.2d 107, 112 (Minn. 1990).

The second allegedly coercive tactic was implying that the safety of Ezeka's family might be affected by his decision to confess. The district court found that, during the interview, "there was discussion about shootings that had been aimed at [Ezeka's] house." The investigators "suggested that an explanation from [Ezeka] might dissuade those involved from continuing to shoot at his home."

Regardless of the propriety of the investigators' statements, we conclude that those statements, without more, were "not so coercive as to render the confession involuntary." *See Farnsworth*, 738 N.W.2d at 374. When the investigators' statements are considered in context, the record reflects that Ezeka did not take the investigators' assertions seriously. Ezeka immediately replied, "some people are still gonna [*sic*] come and do that." *See id.* at 375 (finding a confession was voluntary when the defendant's prior experience gave him reason to disbelieve that the police had the power to carry out their threats); *see also State v. Spaeth*, 552 N.W.2d 187, 195 (Minn. 1996). It is unreasonable to conclude that Ezeka was coerced into making a confession by an investigator's comment that he did not believe. The record simply does not support the conclusion that Ezeka's will was overborne by these statements. *See Nelson*, 886 N.W.2d at 509.

Finally, Ezeka's decision to urinate into the trash can—rather than asking to be escorted to a restroom—has no persuasive value. The record does not show that Ezeka relieved himself in the trash can because police refused a request to use the restroom. Rather, the video shows that Ezeka urinated into the trash can within seconds of entering and being left alone in the interrogation room—hardly an intentional deprivation of his needs. *See, e.g.*, *Nelson*, 886 N.W.2d at 511; *State v. Camacho*, 561 N.W.2d 160, 170

(Minn. 1997); *State v. Moorman*, 505 N.W.2d 593, 600 (Minn. 1993) (concluding that defendant's hunger did not render a statement involuntary because "the police were totally unaware of it and did not use it to coerce an involuntary confession").

Based on the district court's factual findings, which are not clearly erroneous, and our independent review, we find nothing "so coercive, so manipulative, [or] so overpowering" as to suggest that Ezeka's will was overborne when he confessed. *See Nelson*, 886 N.W.2d at 509; *Pilcher*, 472 N.W.2d at 333. For these reasons, the district court did not abuse its discretion when it denied Ezeka's pretrial suppression motion.

III.

Ezeka also argues the district court committed an error that was plain when it instructed the jurors on the elements of premeditated murder. We disagree.

Without objection, the district court instructed the jury that, in connection with the charge of first-degree premeditated murder, the State was required to prove, among other things, that "[Ezeka], or someone he intentionally aided and abetted, acted with premeditation." According to Ezeka, these instructions misstated the law because they permitted the jury to find that the premeditation element was satisfied if the jury believed Freddy Scott acted with premeditation. Ezeka further argues that the impact of this misstatement of law was amplified by the prosecutor's closing argument, which emphasized Scott's undisputed act—calling Ezeka and "order[ing] the hit" on D.G.

A defendant forfeits appellate review of a jury-instruction issue when he fails to object to the instruction in the district court. *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019). But, under the plain-error standard, we have the discretion to consider a

forfeited issue if the defendant establishes (1) an error, (2) that is plain, and (3) that affects his substantial rights. *Id.* The error requirement is satisfied when the jury instructions "confuse, mislead, or materially misstate the law." *State v. Smith*, 674 N.W.2d 398, 401–02 (Minn. 2004). An error is plain if it is "clear" or "obvious." *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)). A defendant's substantial rights are affected when "there is a reasonable likelihood that the giving of the instruction in question had a significant effect on the jury verdict." *State v. Gomez*, 721 N.W.2d 871, 880 (Minn. 2006)). If the defendant establishes all three requirements, "we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *State v. Mouelle*, 922 N.W.2d 706, 718 (Minn. 2019).

A brief discussion of aiding and abetting liability is necessary to fully assess Ezeka's claim that the jury instructions materially misstate the law. Ordinarily, a person is "responsible only for criminal acts committed by himself." 8 Am. Jur. 2d *Proof of Facts* § 1 (1976). But the aiding and abetting statute, Minn. Stat. § 609.05, subd. 1 (2018), provides that "[a] person is criminally liable for *a crime committed by another* if the person intentionally aids, advises, hires, counsels, or conspires with or *otherwise procures the other to commit the crime*." (Emphasis added.). We commonly use the word "principal" when referring to the person who committed the crime and the word "accomplice" when referring to the person who intentionally aided the principal's commission of the offense. *See State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016). "We have long held that aiding and abetting is not a separate substantive offense . . . ." *State v. DeVerney*, 592 N.W.2d

837, 846 (Minn. 1999). Instead, it is "a theory of criminal liability." *Dobbins v. State*, 788 N.W.2d 719, 729–30 (Minn. 2010). In other words, section 609.05 makes accomplices criminally liable as principals. *State v. Lee*, 683 N.W.2d 309, 315 (Minn. 2004); *State v. King*, 622 N.W.2d 800, 804 (Minn. 2001). There is no need to rely on section 609.05 when the criminal act is committed by the accused because a person is directly liable for his or her actions as a principal.

After reviewing the jury instructions as a whole, we conclude that the district court erred when it instructed the jury on aiding and abetting liability. There was no evidence that Ezeka acted as an accomplice, and the State's theory at trial was that Ezeka was the shooter and, therefore, directly liable for his actions as a principal. Consequently, there was no need for the district court to instruct the jurors on an aiding and abetting theory of criminal liability.

In addition, the district court used confusing and misleading language to describe this unnecessary theory of criminal liability. For example, in instructing the jurors that the State needed to prove "[Ezeka], or someone he intentionally aided and abetted, acted with premeditation," the district court's use of the word "acted" allowed the jury to find Ezeka guilty of premeditated murder if the State proved either that Ezeka *fired the shots* with premeditation or that Scott *ordered the hit* with premeditation. To be clear, if Ezeka fired the shots with premeditation, his liability as the principal could have been extended to Scott under an aiding-and-abetting theory of criminal liability because Scott procured Ezeka to commit the crime. *See* Minn. Stat. § 609.05, subd. 1. But Scott's premeditation in ordering

the hit cannot be used to satisfy a necessary element of the principal crime, namely Ezeka's premeditation in firing the shots.

Having concluded that the district court improperly provided the jury an aiding and abetting instruction, we consider whether the error was clear and obvious. In two cases within the last decade, we have *discouraged* instructions that combine accomplice liability and the underlying elements (commonly referred to as "hybrid instructions"). In *Huber*, "we encourage[d] district courts to separately instruct the jury on accomplice liability and on the underlying elements of the substantive offenses." 877 N.W.2d at 524 n.3. And in *State v. Bahtuoh*, "we encourage[d] district courts to separately instruct the jury on accomplice liability and the underlying substantive offense because of the different state-of-mind requirements for criminal liability as a principal rather than as an accomplice." 840 N.W.2d 804, 815 n.1 (Minn. 2013). But discouraging words do not create a well-established rule. Because the district court's erroneous instruction did not violate a well-established rule, we conclude that the error was not plain. We take this opportunity, however, to emphasize that district courts must separately instruct the jury on accomplice liability and on the underlying elements of the substantive offenses. The era of hybrid instructions has ended.

IV.

Ezeka argues that a second jury-instruction error—the district court's failure to instruct the jurors on uncorroborated accomplice testimony—also requires reversal. Ezeka argues that because Scott was an accomplice, the district court was required to instruct the jury that it could not convict Ezeka based on Scott's uncorroborated testimony.

Ezeka failed to request, or object to the absence of, an accomplice-testimony jury instruction. We therefore review the failure to give the instruction under the plain-error standard. *State v. Barrientos-Quintana*, 787 N.W.2d 603, 611 (Minn. 2010). As above, Ezeka must establish (1) an error, (2) that is plain, and (3) that affected his substantial rights. *See Zinski*, 927 N.W.2d at 275. If he does so, "we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Mouelle*, 922 N.W.2d at 718.

It is undisputed that the district court's failure to provide an accomplice testimony jury instruction was plain error under our case law. *See State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). We therefore turn to the error's effect, if any, on Ezeka's substantial rights. Ezeka bears the burden of showing that "there is a 'reasonable likelihood' that the absence of the error would have had a 'significant effect' on the jury's verdict." *See State v. Reed*, 737 N.W.2d 572, 583–84 (Minn. 2007). In determining whether a defendant has met this burden, we consider whether the jury relied on corroborating evidence and not just the accomplice testimony standing alone. We conduct an independent review of the record and consider all relevant factors that may bear on the question. Our recent cases have highlighted four non-exclusive factors that we consider as part of that review. *See, e.g.*, *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (considering " 'whether the testimony of the accomplice was corroborated by significant evidence, whether the accomplice testified in exchange for leniency, whether the prosecution emphasized the accomplice's testimony in closing argument, and whether the court gave the jury general witness credibility instructions.' " (quoting *State v. Jackson*, 746 N.W.2d

894, 899 (Minn. 2008)); *State v. Lee*, 683 N.W.2d 309, 316–17 (Minn. 2004) (concluding based on evidence in the record, closing argument, and other instructions that an "independent review of the record compels the conclusion" beyond a reasonable doubt that an omitted accomplice instruction "did not have a significant impact on the verdict").

Here, Ezeka argues that Scott's testimony is the only evidence of Ezeka's premeditation and intent to kill D.G. Accordingly, Ezeka asserts the failure to instruct the jury that it could not rely solely on Scott's testimony means that the jury may have convicted Ezeka in violation of Minn. Stat. § 634.04 (2018) ("A conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense . . . ."). We disagree.

First, significant corroborating evidence was introduced that supported Ezeka's premeditation and intent.[5] Cellphone records showed that Scott called Ezeka just before the shooting and that he was in the same area as Ezeka during and after the shooting. Security camera footage shows Scott's vehicle leaving the crime scene immediately after the shots were fired. Ezeka also corroborated Scott's testimony himself, admitting during his January 2017 interrogation that he received a phone call from Scott regarding D.G., left his house with a handgun, fired nine bullets at D.G.'s car, and fled the scene in Scott's car after the shooting. Further, the jury was instructed on the general credibility of witnesses

[5] "Corroborative evidence need not, standing alone, be sufficient to support a conviction, but it must 'affirm the truth of the accomplice's testimony and point to the guilt of the defendant in some substantial degree.' " *Reed*, 737 N.W.2d at 584 (quoting *State v. Sorg*, 144 N.W.2d 783, 786 (Minn. 1966)). The evidence "need only be sufficient to restore confidence in the truthfulness of the accomplice's testimony." *State v. Clark*, 755 N.W.2d 241, 256 (Minn. 2008).

and the jury knew that Scott was an accomplice who received a plea deal in exchange for his testimony. Viewing the record together with all relevant factors, we conclude that Ezeka failed to show a reasonable likelihood that the failure to provide an accomplice-testimony jury instruction had a significant effect on the jury's verdict. The evidence reasonably supports a conclusion that the jury believed, and relied upon, more than just Scott's testimony. Accordingly, although the district court committed an error that was plain when it failed to provide an accomplice-testimony jury instruction, the error did not affect Ezeka's substantial rights.

V.

The district court sentenced Ezeka to 360 months imprisonment on the conviction of attempted first-degree premeditated murder. The parties agree that this was error because the statutory maximum for this offense is 240 months. *See* Minn. Stat. § 609.17, subd. 4(1) (2018) (providing that "[w]hoever attempts to commit a crime may be sentenced as follows: (1) if the maximum sentence provided for the crime is life imprisonment, to not more than 20 years."). We therefore reverse Ezeka's 360-month sentence and remand to the district court for resentencing on this offense.

CONCLUSION

For the foregoing reasons, we affirm Ezeka's convictions, reverse his sentence for attempted first-degree premeditated murder, and remand for resentencing on that offense.

Affirmed in part, reversed in part, and remanded

ANDERSON, Justice (concurring in part and dissenting in part).

The issue presented in this appeal is how best to safeguard individual liberty when a suspect is detained. Because appellant Joshua Ezeka was out of custody during the 14 days prior to the custodial interrogation, I concur in the court's conclusion that the protection of his earlier invocation of the right to counsel had ended. But because I conclude that Ezeka's post-*Miranda* statements were obtained using unconstitutional coercive custodial interrogation methods, I respectfully dissent.

The Fifth Amendment, as applied to Minnesota through the Due Process Clause of the Fourteenth Amendment, protects a defendant from self-incrimination. *See* U.S. Const. amends. V, XIV; *see also Miranda v. Arizona*, 384 U.S. 436, 442 (1966). When the police interrogate a person who is in custody, "the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444; *see also State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993) (requiring a *Miranda* warning for custodial interrogations). This is because "[t]he underlying purpose of *Miranda* was to stop certain coercive practices used by police in custodial interrogation." *State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995). Any waiver of this right by an individual must be made "voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 444. For a statement to be voluntarily given, a person must give those statements without the presence of "promises, trickery, deceit, and stress-inducing techniques." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991).

I first turn to a review of the district court's factual findings relating to Ezeka's confession, which are reviewed under the clearly erroneous standard. *See State v. Anderson*, 396 N.W.2d 564, 565 (Minn. 1986). "A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law." *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016). When reviewing confessions, a reviewing court considers all the factual findings that are not clearly erroneous and independently determines whether a confession was voluntary. *Anderson*, 396 N.W.2d at 565. I then consider the voluntariness of Ezeka's confession before addressing why a new trial is necessary.

I.

I begin my analysis by considering whether any of the district court's findings are clearly erroneous. After reviewing the record, I conclude that two of the findings made by the district court—those related to the delay in providing Ezeka with the *Miranda* warning and those related to the demeanor of the investigators—are clearly erroneous.

The first factual error was the finding of the district court that Ezeka caused the delayed reading of the *Miranda* warning. This finding is not supported by the record. During the 13 minutes in which Ezeka is interrogated prior to being read his *Miranda* warning, every time the first investigator indicates that he intends to read the *Miranda* warning, it is the second investigator, not Ezeka, who interjects. For example, when the first investigator says, "we gotta read you your rights," the second investigator interrupts, saying:

> Before you read that, we, we know what's going on at your house there, your house has been shot up twice last weekend. Maybe, maybe some admi, admission on your part . . . we don't wanna see your mom get killed or your dad get killed because they're in the house when it gets shot up.

At a minimum, the officers used their team interrogation tactics to prolong the police interview without reading Ezeka his *Miranda* warning. The district court's factual finding that Ezeka was the cause of the delay of his *Miranda* warning is clearly erroneous.

Second, the district court erred when it found that the investigators were "cordial and encouraging during the interview, and never threatening or coercive in their demeanor." This finding is not supported by the record. For the first 13 minutes of the interrogation before reading Ezeka his *Miranda* rights, the investigators used body language, conduct, false legal advice, and the nature of custodial interrogation to create a coercive atmosphere. The second investigator frequently leans into Ezeka, and in response Ezeka is seen showing common signs of stress, such as crossing his arms, hunching over, covering his face, and fidgeting. At one point Ezeka says, "[Y]'all trying [to] yell at me."

The investigators provided Ezeka with the false legal advice that speaking with them might be Ezeka's "only opportunity to get [his] story out" because he might be barred from testifying at trial.[1] This conduct by the investigators is troubling because "giving false legal advice" is one of the deceptive stratagems that contributes to the coercive nature of custodial interrogations. *See Miranda*, 384 U.S. at 455. After explaining that he was facing up to 60 years in prison, the investigators also suggested that an admission could lead to

[1] This advice was false because "the right of a criminal defendant to testify is a personal right and the decision whether to testify is ultimately for the defendant." *State v. Smith*, 299 N.W.2d 504, 506 (Minn. 1980).

leniency from the prosecutor. The investigators repeatedly told Ezeka that they did not want to see his parents killed and that an admission might end the drive-by shootings at his family home and the threat to the lives of his parents. The coercive effect of repeated suggestions that a confession could lead to the end of drive-by shootings at his family home and the threat to the lives of his parents cannot be overstated. Finally, the fact that Ezeka was questioned in the same room (which now smelled of urine) by the same investigators who disregarded his previous request for counsel added to the coercive nature of the unwarned portion of the January 2017 custodial interrogation. In light of these facts, the district court's findings related to the nature of the encounter and the demeanor of the investigators were clearly erroneous.

These clearly erroneous findings formed the foundation of the district court's conclusion that the unwarned portion of the custodial interrogation did not create such a coercive atmosphere that Ezeka's will was overborne at the time he made his confession. As a result, the district court's conclusion, and similarly the court's conclusion, is unsound.

II.

I next turn to the question of whether, under the totality of the circumstances, Ezeka's confession was voluntary. "[T]he relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

The key question is whether the conduct of the investigators prior to administering the *Miranda* warning taints Ezeka's post-*Miranda* confession. The court concludes that

because Ezeka made no incriminating statements to police before he was read his *Miranda* rights, his confession was voluntary. This reasoning is flawed for two reasons.

I first conclude that actual coercion occurred during the first 13 minutes of Ezeka's interrogation. The failure of the investigators to administer a *Miranda* warning, by itself, does not mean that Ezeka's statements were actually coerced. *Oregon v. Elstad*, 470 U.S. 298, 310 (1985). But when, as here, events "by any objective measure reveal a police strategy adapted to undermine the *Miranda* warnings," the confession is the product of actual coercion. *Missouri v. Seibert*, 542 U.S. 600, 616 (2004). Important to my analysis is that Ezeka's unwarned confession was produced by false legal advice and repeated suggestions that an admission might end the drive-by shootings at his family home and the threat to the lives of his parents. These circumstances, along with the deliberate delay, created actual coercion.

Upon entering the interrogation room, the investigators set the tone by reminding Ezeka of their last encounter, which had occurred six months before, in the same interrogation room, and with the same investigators. This context is relevant because, when Ezeka previously met with the investigators, he requested an attorney and informed the investigators that his family had experienced negative encounters with police in the past. Rather than ceasing the interrogation, the investigators disregarded his invocation of his right to counsel and continued questioning him. The investigators reminded Ezeka of the prior interaction by stating that it was a "contentious meeting the first time." Shortly after reminding Ezeka of their previous interaction, one of the investigators attempts to begin to read Ezeka his *Miranda* rights. The second investigator quickly interrupts the first

investigator and, while leaning toward Ezeka, implores Ezeka to confess. Just as in the first interrogation where the investigators circumvented Ezeka's right to counsel, here, from the start of the interrogation, using a question-first-inform-later strategy, the investigators failed to give the *Miranda* warning in a timely and appropriate fashion.

While deliberately withholding the *Miranda* warning, the investigators then gave false legal advice to Ezeka: that he may be prevented from testifying at trial and therefore should confess to police because it may be his "only opportunity" to get his "story out." The interrogation tactics used by investigators are not new and is the type of conduct that the Supreme Court sought to deter in *Miranda*. The *Miranda* Court warned: "When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice." 384 U.S. at 455. Such a stratagem "exacts a heavy toll on individual liberty and trades on the weakness of individuals." *Id.*; *see also United States v. Anderson*, 929 F.2d 96, 101–02 (2d Cir. 1991) (holding that the government agent coerced a defendant by giving false legal advice to get his confession and noting that "[i]n *Miranda* the [Supreme] Court expressly disapproved [of] deceptive stratagems such as giving false legal advice, stating: 'any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege' " (quoting *Miranda*, 384 U.S. at 476)).

After giving false legal advice, the investigators also repeatedly told Ezeka that they did not want to see his parents killed and that a confession from Ezeka might end the drive-by shootings at his family home and the threat to the lives of his parents. The court waves away these threats, arguing that "[r]egardless of the propriety of the investigators'

statements," the threats to Ezeka's family were not coercive because there is no reason to think that Ezeka believed the investigators. But threats and promises by police are often more coercive when directed at someone related to the accused, rather than direct threats or promises to the accused. *Compare Lynumm v. Illinois*, 372 U.S. 528, 534–35 (1963) (police threats that the suspect's children would be taken from her invalidated confession), *and State v. Anderson*, 298 N.W.2d 63, 65 (Minn. 1980) (noting that the promise to free a relative in exchange for a confession may render a confession involuntary), *with State v. Nelson*, 886 N.W.2d 505, 510 (Minn. 2016) (holding that vague appeals by police to a suspect's "conscience" and "personal integrity" are not coercive), *and State v. Beckman*, 354 N.W.2d 432, 437 (Minn. 1984) (holding that the police statement that "any cooperation would be brought to the trial court's attention" did not invalidate confession). Importantly here, the investigators' statements neither helped Ezeka understand his rights, *see State v. Slowinski*, 450 N.W.2d 107, 111 (Minn. 1990), nor were the product of an "empathic approach" to policing, *see State v. Farnsworth*, 738 N.W.2d 364, 374 (Minn. 2007); nor was Ezeka's statement made with the benefit of being represented by an attorney, *see State v. Spaeth*, 552 N.W.2d 187, 195 (Minn. 1996). Rather, advanced today is the notion that only certain promises made by police—those that make believable offers of leniency—can be coercive.

The investigators repeatedly delayed and stalled giving the *Miranda* warning, using threats, conduct, false promises, and coercive police tactics until Ezeka confessed. The totality of the circumstances supports the conclusion that actual coercion by the investigators occurred.

Second, I conclude that the court misunderstands the relevance of the timing of events here. The existence of actual coercion during an unwarned portion of a custodial interrogation fundamentally alters the analysis that is applied in determining whether post-*Miranda* statements are admissible. The Supreme Court acknowledged the competing analyses in *Oregon v. Elstad*. The *Elstad* Court explained that when the unwarned statement "*is actually coerced*, the time that passes between confessions, the change in place of interrogations, and the change in identity of the interrogators all bear on whether that coercion has carried over into the second confession." 470 U.S. at 310 (emphasis added). By contrast, when the unwarned statement is "*unaccompanied by any actual coercion* or other circumstances calculated to undermine the suspect's ability to exercise his free will," it is an unwarranted extension of *Miranda* to hold that the investigatory process is so tainted that "a subsequent voluntary and informed waiver is ineffective for some indeterminate period." *Id.* at 309 (emphasis added). In other words, a voluntary and informed waiver of *Miranda* rights cleanses the taint of an unwarned statement when the statement was unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will.

Consequently, in determining whether Ezeka's post-*Miranda* statements were admissible, a reviewing court should consider the time that passed between the unwarned statement and the post-*Miranda* confession, the change in place of interrogations, and the change in identity of the interrogators. The post-*Miranda* statements directly followed the unwarned, coercive custodial interrogation, and there was no change in the place of

interrogation or the identity of the investigators. Ezeka's confession was the product of unlawful coercive police tactics.

The court does not discuss or apply *Elstad*; instead, it applies the inapplicable test for unwarned statements that are unaccompanied by actual coercion. But even if this were the proper test, relying on *State v. Scott*, 584 N.W.2d 412 (Minn. 1998), to justify the investigators' conduct here is misplaced. The unwarned questioning of Ezeka was not the "low key," 15-minute questioning of the defendant in *Scott*. *See* 584 N.W.2d at 419. In a 13-minute period, the investigators here (1) remind Ezeka of his previous encounter in which the investigators ignored his constitutionally protected request for counsel; (2) offer false legal advice; and (3) callously discuss the drive-by shootings occurring at his family home, suggesting that his confession may prevent future shootings. The nature of the questioning by the investigators, not its brevity, controls in this case.

I, therefore, conclude that the district court erred by denying Ezeka's motion to suppress and admitting the post-*Miranda* statements into evidence at trial.

III.

Because I conclude that Ezeka's post-*Miranda* statements were erroneously admitted at trial, I must next determine whether their admission entitles Ezeka to a new trial. "[T]he admission of a defendant's statements to police at trial in violation of *Miranda* does not require a new trial if the state can show beyond a reasonable doubt that the error was harmless." *State v. Farrah*, 735 N.W.2d 336, 343 (Minn. 2007). An error is harmless beyond a reasonable doubt when the jury's verdict was "surely unattributable to the error." *Id.* "[I]t is not sufficient to find that without the error enough evidence exists to support

the conviction . . . ." *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997). Independent evidence sufficient to meet the "surely unattributable" standard has included DNA evidence, possession of the victim's property, and physical evidence placing the defendant at the scene. *State v. Day*, 619 N.W.2d 745, 750–51 (Minn. 2000). But the mere presence of some independent evidence is not enough to conclude that the conviction was "surely unattributable" to the admission of a confession.

Generally, when a confession was erroneously admitted at trial, it constitutes harmful error because of the "powerful evidentiary value" of the confession. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 365 (Minn. 2010). For example, in *Chavarria-Cruz*, the defendant was convicted of second-degree murder; he appealed the verdict, arguing that his confession should have been suppressed. *Id.* at 357, 360. Although a statement from a witness implicated the defendant in the murder and the State presented other evidence of his guilt, the admission of his statement was not harmless beyond a reasonable doubt. *Id.* at 365. Here, the State argues that the jury's verdicts were "surely unattributable" to the admission of Ezeka's post-*Miranda* statements. In support of its argument, the State relies on the following evidence: (1) the photographs of Ezeka "throwing up" the gang sign for the Lows, which verified that he is a member of the Lows gang; (2) the cell phone data, which confirmed that Freddy Scott called Ezeka before and after the shooting and placed Ezeka near the location of the shooting at the time of the event; (3) the surveillance camera footage that captured images of a vehicle driven by Scott leaving the crime scene immediately after the shooting; (4) the forensic evidence that showed the bullets recovered from D.G.'s car and Beeks's chest, along with other bullets

found at the crime scene, were all fired from the same firearm; and (5) the ShotSpotter audio recording proving that nine shots were fired.[2] Although this evidence arguably supports Ezeka's convictions, the question before us is not whether, without the error, there exists enough evidence to support the convictions. Instead, the question is: What effect did the error have on the jury's verdicts? *See Farrah*, 735 N.W.2d at 343. In light of the "powerful evidentiary value" of Ezeka's post-*Miranda* statements, I cannot conclude that the guilty verdicts were "surely unattributable" to the erroneous admission of the statements. *See Chavarria-Cruz*, 784 N.W.2d at 355. Ezeka is therefore entitled to a new trial.

For the foregoing reasons, I would reverse the judgment of conviction and remand to the district court for a new trial. I respectfully dissent.

HUDSON, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Anderson.

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[2] The number of shots fired is a relevant fact to establish the nature of the killing, which is one of three categories of evidence used to infer premeditation. *See State v. Holliday*, 745 N.W.2d 556, 563–64 (Minn. 2008) (stating that the number of times the defendant uses the weapon is considered to determine his or her intent); *State v. Goodloe*, 718 N.W.2d 413, 419–20 (Minn. 2006) (same).

CONCURRENCE & DISSENT

THISSEN, Justice (concurring in part and dissenting in part).

This is a tragic case. Escalating mutual gang retribution left an innocent victim, Birdell Beeks, dead from an act of senseless violence. This case cries out for justice for Ms. Beeks and her family. But part of justice is ensuring that it is reached in a fair and constitutional manner that respects the individual liberty rights that we all cherish. In the midst of our fight for American values during World War II, we stated that the question before us "does not involve the guilt or innocence of the defendant. It concerns only his constitutional rights. The law of the land is the only yardstick which can be allowed to gauge the liberties of citizens, whatever may be their ill or just desert." *State v. Kelly*, 15 N.W.2d 554, 556 (Minn. 1944); *see generally Brown v. Mississippi*, 297 U.S. 278, 285 (1936) (stating that "the freedom of the state in establishing its policy is the freedom of a constitutional government and is limited by the requirement of due process of law").

I agree with the court's holding affirming the district court's decision that appellant Joshua Ezeka's invocation of his *Miranda* rights in June 2016 did not carry over to prevent the police from interrogating him again in January 2017. But I would rest that conclusion on our decision in *State v. Scanlon*, 719 N.W.2d 674 (Minn. 2006) (holding that a defendant who was out of custody for months between interrogations was "sufficiently 'out of custody' for his *Edwards* invocation to be nullified" without establishing a bright-line rule). I would not unnecessarily establish a bright-line 14-day expiration date for properly invoked *Miranda* rights. I disagree with the majority of the court that Ezeka's confession was voluntary. I conclude that his confession was the result of improper and

unconstitutional police coercion. Because I conclude that Ezeka's conviction should be reversed and the case remanded for a new trial, I would not reach the jury instruction issues, although it is clear that the district court should have given an accomplice corroboration instruction. Finally, I agree with the court that the district court erred by sentencing Ezeka to more than the statutory maximum sentence on the attempted-premeditated-murder conviction.

I.

Ezeka argues that his January 2017 statement to police should be suppressed because police reinitiated interrogation after he had invoked his *Miranda* rights to silence and to the advice of an attorney during his June 2016 interrogation. Consistent with the unique values of Minnesotans and the history of our state, we have held that our Minnesota Constitution provides more protection to individual liberty than the United States Constitution in precisely the context of continuing police interrogation after the invocation of *Miranda* rights. *Compare State v. Ortega*, 813 N.W.2d 86, 98 (Minn. 2012) (noting that Minnesota "case law imposes an additional obligation" that the United States Constitution does not require "on officers when a suspect makes an equivocal request for counsel"), *and State v. Risk*, 598 N.W.2d 642, 648–49 (Minn. 1999) (requiring police to "stop and clarify" an ambiguous invocation of the right to counsel before continuing with interrogation), *with Davis v. United States,* 512 U.S. 452, 461–62 (1994) (stating that an officer has "no obligation to stop questioning a suspect" when that suspect's "statement is not an unambiguous or unequivocal request for counsel"*).* Unless there is a good reason to do so,

we should not back away from that commitment to protecting Minnesotans' liberties in any context. And there is no good reason to do so in this case.[1]

The facts here demonstrate that Ezeka's previous invocation of his right to counsel made during his June 2016 interrogation did not carry over to prevent the January 2017 interrogation. In *Scanlon*, we held that a break in custody of several months nullified Scanlon's prior invocation of his right to counsel. 719 N.W.2d at 682–83. I agree with the district court that the rule in *Scanlon* applies equally here, where Ezeka had been out of police custody for 102 days of the 235 days between the June 2016 interrogation when he invoked his right to counsel and the January 2017 interrogation. There is no reason for our court to reach out beyond the facts of this case to adopt the federal bright-line 14-day rule of *Maryland v. Shatzer*, 559 U.S. 98 (2010).[2] *See State v. N. Star Research & Dev. Inst.*,

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[1] To be fair, the court's holding is not inherently inconsistent with Minnesota's commitment to greater protection for individual liberty under the Minnesota Constitution. The court is not overruling our clear precedent interpreting the Minnesota Constitution to provide broader protection to suspects during investigations than is provided under the United States Constitution. But I cannot understand why this Minnesota court, in a case where it need not reach the issue, would voluntarily cede the constitutional authority granted to it by the people of Minnesota to a panel of nine non-Minnesotans sitting in Washington D.C. *See generally Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 831, 833 (Minn. 1991) (noting Minnesota's long tradition of assuring the right to counsel beyond the protections provided by the federal constitution and holding that the Minnesota Constitution affords suspects a limited right to consult an attorney before deciding whether to submit to chemical testing for blood alcohol).

[2] I do not agree that a totality-of-the-circumstances test is impractical for assessing whether sufficient time has passed after a *Miranda* warning has been given to reinitiate an interrogation, or that the needs of the police and public safety demand an arbitrary bright-line rule that the Supreme Court of the United States seemingly plucked out of thin air. *See generally* Hannah Misner, *Maryland v. Shatzer: Stamping a Fourteen-Day Expiration Date on Miranda Rights*, 88 Denver Univ. L. Rev. 289 (2010) (critiquing the decision in *Shatzer*). Certainly no evidence was admitted in this case that crime-fighting has been

200 N.W.2d 410, 425 (Minn. 1972) ("This court does not decide important constitutional questions unless it is necessary to do so in order to dispose of the case.").

II.

Ezeka asserts that his January 2017 statement must be suppressed as the product of coercion. As our division on this issue shows, this is a difficult decision.

Dating back many decades, the Supreme Court of the United States recognized that the Due Process Clause of the United States Constitution prohibits the State from using confessions obtained under coercive circumstances such that an individual's will was overborne at the time the confession was made. *See Dickerson v. United States*, 530 U.S. 428, 433–34 (2000) (reaffirming due process prohibition on use of involuntary confessions); *Miller v. Fenton*, 474 U.S. 104, 109–10 (1985); *Brown*, 297 U.S at 286. The Supreme Court has repeatedly stated that coerced confessions implicate the "complex of values" that underlies the Due Process Clause. *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960); *see also Miller*, 474 U.S. at 109–10. Those values include avoiding false confessions, ensuring that police obey the law while enforcing the law, upholding a civilized system of justice, as well as the values of "human dignity, personal autonomy and mental freedom." *See* Joshua Dressler & Alan C. Michaels, *Understanding Criminal*

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impaired because Minnesota police are uncertain about the number of days they must wait after a break in custody before they can reinitiate an interrogation. I trust police officers to exercise the type of reasonableness that underlies the totality-of-the-circumstances test in that regard. More to the point, we cannot anticipate the precise facts of future cases. There may be a situation in the future where the reinitiation of an interrogation of an individual after 18 days out of custody crosses the line into unconstitutionally compelled self-incrimination. We should wait for that much closer case—not the more than seven times 14 days at issue here—to shunt away the unique protections of our Minnesota Constitution.

Procedure 406–07 (LexisNexis ed., 5th ed. 2010) (citing *Colorado v. Connelly*, 479 U.S. 157, 165–66 (1986); *Miller*, 474 U.S. at 109; and *Spano v. New York*, 360 U.S. 315, 320 (1959)). Many of these fundamental values are implicated in this case. Recognizing the fundamental unfairness inherent in coerced confessions, true statements as well as false statements resulting from coerced confessions must be suppressed. *See Rogers v. Richmond*, 365 U.S. 534, 544–45 (1961).

In addition to constitutional concern for fundamental fairness, coerced confessions also run afoul of the Fifth and Sixth Amendments which protect individual liberty from the overwhelming power of the State in criminal prosecutions. *See* U.S. Const. amends. V, VI. In *Miranda v. Arizona*, the Supreme Court recognized that "custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals" and held that the Fifth Amendment privilege against compulsory self-incrimination applies in the context of custodial interrogations. 384 U.S. 436, 455, 478 (1966); *see Malloy v. Hogan*, 378 U.S. 1, 6 (1964) (stating that the Fifth Amendment privilege against compelled self-incrimination is binding on the States). The Supreme Court has determined that custodial interrogations are presumptively coercive. *Miranda*, 384 U.S. at 455; s*ee also Oregon v. Elstad*, 470 U.S. 298, 304–07 (1985) (interpreting *Miranda* to state that custodial interrogations are presumptively coercive).

In assessing whether Ezeka's statement was coerced—whether his will was overborne—we examine whether Ezeka was "deprived of his ability to make an unconstrained and wholly autonomous decision to speak." *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991). We assess whether such deprivation occurred by considering all

the circumstances surrounding the interrogation and confession. *Id.* The State has the burden of proving the voluntariness of the confession by a preponderance of the evidence. *State v. Nelson*, 886 N.W.2d 505, 509 (Minn. 2016).

I start with the findings of the district court which are entitled to due deference unless clearly erroneous. *State v. Anderson*, 396 N.W.2d 564, 565 (Minn. 1986). The district court, having reviewed the interrogations and hearing the testimony of the two officers and Ezeka, issued a lengthy and detailed order with several important findings that are supported by the record. But I conclude that the district court clearly erred when it determined as follows: "[One investigator] mentioned several times that he was going to read [Ezeka] his *Miranda* rights, but it was [Ezeka] who kept asking questions which delayed the reading of *Miranda*." For the reasons stated by Justice Anderson, the district court's finding is flatly contradicted by the record. In fact, on more than one occasion, the second police investigator distracted the first investigator from reading Ezeka his *Miranda* rights.[3] The court makes no effort to seriously engage with the central fact that a detective, who previously and indisputably ignored Ezeka's constitutional rights, made a conscious and deliberate decision to repeatedly delay the *Miranda* warning in an inherently coercive environment.

[3] I also find the district court's conclusion that the investigators were "cordial and encouraging during the interview" to be an overstatement. But I am not convinced the finding matters much. Our constitution does not require that police be cordial and encouraging. Based on my review of the record, the demeanor of the investigators was also not unusually harsh or threatening, which should be the relevant inquiry.

Ezeka makes three arguments that his will was overborne, thereby making his statement involuntary. First, he argues that the police promised that he would receive a more lenient sentence if he admitted that he fired the shots at the car, including the shot that killed Birdell Beeks. We have acknowledged that express or implied promises of special treatment in exchange for a confession may render the confession involuntary. *See Nelson*, 886 N.W.2d at 505; *State v. Biron*, 123 N.W.2d 392, 397–99 (Minn. 1963). But we have also been clear in numerous cases that we will not find the confession involuntary when it was not reasonable in the circumstances for a suspect to understand the police statement as a promise of special treatment in exchange for a confession. *See Nelson*, 886 N.W.2d at 509–10; *State v. Cox*, 884 N.W.2d 400, 410 (Minn. 2016) (observing that officers made no promise that if the suspect confessed, "they would attempt to obtain favorable treatment for him from the prosecutors"); *State v. Farnsworth*, 738 N.W.2d 364, 374–75 (Minn. 2007) (concluding that there was no promise of treatment made in lieu of prosecution); *In re Welfare of M.D.S.*, 345 N.W.2d 723, 732 (Minn. 1984) (holding that the statements of police provided no objective basis for a juvenile to believe that if she cooperated with the investigation and confessed, she would be given immunity); *State v. Merrill*, 274 N.W.2d 99, 107–08 (Minn. 1978) (concluding that police made no actual or implied promise by informing the suspect that, although they had evidence supporting a murder charge, others in a similar situation had been charged with manslaughter), *abrogated on other grounds by State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005); *see generally State v. Williams*, 535 N.W.2d 277, 287 (Minn. 1995) (stating that the purpose of the rule suppressing involuntary confessions is to deter coercive police conduct).

The police never promised—explicitly or implicitly—that Ezeka would receive more leniency from prosecutors if he cooperated and confessed. Rather, he was told truthful information about the potential consequences he faced. *See Pilcher*, 472 N.W.2d at 334 (stating that it is not improper for police to inform a suspect of possible charges and evidence in the case). Accordingly, I agree with the court: I cannot conclude that Ezeka was coerced by false promises.

Second, Ezeka argues that the investigators' suggestions that a confession would mean people would stop shooting up his family's house, reducing the risk to his parents and family, was coercive. Police statements that raise the specter that a confession may reduce a threat of physical violence to a suspect or his family could, in certain circumstances, be sufficiently powerful to cause an innocent suspect to falsely admit to conduct. And it remains a factor even here for purposes of the totality-of-the-circumstances test. But based on my review of the record, Ezeka did not confess to ensure his family's safety. Indeed, Ezeka contested the investigators' reasoning during the interrogation. Consequently, I agree with the court on this point. I cannot conclude in these circumstances that Ezeka's confession was coerced by suggestions that a confession would keep his family safe.

Third, Ezeka asserts that coercion was demonstrated by a constellation of police conduct that overbore Ezeka's will. The same investigators who interrogated Ezeka in January 2017 blatantly ignored a plain request to remain silent and speak to a lawyer during

the June 2016 interrogation;[4] following the June 2016 interrogation, Ezeka was held in police custody for 23 days; immediately prior to the January 2017 interrogation, Ezeka was apprehended after six officers with guns drawn entered his girlfriend's bedroom where he and his girlfriend were together; the police failed to immediately give Ezeka a *Miranda* warning at the beginning of the January 2017 interrogation; and multiple times during the January 2017 interrogation one investigator refused to allow the other investigator to read Ezeka his *Miranda* rights, including at least one instance where the investigator expressly waived off the *Miranda* rights. Notably, the district court expressly found that one investigator "appeared anxious to keep [Ezeka] from saying anything substantive about the case until the *Miranda* warning had been read." But the warning kept being delayed. That is simply impermissible conduct.

Based on those experiences, Ezeka argues, he had no reason to believe that the investigators would honor a future request to speak with a lawyer or a refusal to talk to police. Stated another way, Ezeka argues that he perceived the promise that the investigators would allow him to remain silent to be meaningless because, based on his

[4] As discussed above, I concur in the court's decision that the passage of several months nullified the June 2016 *Miranda* warning such that the investigators did not violate the federal and Minnesota constitutions by initiating a second interrogation of Ezeka in January 2017. That conclusion does not mean, however, that we cannot consider the investigators' June 2016 conduct when they ignored Ezeka's invocation of his right to remain silent and to speak to counsel as part of our totality-of-the-circumstances inquiry into whether Ezeka's January 2017 statements were the product of an unconstrained and wholly autonomous decision to speak. Indeed, his treatment by the police in June 2016 and January 2017 in the investigation of the Beeks murder is Ezeka's most relevant and important experience for purposes of assessing whether his confession was voluntary or coerced.

relevant and immediate experience, the investigators simply would not honor that right and would continue to interrogate him until he confessed. If true, that is unquestionably a coercive interrogation; indeed, it is the definition of one.

I conclude that the State did not carry its burden of proving that, under the circumstances just described, Ezeka was not deprived of his ability to make an *unconstrained* and *wholly autonomous* decision to speak. *See Pilcher*, 472 N.W.2d at 333. The State does not now contest that the investigators ignored a clear and unequivocal invocation of Ezeka's *Miranda* rights in June 2016 or that he was held in jail for 23 days after that interrogation. The detectives indisputably and intentionally delayed giving Ezeka a *Miranda* warning in January 2017 for over 13 minutes of interrogation even though (as the State agrees) Ezeka was in custody. And a review of the interrogation transcript and video shows that one investigator specifically overrode the efforts of the other investigator to give the *Miranda* advisory.

Our coercion inquiry is a totality-of-the-circumstances analysis, which, by its nature, requires a case-by-case approach. But over time, our coercion jurisprudence has evolved into a formula—the often repeated *Jungbauer* list of factors.[5] *See, e.g.*, *Pilcher*, 472 N.W.2d at 333. We must remain vigilant that the analysis does not devolve into the

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[5] The coercion inquiry includes consideration of such factors as

> the age, maturity, intelligence, education, and experience of the defendant and the ability of the defendant to comprehend; the lack or adequacy of warnings; the length and legality of the detention; the nature of the interrogation; whether the defendant was deprived of physical needs; and whether the defendant was denied access to friends.

State v. Jungbauer, 348 N.W.2d 344, 346 (Minn. 1984) (citing *State v. Linder*, 268 N.W.2d 734, 735–36 (Minn. 1978)).

checking off of boxes on a list, regardless of whether any particular factor says anything about the specific case under consideration, or whether other factors may be relevant to the inquiry in a particular case. And I agree that some of the physical aspects of this interrogation were not unreasonable. There were no physical threats or intimidation tactics.

The court relies on the asserted brevity of the delay—13 minutes—between the time the January 2017 interrogation started and when Ezeka received the *Miranda* warning. Certainly, in other cases, we have found a confession voluntary after a slightly longer delay between the initiation of the interrogation and the *Miranda* warning. *See State v. Scott*, 584 N.W.2d 412, 418 (Minn. 1998) (referring to an unwarned 15-minute period of interrogation). But there is no magic constitutional time period that makes an interrogation voluntary or coerced. What matters is what happened before and during those 13 minutes. In this case, during those 13 minutes, the investigators—the same investigators who had completely ignored Ezeka's right to remain silent and to counsel just months before—refused multiple times to provide a *Miranda* warning, ignoring the underlying constitutional promises that an individual will not be forced by the State to testify against himself. In that broader context of his prior experiences, Ezeka likely would feel isolated and hopeless; a fact the investigator played upon by delaying and waving off efforts to inform Ezeka of his constitutional rights.

The investigators easily could have read Ezeka his *Miranda* rights at the start of the custodial interrogation. Had the officers done so, the course and experience of the interrogation would have been different. The State offers no explanation as to why the detectives failed to immediately give the warning. Notably, in our long series of cases

dealing with questions of coercion and the voluntariness of a confession, there are very few examples of a custodial interrogation where the police did not provide a *Miranda* warning before the interrogation. Indeed, in several cases, we noted that the suspect was advised *multiple* times of his *Miranda* rights during an interrogation.

The court also vaguely relies on Ezeka's experience with law enforcement in determining that his confession was voluntary. Experience with law enforcement and having a criminal history may be relevant to assessing whether a statement was voluntary. The court asserts that Ezeka's history "suggests that he was familiar with the collateral consequences of a felony conviction [that he could go to prison], and his demeanor in the interrogation suggests that he was aware of the investigators' adversarial role." And to the extent that Ezeka claims that he believed he would get a more lenient sentence by cooperating, I agree that those considerations may be relevant with the proper proof.

But that is not the source of the coercion about which I am concerned. Ezeka's experience with law enforcement generally is not relevant to demonstrate that his experience with these investigators in June 2016 and January 2017 rendered his confession unconstrained and wholly autonomous. The State presented—and the district court found—no evidence, either specific to Ezeka or based on broader social science research, to demonstrate that Ezeka was more likely to withstand coercive police techniques because of his history with law enforcement than another suspect without the same history.[6] There

[6] We should take great care when we use an individual's general experience with law enforcement or a criminal history to assess whether a confession was voluntary. The practical effect of an assumption that individuals with experience in the criminal justice system are more likely *as a group* to be able to stand up to coercive police conduct is to

is nothing in the record that tells us anything about his experiences one way or the other, particularly with regard to interrogations following arrests. For all we know from the record, it is equally possible that Ezeka's assertion of his constitutional rights, including the right to remain silent, may have been ignored previously as well.

Finally, the fact that the detectives ultimately advised Ezeka of his *Miranda* rights and Ezeka acknowledged those rights does not automatically cleanse the interrogation of coercion. We recognized as much in *State v. Bailey*, 677 N.W.2d 380, 391–92 (Minn. 2004) (suppressing statements made after a *Miranda* warning where the suspect was subjected to coercive police interrogation before the *Miranda* warning was given).[7]

The recitation of *Miranda* rights is a constitutionally founded prophylactic against the inherently coercive nature of custodial interrogations. A valid *Miranda* warning, accompanied by a voluntary, knowing, and intelligent waiver of the suspect's Fifth and Sixth Amendment rights, eliminates the *presumption* that a confession given during a

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further embed in our criminal justice system the class and racial disparities that already exist. Because people of color and poor people are more likely to have experience with the criminal justice system, a rule of law that systemically—rather than based on individual case-by-case assessments—provides less protection for their constitutional rights will inevitably perpetuate those disparities and reduce trust in the fairness of our courts. *See, e.g.*, Susan M. Behuniak, *How Race, Gender, and Class Assumptions Enter the Supreme Court*, 10 Race, Gender & Class 1, 79–82 (2003) (describing how judicial assumptions about the "real" world serve as starting points from which to engage in legal reasoning are not always based on empirical data, but may be derived from culture or individual subconscious values and may also reflect "an expression of power, hierarchy, and perhaps even oppression").

[7] This case differs from *Scott*, 584 N.W.2d at 418–19, where the totality of the circumstances and police conduct did not evince a coercive environment that overcame the suspect's exercise of free will.

custodial interrogation was coercive. But the giving of a *Miranda* warning does not convert an otherwise coerced confession into a voluntary confession. "[I]t would be absurd to think that mere recitation of the litany suffices to satisfy [the constitutional prohibition on coerced confessions] in every conceivable circumstance." *Missouri v. Siebert*, 542 U.S. 600, 611 (2004).

Siebert is instructive. In *Siebert*, a police officer held off on giving a *Miranda* warning until he had extracted a confession from the suspect. *Id.* at 604–06. The officer subsequently gave the suspect a *Miranda* warning after which the suspect confessed again. *Id.* at 605–06. The *Siebert* Court held that the second confession was inadmissible. *Id.* at 617. In so holding, the *Siebert* Court reasoned that a *Miranda* warning is effective only when it gives the suspect a "real choice" about giving a statement. *Id.* at 609, 612.

In this case, the totality of the investigators' conduct—wholly ignoring a demand for assistance of counsel and to remain silent in June 2016, followed by weeks in jail, an arrest at gunpoint by six armed officers in his girlfriend's bedroom, and the same investigators' repeated failure and refusal to allow the *Miranda* rights to be administered during the January 2017 custodial interrogation—rendered the entire interrogation coercive. And because of the specific conduct of the investigators who interrogated him in June 2016 and January 2017, Ezeka likely did not believe that his constitutional rights would be honored. The conduct of the investigators suggests that they would interrogate Ezeka until he confessed, and the State did not carry its burden and introduce evidence sufficient to overcome that conclusion. In short, Ezeka's experience taught him that he did not have a real choice about making a statement. Accordingly, the investigators' belated

reading of the *Miranda* warning to guarantee his rights was meaningless and cannot cleanse the already existing coercive conditions into an unconstrained and wholly autonomous decision to speak.

In summary, I conclude that Ezeka's inculpatory statement was not the product of an unconstrained and wholly autonomous decision to speak. The statement should have been excluded at trial. And for the reasons stated by Justice Anderson, I cannot conclude that the guilty verdict in this case was surely unattributable to the constitutionally impermissible admission of the statement. Therefore, I would reverse and remand for a new trial.

STATE OF MINNESOTA — IN THE DISTRICT COURT
CRIMINAL DIVISION
COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Joshua Chiazor Ezeka,

Defendant.

Jury Trial Transcript

District File No. 27-CR-17-1879

Appellate File No. A18-0828

Volume XI

The above-entitled matter came before the Honorable Tamara G. Garcia, Judge of District Court, at the Government Center, Minneapolis, Minnesota, on January 24, 2018.

* * * *

APPEARANCES

Christopher E. Freeman and Dominick D. Mathews, Assistant Hennepin County Attorneys, appeared on behalf of the State of Minnesota;

Paul D. Schneck and Erik R. Beitzel, Assistant Public Defenders, appeared on behalf of the Defendant, who was personally present.

* * * *

* * P R O C E E D I N G S * *

(The following proceedings began at 10:09 a.m.)

THE COURT: All right. Let's go on the record, please. All right. Good morning, everyone.

MR. MATHEWS: Good morning.

MR. SCHNECK: Good morning, Your Honor.

THE COURT: We received a note from the jury, and I showed it to the attorneys this morning and we talked about a response.

The question from the jury reads, "Point of clarification," because it sounds like they're trying to understand the instructions.

"If we find the defendant guilty of any counts, 1 through 4, do we still need to make a finding on the lesser charges?" And then in parentheses it says, "Aiding and abetting unintentional murder in the second degree," end parentheses. And it's signed and dated by the -- by a foreperson.

So we did discuss a possible response, a clarification to their -- to the instructions and to answer their question. And the response that was crafted was as follows:

The lesser crime of aiding and abetting unintentional murder in the second degree, while committing a felony, applies only to Counts 1 and 2.

It is not a lesser-included crime on Counts 3, 4, or 5.

You have been given twelve verdict forms; please use the six that reflect your decision.

This is essentially just a reiteration of the instructions that they've all been given. And we discussed whether we wanted to bring the jury in to respond, or simply have my note go back in response.

So, Mr. Schneck, Mr. Bietzl; thoughts, please?

MR. SCHNECK: That's fine, Your Honor.

THE COURT: And from the State.

MR. MATHEWS: Your Honor, the State approves that.

THE COURT: All right. Then I will simply have the deputy hand this back to the deputy. All right. And that was the agreed-upon way to handle it. Again, nothing was really added. We just reiterated instructions already given to the jury.

So at this time we will, again, resume our waiting while the jury is deliberating. I will let the attorneys know as soon as I hear anything from the deputy, from the jury.

MR. SCHNECK: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Recess was taken from 10:12 a.m. to 12:08 p.m.)

THE COURT: All right. And, Counsel, can you approach just very briefly, please.

(A brief discussion was had at the bench.)

THE COURT: All right. We are ready at this time. All rise.

(Jury entered the courtroom at 12:08 p.m.)

THE COURT: And everyone may be seated.

All right. Members of the jury, have you arrived at a verdict; yes or no?

FOREPERSON: Yes.

THE COURT: Deputy, would you please retrieve the verdict forms and provide them to me for my review.

Mr. Ezeka, would you please rise.

Madam Clerk, would you please read the verdicts.

THE CLERK: Members of the jury, I will now read your verdict as it will appear in the permanent court records of Hennepin County.

State of Minnesota vs. Joshua Ezeka. Count 1, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting murder in the first degree, premeditation.

Count 2, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting murder in the second degree, intentional.

Count 3, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting attempted murder in the first degree, premeditation.

Count 4, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting attempted murder in the second degree, intentional.

Count 5, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting assault in the second degree, dangerous weapon.

Lesser crime for Counts 1 and 2, verdict of guilty. We the jury find the defendant guilty of the charge of aiding and abetting unintentional murder in the second degree while committing a felony."

Members of the jury, is this your true verdict so say you one so say you all?

(Jurors affirm.)

THE COURT: Mr. Ezeka, you may be seated.

Counsel, you may be seated.

At this time, I will poll the jury.

Juror Number One, is this your true and correct verdict? Top row.

JUROR: Yes.

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THE COURT: Juror Number Two, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Three, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Four, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Five, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Six, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Seven, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Eight, is this your true and correct verdict.

JUROR: Yes.

THE COURT: Jury Number Nine, is this your true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Ten, is this your

true and correct verdict?

JUROR: Yes.

THE COURT: Juror Number Eleven, is this your true and correct verdict?

JUROR: Yes.

THE COURT: And, Juror Number Twelve, is this your true and correct verdict?

JUROR: Yes, it is.

THE COURT: Ladies and gentlemen, in this case the law provides for a separate proceeding when a defendant has been found guilty of a crime. At this proceeding you shall consider whether any aggravating factors exist, and they will be put to you in the form of questions that will appear on, what we call, special verdict forms. I will read the forms to you now.

State of Minnesota vs. Joshua Chiazor Ezeka. Counts 1, 2, and lesser-included crime special verdict form.

Please answer the following questions regarding Count 1, aiding and abetting murder in the first degree, premeditation; Count 2, aiding and abetting murder in the second degree, intentional; and the lesser-included crime, aiding and abetting unintentional murder in the second degree while committing a felony.

Question 1. Did the State prove beyond a reasonable doubt that the Ne'Asha Griffin was present in the vehicle driven by Ms. Birdell Beeks? Yes or no.

Two, did the State prove beyond a reasonable doubt that Ne'Asha Griffin was a front-seat passenger in the vehicle driven by Ms. Birdell Beeks? Yes or no.

Question 3. Did the State prove beyond a reasonable doubt that Ne'Asha Griffin was present when Ms. Birdell Beeks was shot? Yes or no.

Question 4. Did the State prove beyond a reasonable doubt that Ne'Asha Griffin was under the age of 18 on May 26, 2016? Yes or no.

Question 5. Did the State prove beyond a reasonable doubt that the offense occurred on May 26, 2016, at approximately 6:02 p.m.? Yes or no.

Question 6. Did the State prove beyond a reasonable doubt that the offense occurred at the intersection of Penn Avenue North and 21st Avenue North in Minneapolis, Hennepin County, Minnesota? Yes or no.

Question 7. Did the State prove beyond a reasonable doubt that multiple vehicles were present at the time of the offense? Yes or no.

Question 8. Did the State prove beyond a reasonable doubt that there were multiple members of the public present at the time of the offense? Yes or

no.

Question 9. Did the State prove beyond a reasonable doubt that the defendant fired a firearm nine times in a public area? Yes or no.

And Question 10. Did the State prove beyond a reasonable doubt that defendant's actions of firing a firearm endangered motorists and bystanders in the area?

Counts 3 and 4, special verdict form. Please answer the following questions regarding Count 3, aiding and abetting attempted murder in the first degree, premeditation; and Count 4, aiding and abetting attempted murder in the second degree, intentional:

Question 1. Did the State prove beyond a reasonable doubt that the Briana Williams' daughter was present in Mr. Garner's car on May 26, 2016, at the time of the shooting? Yes or no.

Question 2. Did the State prove beyond a reasonable doubt that Briana Williams' daughter was under the age of 18 on the May 26, 2016? Yes or no.

Question 3. Did the State prove beyond a reasonable doubt that the offense occurred on May 26, 2016, at approximately 6:02 p.m.? Yes or no.

Question 4. Did the State prove beyond a reasonable doubt that the offense occurred at the

intersection of Penn Avenue North and 21st Avenue North in Minneapolis, Hennepin County, Minnesota? Yes or no.

Question 5. Did the State prove beyond a reasonable doubt that multiple vehicles were present at the time of the offense? Yes or no.

Question 6. Did the State prove beyond a reasonable doubt that there were multiple members of public present at the time of the offense? Yes or no.

Question 7. Did the State prove beyond a reasonable doubt that defendant fired a firearm nine times in a public area? Yes or no.

And Question 8. Did the State prove beyond a reasonable doubt that defendant's actions of firing a firearm endangered motorists and bystanders in the area? Yes or no.

Your answers will assist the Court in determining the defendant's sentence. The defendant is presumed innocent of the aggravating factors alleged. This presumption remains with the defendant unless and until the aggravating factors have been proven beyond a reasonable doubt.

The burden of proving the existence of aggravating factors is on the State; the defendant does not have to prove anything. The State has the burden to prove beyond a reasonable doubt the existence of any

aggravating factor.

In deciding whether the State has met its burden, you may consider all the evidence presented at the trial.

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

In order to find the existence of any aggravating factor, the jury must unanimously agree that it has been proven beyond a reasonable doubt.

You'll be asked questions regarding the existence of the aggravating factors on the special verdict forms. If you find that an aggravating factor has been proven beyond a reasonable doubt, then you shall answer yes to the question on the form. If you find that an aggravating factor has not been proven beyond a reasonable doubt, then you shall answer no to the question on the verdict form.

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

You should decide each question for yourself, but only after you have discussed it with your fellow jurors and have carefully considered their views. You should not hesitate to re-examine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a unanimous decision.

The foreperson must date and sign the special verdict forms when you have finished your deliberations and answered each question. When you have finished your deliberations, notify the deputy. You'll return to the courtroom where your answers will be received and read out loud in your presence.

In arriving at your answers, the subject of penalty or punishment is not to be discussed or considered by you. This is a matter that lies solely with the Court and within the limits prescribed by law. The subject of penalty or punishment must not in any way affect your decision as to whether or not the State has proven any aggravating factor beyond a reasonable doubt.

Your duty is to both the State and the defendant. The State and the defendant both have the right to expect that you will see that justice is done

according to your true conclusions. The responsibility which rests upon you should be borne courageously and without fear or favor. Be fair, act honestly, deliberate without prejudice, bias, or sympathy, without regard to your personal likes or dislikes.

Deputy, if you'll retrieve the special verdict forms from me. Thank you.

All rise.

Jurors should go with the deputy at this time.

(Jury exited the courtroom at 12:21 p.m.)

MR. MATHEWS: Your Honor, may we --

THE COURT: Everyone may be seated.

You may approach.

(A brief discussion was had at the bench.)

THE COURT: All right. We need to make a record, please. We had some discussion ahead of time, just for planning purposes, to be ready in the event that there was a guilty verdict. And so the State had requested Blakely, in other words, aggravating factors. And so counsel met and conferred with the Court and proposed questions, which were the ones handed to the jurors in the form of the special verdict form.

And I want us just to make a record that we did meet and confer about this, and that the parties

agreed on the special-form questions that were read to the jury.

So what would the State like to place on the record at this time?

MR. MATHEWS: That's correct, Your Honor.

THE COURT: Okay. Mr. Schneck, Mr. Bietzl?

MR. SCHNECK: That's correct, Your Honor.

THE COURT: All right. So everybody agreed on what the forms would be, should they be necessary, and that was what was submitted to the jury.

At this time, the deputy is going to probably get lunch for the jury. So my advice to counsel is just be available by phone, et cetera. I will let you know as soon as I hear anything from the deputy with regard to the special verdict forms.

But I would imagine, since they are going to be on lunch, that it would probably be at lease a half an hour, absolute minimum, before I hear anything; so --

(Brief disruption.)

THE COURT: So, at this time, we are going to adjourn until we hear something further; so we will be in recess.

Deputies, at this time, you may escort Mr. Ezeka back.

Mr. Ezeka, I'll let you know as soon as I hear anything from the jury.

THE DEFENDANT: Yes, Judge.

THE COURT: All right. Thank you. Everybody remain seated, please.

Ladies and gentlemen in the back, as always, please have absolutely no conversation with any juror in this case. That is strictly prohibited, and, in fact, I'm going to ask that all of you either go to a different floor for the next few minutes, or wait at the other end of the hall. Thank you.

(Recess was taken from 12:26 p.m. to 1:39 p.m.)

THE COURT: All right. We have -- counsel. We've been advised that the jury is ready for us. I note we are one defense lawyer short.

Mr. Schneck?

MR. SCHNECK: Yes, Your Honor. Has anybody -- I know Mr. Beitzel had said he had to be in another courtroom and he might not be coming -- coming -- be able to come. I don't know if anybody received anything else from him, but I sent him something, just making sure he knew, and I haven't gotten a response; so I think we can go forward.

Is that okay with you?

THE DEFENDANT: Yes.

MR. SCHNECK: That's okay with us, Your Honor.

THE COURT: Okay. To go forward without him?

MR. SCHNECK: Yes.

THE COURT: Okay. And then I just want to make something clear too, just with respect to the verdicts. I just want to note the date and time of the verdicts.

Count 1 was dated 1/24/2018, 11:03 a.m.; Count 2 dated 1/24/2018, 11:03 a.m.; Count 3, 1/24/2018 at 11:06 a.m.; Count 4, 1/24/2018 at 11:06 a.m.; Count 5, 1/24/2018 at 11:06 a.m.; and the lesser included 1/24/2018 at 11:06 a.m.

All right. I'll have you all rise for the jury at this time. Ladies and gentlemen, once again, if you have an electronic device, please turn it completely off at this time. And there should be no conversation or remarks during this proceedings.

(Jury entered the courtroom at 1:41 p.m.)

THE COURT: And everyone may be seated.

Ladies and gentleman of the jury, have you arrived at verdicts on the special verdict forms and completed the forms; yes or no?

(Jurors affirm.)

THE COURT: Deputy, would you please retrieve

the forms for me for my review.

All right. At this time not going to require Mr. Ezeka or Mr. Schneck to rise. I will have madam clerk read the special verdict forms at this time.

THE CLERK: Members of the jury, I will now read your verdict as it will appear in the permanent court records of Hennepin County.

As to the special verdict form, Count 1, 2, and lesser-included crime: Question 1. Did the State prove beyond a reasonable doubt that Ne'Asha Griffin was present in the vehicle driven by Ms. Birdell Beeks? answer, "Yes."

Question 2. Did the State prove beyond a reasonable doubt that Ne'Asha was front-seat passenger in the vehicle driven by Ms. Birdell Beeks? Answer, "Yes."

Question 3. Did the State prove beyond a reasonable doubt that Ne'Asha Griffin was present when Ms. Birdell Beeks was shot? Answer, "Yes."

Question 4. Did the State prove beyond a reasonable doubt that Ne'Asha Griffin was under the age of 18 on May 26, 2016? Answer, "Yes."

Number 5. Did the State prove beyond a reasonable doubt that the offense occurred on May 26, 2016, at approximately 6:02 p.m.? Answer, "Yes."

Question 6. Did the State prove beyond a reasonable doubt that the offense occurred at the intersection of Penn Avenue North and 21st Avenue North in Minneapolis, Hennepin County, Minnesota? Answer, "Yes."

Question 7. Did the State prove beyond a reasonable doubt that multiple vehicles were present at the time of the offense? Answer, "Yes."

Question 8. Did the State prove beyond a reasonable doubt that there were multiple members of the public present at the time of the offense? Answer, "Yes."

Did the State prove beyond a reasonable doubt that the defendant fired a firearm nine times in a public area? Answer, "Yes."

Question 10. Did the State prove beyond a reasonable doubt that defendant's actions of firing a firearm endangered motorists and bystanders in the area? Answer, "Yes." Dated January 24th, 2018, at 1:02 p.m. at Minneapolis, Minnesota.

As to the special verdict form, Counts 3 and 4.

Question 1. Did the State prove beyond a reasonable doubt that Brianna Williams' daughter was present in Mr. Garner's car on May 26, 2016, at the

time of the shooting? Answer, "No."

Question 2. Did the State prove beyond a reasonable doubt that Brianna Williams' daughter was under the age of 18 on May 26, 2016? Answer, "Yes."

Question 3. Did the State prove beyond a reasonable doubt that the offense occurred on May 26, 2016, at approximately 6:02 p.m.? Answer, "Yes."

Question 4. Did the State prove beyond a reasonable doubt that the offense occurred at the intersection of Penn Avenue North and 21st Avenue North in Minneapolis, Hennepin County, Minnesota? Answer, "Yes."

Question 5. Did the State prove beyond a reasonable doubt that multiple vehicles were present at the time of the offense? Answer, "Yes."

Question 6. Did the State prove beyond a reasonable doubt that there were multiple members of public present at the time of the offense? Answer, "Yes."

Question 7. Did the State prove beyond a reasonable doubt that the defendant fired a firearm nine times in a public area? Answer, "Yes."

Question 8. Did the State prove beyond a reasonable doubt that the defendant's actions of firing a firearm endangered motorists and bystanders in the

area? Answer, "Yes." Dated January 24th, 2018, at 1:06 p.m. at Minneapolis, Minnesota.

Members of the jury, is this your true verdict so say you one so say you all?

(Jurors affirm.)

THE COURT: I'll now poll the jury on the special verdict forms.

Juror Number One, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Two, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Three, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Four, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Five, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Six, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Seven, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Eight, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Nine, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Ten, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: Juror Number Eleven, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: And, Juror Number Twelve, are these your true and correct verdicts?

JUROR: Yes.

THE COURT: All right. Ladies and gentlemen of the jury, I want to thank you very much for your service in this case. I'm aware of the sacrifice that this trial has required from each and every one of you, and I hope you understand that it is this sense of civic responsibility that makes our system of justice possible. The right to a jury trial is the very

foundation of justice in this country. So I want thank you very much for that.

I would also like to advise you that you may, but need not, speak to other persons, including the lawyers or anybody else about the case. That decision is entirely up to you.

Your jury service is now complete. You do not need to return to the jury office. You are done-done, as I like to say, with respect to your jury service.

My clerk Ms. Kelly will hand out to you evaluation forms as you make your way back to the jury room. You are free to complete them here, you can take them home and mail them back to us; that's entirely up to you, but your feedback is very important to us. We value it.

Additionally, I'm happy to come back and speak with you and answer any questions that you might have. So if you want to talk with me, I invite you to return to the jury room and wait there for just a few minutes while I finish any additional business, and then I'm happy to the come back and speak with you.

So at this time, ladies and gentlemen, thank you very much for your service.

All rise.

Jurors may exit the courtroom.

(Jury exited the courtroom at 1:49 p.m.)

THE COURT: Everyone may be seated.

Does either party wish to make any motions at this time?

MR. MATHEWS: No, Your Honor.

MR. SCHNECK: No, Your Honor.

THE COURT: Very well. We will schedule sentencing for this case on February 26 at 11:00 a.m. This is not a situation where I would order a PSI unless Mr. Ezeka wants one.

MR. SCHNECK: We are requesting one, Your Honor.

THE COURT: All right. Then I will order a presentence investigation. I'm going to ask that any memorandum, memoranda, anything that you want to submit to me gets submitted to me -- the 26th is a Monday; correct? -- by Thursday at noon, the week before.

MR. MATHEWS: And, Your Honor, what date is that?

THE COURT: The 22nd, I believe, at noon. So everything will be due by then.

And, at this time, I revoke any existing bail. Defendant is held without bail pending sentencing. And thank you very much, everyone. We are

concluded with this hearing.

Mr. Ezeka, you can go with the deputies at this time, and I will see you in February, sir.

Let's shut the door, please. Thank you.

(The proceedings were concluded at 1:51 p.m.)

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

I, Allison J. McCarthy, Court Reporter, hereby certify that the foregoing pages are a true and correct transcript of my stenographic notes taken relative to the afore-mentioned matter on the 24th day of January, 2018, in the City of Minneapolis, County of Hennepin, and State of Minnesota, before the Honorable Tamara G. Garcia, Judge of District Court.

SIGNED THIS 10th DAY OF SEPTEMBER, 2018

/s/ Allison J. McCarthy
Allison J. McCarthy
Court Reporter
Hennepin County, Minnesota

minutes.

So all rise.

Jurors may exit. Leave your pads and pens on your chairs, please.

(Jury exited the courtroom at 2:26 p.m.)

THE COURT: Everyone may be seated. All right. The State has rested. All right. Are there any motions that we need to discuss at this time? Yes or no?

MR. SCHNECK: Yes, Your Honor.

THE COURT: Mr. Schneck.

MR. SCHNECK: I suppose it would be appropriate for us to make a motion for a judgment of acquittal at this time. I'm not sure if those are the exact right words, but the State, in order to prove all the counts but the assault two regarding Ne'Asha Griffin, needed to prove intent to kill, Your Honor. And as we've kind of discussed ad nauseam, I don't think they've presented any intent -- any evidence of intent to kill, maybe other than Sergeant Thomsen's opinion, which the Court struck.

So for those reasons, we'd ask the Court to dismiss all counts other than the intent -- the assault two regarding Ne'Asha Griffin.

THE COURT: Okay. And from the State?

MR. MATHEWS: Your Honor, I believe that there are -- is enough evidence for the jury to consider whether there is intent and premeditation. There's sufficient facts before the jury to leave a factual question for the jury, I believe that is what is required to withstand a motion to acquittal, especially when we're supposed to consider all the facts in the favor -- most favorable to the State. In this case we have several witnesses who, based on the circumstances, can testify as to the intent, specifically, Mr. Scott who, basically, acknowledged making the phone call that set this all into motion, what his intent was for making the phone call, and why he called Mr. Ezeka.

So I believe that there is enough evidence before the jury, based on just the surrounding facts, but also witness' testimony to put it before the jury.

THE COURT: All right. And viewing the evidence in the light most favorable to the State, this motion is denied.

Any other motions?

MR. SCHNECK: I don't think so, Your Honor.

THE COURT: All right. Then that brings us to the defense, and whether or not the defense intends to put on a case, and whether or not Mr. Ezeka wishes

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Joshua Chiazor Ezeka,

Defendant.

Case Type: Criminal
Judge Tamara Garcia

Court File No. 27-CR-17-1879

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS

The above-entitled matter came before the Honorable Tamara Garcia on October 10, 2017 at the Hennepin County Government Center for an Evidentiary Hearing.

APPEARANCES

Christopher Freeman and Dominick Mathews, Assistant Hennepin County Attorneys, appeared for and on behalf of the State of Minnesota.

Paul Schneck and Erik Beitzel, Assistant Public Defenders, appeared for and on behalf of Joshua Chiazor Ezeka, Defendant herein, who was personally present.

Upon the evidence adduced, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following:

PROCEDURAL POSTURE

1. Defendant is charged by indictment with the following five counts:

    a. Murder in the First Degree of B.B.B.in violation of Minn. Stat. § 609.185(a)(1);
    b. Murder in the Second Degree of B.B.B.in violation of Minn. Stat. § 609.19 subd. 1(1);
    c. Attempted Murder in the First Degree of Victim 3 in violation of Minn. Stat. §§ 609.17 & 609.185(a)(1);
    d. Attempted Murder in the Second Degree of Victim 3 in violation of Minn. Stat. §§ 609.17 & 609.19, subd. 1(1), and
    e. Assault in the Second Degree of Victim 2 in violation of Minn. Stat. §609.222 subd. 1.

2. On May 31, 2017 Defendant filed a motion to suppress the two statements he made to law enforcement. An Evidentiary hearing was held on October 10, 2017 on Defendant's

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motion. At the hearing, the Court took testimony from the following witnesses with regard to Defendant's statements:

a. Sgt. Charles Green
b. Sgt. Christopher Thomsen
c. Defendant

3. The following relevant exhibits were offered and admitted by the Court:

a.	EVD 001	Recording of Defendant's 6/2/16 statement;
b.	EVD 002	Recording of Defendant's 1/23/17 statement[1];
c.	EVD 003	Transcript of Defendant's 1/23/17 statement;
d.	EVD 004	Defendant's transcript for 6/2/16 statement;
e.	EVD 005	State's transcript for 6/2/16 statement;
f.	EVD 006	Letter provided to detectives on 6/2/16;
g.	EVD 007	Statewide Portal printout for Defendant from the Hennepin jail;
h.	EVD 008	Statewide Portal printout for Defendant from Hennepin workhouse; and
i.	EVD 009	Statewide Portal printout for Defendant from Anoka jail.

FINDINGS OF FACT

1. On May 26, 2016 at approximately 6:00 p.m., an individual (Victim 3) known to associate with an alliance of several criminal street gangs, referred to collectively as "the highs," approached the area of 21st Ave. N. and Penn Ave. N. in Minneapolis in a vehicle. In another vehicle, B.B.B., a 58 year old woman and her teenaged granddaughter (Victim 2) were stopped at the intersection. At approximately 6:03 p.m. a male discharged a firearm multiple times toward the vicinity of the two vehicles. B.B.B. was struck by the gunfire and subsequently died from her injuries.

2. During the course of police investigation, Defendant became a prime suspect in the May 26, 2016 shooting and the death of B.B.B. Defendant was interviewed twice by police; first on June 2, 2016 and then again on January 23, 2017. These interviews were conducted by two Minneapolis police sergeants, Sgt. Charles Green and Sgt. Christopher Thomsen.

3. Sgt. Green has been a peace officer with the city of Minneapolis for 21 years. He has worked as an investigator in the homicide unit for the last five. Sgt. Thomsen has been with the Minneapolis Police Department since June of 1990, and has worked as a sergeant with the homicide department since August of 2004. Sgt. Green and Sgt. Thomsen were assigned to investigate the death of B.B.B. Defendant had been identified as a possible suspect in their investigation. Together, they interviewed Defendant for the

[1] The disc is labeled 1/25/17 and was offered as a recording of the statement taken on that date, however, all testimony regarding this interview indicated that it occurred on January 23, 2017. An amended complaint was filed on January 24, 2017 which referred to this second statement, and the Court concludes that this statement actually occurred on January 23.

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first time on June 2, 2016. At the time of this interview, Defendant was in custody.[2] The Court notes that Defendant was difficult to understand in this interview, as he often mumbled and spoke quickly. This is evidenced by the number of time the transcript indicates Defendant's statements as "inaudible."

4. At the time of the interview, Defendant was ushered into an interview room in handcuffs. The handcuffs were removed, and he was then left to sit in the room, by himself, for approximately 9 minutes. During that time, Defendant pulled a piece of paper out of his wallet. When the detectives entered the interview room, Defendant was reading the paper. Sgt. Thomsen asked what he was reading, to which Defendant replied, "Something for you guys." Before the interview began, Defendant handed Sgt. Green this piece of paper, which contained the following letter:

> "With all due respect, my family has been harassed and terrorized by the police. It has been very traumatic and embarrassing for our entire family.
>
> We contacted an attorney and he has instructed us to not give any interviews or information to the police or detective ***unless*** he is with us.
>
> If you want his name, it's Richard Hechter. 952-920-0840
>
> We respectfully ask that you now communicate through our attorney.
>
> THE EZEKA FAMILY."[3] (emphasis original)

Sgt. Green read the letter as Sgt. Thomsen was beginning the interview. He then set the letter down on the table. Sgt. Green testified that he did not consider the letter as an invocation of Defendant's right to counsel. He described the letter as "ambiguous at best."

5. Defendant and the detectives engaged in conversation on a number of items including another shooting death where Defendant had been questioned as a potential witness, and Defendant's stutter, with which Sgt. Green commiserated. A few brief mentions were made regarding Defendant's probation violation, for which he was arrested, and the detectives also told Defendant they wanted to talk with him about B.B.B.'s death. During this conversation, Sgt. Green turned the letter so it would be right-side up for Sgt. Thomsen and pushed it so it would be within his view. It is not clear in the video whether or not Sgt. Thomsen actually read the letter when it was placed in front of him. He looked in that direction, but never picked up the letter and did not pause in his questioning, as might be expected if he were reading an item. Sgt. Thomsen testified that he did not recall having seen the letter until after the interview was completed.

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[2] Defendant was in custody on an unrelated probation violation. The State does not argue that Defendant was not in custody for the purposes of *Miranda* on this date.

[3] EVD 006

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6. Sgt. Thomsen read Defendant his *Miranda* rights after several minutes of conversation. When Sgt. Thomsen advised Defendant of his right to talk with an attorney, Defendant pointed to the letter in front of Sgt. Thomsen and said something to the effect of "Right there, it's in that paper for you." Defendant also mentioned the name "Rich Hayes," when Sgt. Thomsen advised him that an attorney could be appointed to him. Defendant and Sgt. Thomsen talk over one another during this portion of the interview. After he finished reading the *Miranda* warning, Sgt. Thomsen asked Defendant if he understood his rights, to which Defendant replied, "I understand everything." Sgt. Thomsen then asked Defendant, "Having those rights in mind do you wanna talk to me about your, why you're violated on your probation?" Defendant responded, "I will, I wanna talk about that." Immediately after this response, Sgt. Thomsen began talking with Defendant about the shooting death of B.B.B. and explained that Defendant had been violated on probation because of items found in his bedroom during the search related to that case. The detectives then went on to question Defendant about the shooting that resulted in B.B.B.'s death. Defendant denied any involvement in the shooting during this interview. Defendant became angry by the end of the interview, refused to give a DNA sample and ended with shouting at the officers.

7. Despite the fact that Sgt. Green reviewed Defendant's letter before Defendant was read his *Miranda* warning, Sgt. Green did not ask Defendant any questions about the letter or attempt to clarify whether or not Defendant was requesting the presence of an attorney during the interview. After the detectives started questioning Defendant regarding the shooting, he made no reference to the letter or wanting to speak with an attorney or wanting to remain silent.

8. Defendant was ultimately released from custody in Hennepin County on June 24, 2016. He remained out of custody until July 1, 2016 when he reported to Hennepin County's workhouse. He remained at the workhouse until October 3, 2016. Defendant was arrested on a pending charge or investigation on November 19, 2016 in Anoka County and released November 23, 2016. He was arrested in Hennepin County on a pending charge or investigation on December 15, 2016 and released on December 21, 2016. He was then arrested in Hennepin County on December 27, 2016 on an Anoka County warrant and transferred into their custody on December 28, 2016. He was ultimately released from Anoka County on December 29, 2016. In all, between June 2, 2016 and January 22, 2017, Defendant spent a total of 133 days in custody and 102 days out of custody.

9. A complaint, charging Defendant with Murder in the Second Degree and Attempted Murder in the Second Degree was filed on January 23, 2017[4] and a warrant was issued for Defendant's arrest. Defendant was arrested on that same date. Defendant testified that at the time of his arrest, he was at his girlfriend's home in St. Paul. Defendant was in his girlfriend's bedroom with his girlfriend when police arrived. He heard a knock on the door, which was then opened by officers, who entered the bedroom. There were six officers present and all had their guns drawn. At least some of the officers had their

[4] Defendant would not be indicted on the Murder 1 charges until March 9, 2017.

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weapons pointed at Defendant. The officers told Defendant not to move, cuffed him and then removed him to a squad car.

10. After Defendant was taken to jail, he was interviewed for a second time by Sgt. Green and Sgt. Thomsen. This interview occurred in the same room as the June 2, 2016 interview. At the time, Defendant was once again taken to the interview room in cuffs, un-cuffed and left to wait in the room alone. He waited approximately five minutes before the detectives joined him. Defendant is in street clothes during this interrogation.

11. The detectives began by re-introducing themselves and explaining why they wanted to speak with him. They informed Defendant that he had been charged with Murder 2 and attempted Murder 2 and that the detectives believed they had a strong case against him. They told him their theory of the case, that Defendant had gone out to shoot at a rival gang member and had accidently shot B.B.B. They also informed Defendant of some of the evidence they had against him and told him that they could show him some of it. Defendant expressed an interest in seeing the evidence. The detectives told Defendant that this would be perhaps his only opportunity to tell his side of the story, other than maybe at trial. They encouraged him to give his version of events, but assured him they already knew what had transpired. The detectives also told him that the prosecutor might entertain what he had to say. They informed him of the maximum sentence on the two charges and showed him a copy of the complaint. Also during this conversation, there was discussion about shootings that had been aimed at Defendant's house. The detective suggested that an explanation from Defendant might dissuade those involved from continuing to shoot at his home.

12. This preliminary conversation lasted for approximately thirteen minutes. Defendant was engaged in this conversation. Defendant asked questions and made a couple of statements regarding his involvement before *Miranda* was read, including an inculpatory statement where Defendant said, "So about this person that's in this gold car that I shooting at, what's his name, you said, Sto?" Additionally, Defendant made at least one statement indicating he wanted to speak to the officers prior to the reading of *Miranda*.

13. The detective mentioned reading Defendant his rights two times during the conversation before the warning was actually read. Sgt. Thomsen, in particular, appeared anxious to keep Defendant from saying anything substantive about the case until after *Miranda* had been read.

14. Defendant was ultimately read the *Miranda* warning. Defendant then waived his rights and agreed to speak with the detectives. During the course of this second interview, Defendant admitted to being the shooter and gave details regarding his motive and the events surrounding the shooting. Defendant's version of events largely matched the one presented to him by officers, with a few differences. For example, Defendant remained adamant that he left the firearm at the scene even after being pressed by the detectives, as the murder weapon was never found. Defendant was also reluctant to identify the individual who had advised him that Victim 3 was approaching his area. Defendant first maintained that the person who called him was an unknown female, and only named a

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name when he was sure that person had already spoken to police and admitted his involvement.

15. At no time during the second interview did Defendant request counsel, or make reference to any request for counsel back in June of 2016.

16. Defendant was 20 years old at the time of the first interrogation and nearly 21 at the time of the second. According the Criminal Record Summary, Defendant has a prior felony conviction from 2016 and a gross misdemeanor conviction from 2015. He was on probation on both of those offenses at the time of the shooting and the interrogations. Defendant also had a juvenile adjudication from 2014 involving a felony weapons offense.

CONCLUSIONS OF LAW

1. An accused's right to remain silent and the right to counsel are enshrined in both the U.S. and Minnesota Constitution. U.S. Const. amend. V; Minn. Const. art. I, § 7. Officers are required to give a *Miranda* warning prior to custodial interrogation advising an accused of these rights. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). However, a "defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." *Id.*

2. Both parties agree that Defendant was in custody at the time of both the June 2, 2016 and January 23, 2017 interviews. Thus, Defendant was entitled to the rights outlined in *Miranda* and a *Miranda* warning before being subject to interrogation during both interviews. The Court considers the issues presented with each interview.

June 2, 2016 Statement

3. When a defendant makes a request for counsel, all interrogation must cease. *See Edwards v. Arizona*, 451 U.S. 477, 485 (1981). However, the request must be unambiguous and unequivocal. *State v. Ortega,* 798 N.W.2d 59, 71 (Minn. 2011). "To invoke the right to counsel a suspect must do more than make reference to an attorney." *Id.* (citations omitted). Additionally, "a suspect's request for counsel is unequivocal if a reasonable police officer, in the circumstances, would understand the statement to be a request for an attorney." *Id.* (internal quotations omitted).

4. The Court concludes that Defendant's letter was a clear and unequivocal request for counsel. The letter stated that the family was represented by an attorney, gave the attorneys name and phone number and then requested, that officers "now communicate through our attorney." The Court is not persuaded that the fact that the letter was signed by the whole family makes this request ambiguous. Defendant handed the letter to Sgt. Green himself and told both detectives that the letter was for them. He stated it was "Something for you guys." Additionally, when Sgt. Thomsen advised him of his right to counsel in the *Miranda* warning, Defendant attempted to direct the detectives to the letter he had given them. These actions make it clear that Defendant was claiming the

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invocation made in the letter as his own. After he reviewed the letter, Sgt. Green should have brought it to Sgt. Thomsen's attention and should not have allowed Sgt. Thomsen to continue to speak with Defendant. Because Defendant made a clear and unequivocal invocation of his right to counsel, which was not honored by the detectives, Defendant's statement made on June 2, 2016 must be suppressed.

5. "When a suspect indicates by an equivocal or ambiguous statement, which is subject to a construction that the accused is requesting counsel, all further questioning must stop except that narrow questions designed to "clarify" the accused's true desires respecting counsel may continue." *State v. Robinson*, 427 N.W.2d 217, 223 (Minn. 1988). "This "stop and clarify" rule ensures that suspects are aware of their right to have counsel present during a custodial interrogation so that any subsequent waiver of this right is knowing and intelligent." *State v. Ortega* at 71–72. Typically, providing the suspect with an accurate Miranda warning is sufficient as a matter of law to satisfy the "stop and clarify" rule. *Id.* at 72.

6. Assuming, for purposes of complete analysis, that Defendant's request for counsel made in the letter was ambiguous as Sgt. Green testified, Sgt. Green failed to have the inquiry limited to clarifying Defendant's request. It is clear Sgt. Green attempted to bring the letter to Sgt. Thomsen's attention, but it is not equally clear that he succeeded in doing so. Thus, the burden of clarification fell to Sgt. Green, who had clearly read the letter. Sgt. Green did not ask Defendant any questions at all about the letter or its content, and made no attempt to clarify or ask whether or not Defendant wanted an attorney based on what was in the letter.

7. Additionally, while a proper *Miranda* warning might normally meet the "stop and clarify" test, the Court concludes it did not suffice in this case. When Defendant agreed to waive his right to counsel, it was in response to Sgt. Thomsen's question, "Having those rights in mind do you wanna talk to me about your, why you're violated on your probation?" Defendant's response was specific, that he would "like to talk about that," meaning the reason for his probation violation. The Court concludes this was not a knowing waiver of his right to counsel with regard to the shooting. Therefore, even if Defendant's request for counsel was ambiguous, because the detectives failed to clarify, the interrogation was improper and Defendant's statements from this interview must be suppressed.

January 23, 2017 Statement

8. Having determined that Defendant did invoke his right to counsel on June 2, 2016, the Court first looks to whether or not this invocation was still in effect on January 23, 2017.

9. When a defendant makes a request for counsel, all interrogation must cease. See *Edwards v. Arizona* at 485. This is true, "unless the accused himself initiates further communication, exchanges, or conversations with the police." *Id.* However, a break in custody can limit or even nullify a prior invocation for the right to counsel. *State v. Scanlon*, 719 N.W.2d 674, 683 (Minn. 2006). The U.S. Supreme Court has held that 14

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days out of custody is a sufficient break for the *Edwards* presumption to no longer apply. *Maryland v. Shatzer*, 5596 U.S. 98, 110 (2010). The Court concluded that amount of time would provide "plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody." *Id.*

10. Here, Defendant spent 102 days out of custody between his first and second interrogation, including the 24 days immediately preceding the second interrogation and a span of 46 consecutive days between October and November 2016. This much time is more than sufficient for Defendant "to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody." *Id.* While this Court acknowledges that the Minnesota Constitution often provides more protection for individual rights than the federal constitution, this Court concludes, as the *Scanlon* court did, that because of the sheer length of time Defendant spent out of custody between the two interrogations that "by any standard, [Defendant] was therefore sufficiently "out of custody" for his *Edwards* invocation to be nullified." *Scanlon* at 683. Therefore, the Court concludes that Defendant's invocation of his right to counsel no longer applied during the second interrogation.

11. Having determined that Defendant's prior invocation to his right to counsel was no longer in effect on January 23, 2017, the Court next considers whether or not Defendant's statements were made freely and voluntarily.

12. "For a statement obtained from an accused during custodial interrogation to be admissible, the state must prove by a preponderance of the evidence both that the accused knowingly, intelligently, and voluntarily waived his right against self-incrimination, and that the accused freely and voluntarily gave the statement." *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995). "If the police fully advise an accused of his Miranda rights, and the accused indicates that he understands his rights and nevertheless gives an incriminating statement, the state is deemed to have met its burden of proving that the accused knowingly and intelligently waived his rights." *Id.*

13. During the second interview, Defendant was properly advised of his *Miranda* rights, indicated he understood his rights, agreed to waive his rights and subsequently gave an incriminating statement. Defendant has not argued that the waiver of his rights was invalid. Thus, the Court concludes that Defendant's waiver of his rights was knowing and intelligent.

14. Courts look to the totality of the circumstances in determining whether or not a confession was made voluntarily. *State v. Farnsworth*, 738 N.W.2d 364, 373 (Minn. 2007). "Relevant factors include the defendant's age, maturity, intelligence, education, and experience; the ability of the defendant to comprehend; the lack of or adequacy of warnings; the length and legality of the detention; the nature of the interrogation; whether the defendant was deprived of any physical needs; and whether the defendant was denied access to friends." *Id.* (internal quotations omitted). "The question in each case is

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whether the defendant's will was overborne at the time he confessed." *Id.* (citations omitted).

15. After looking at a totality of the circumstances, the Court concludes that Defendant's statements to police in the second interrogation were not coerced. While Defendant is a young man, he is not unfamiliar with the criminal justice system, having several prior convictions and at least one pending charge out of Anoka County at the time of the second interrogation. Defendant appeared familiar with his *Miranda* rights in both interviews and agreed that he understood them. Defendant was given a proper *Miranda* warning, albeit, 13 minutes into the interrogation. Defendant had not been subject to a lengthy detention prior to being interrogated.[5] The detectives are cordial and encouraging during the interview, and never threatening or coercive in their demeanor. Additionally, unlike the first interview, Defendant remains engaged and mostly cooperative throughout. Defendant was not denied any physical needs.

16. Additionally, the Court is not persuaded that any of the detectives' statements to Defendant prior to the giving of the *Miranda* warning were so coercive that Defendant's will was overborne at the time he made his confession. Defendant asked a number of times to see what evidence the officers had and expressed a desire to speak with them pre-*Miranda*. In fact, Defendant's first indication that he wanted to see the evidence and speak to the officers comes before any of the more arguably coercive statements from the detectives. Sgt. Thomsen mentioned several times that he was going to read Defendant his *Miranda* rights, but it was Defendant who kept asking questions which delayed the reading of *Miranda*.

17. The Minnesota Supreme Court has held that if a "suspect is apprehended under coercive circumstances, is subjected to lengthy custodial interrogation before being given a Miranda warning, does not have the benefit of a significant pause in the interrogation after the Miranda warning is given, and essentially repeats the same inculpatory statements after the Miranda warning as before, the statements made after the Miranda warning are inadmissible." *State v. Bailey*, 677 N.W.2d 380, 392 (Minn. 2004).

18. Looking at the *Bailey* factors, the Court first agrees that Defendant was apprehended under coercive circumstances, as he was arrested at gun point by six officers in his girlfriend's bedroom. Additionally, there was virtually no pause between the reading of *Miranda* and the post-*Miranda* interrogation. However, Defendant was not subjected to lengthy interrogation before being read his *Miranda* rights. While 13 minutes pre-*Miranda* is not ideal, it is less than the amount of pre-*Miranda* interrogation the Court was concerned with in *Bailey*, which ranged from 25-30 minutes in two different locations. Indeed, the Minnesota Supreme Court has held that a 15 minute delay in giving a *Miranda* warning was not lengthy enough to taint a statement subsequent to *Miranda*. *See State v. Scott*, 584 N.W.2d 412, 418 (Minn. 1998).

[5] Indeed, Defendant's appearance in street clothes suggests he had not even completed the booking process before being interviewed.

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19. Prior to the reading of *Miranda*, Defendant's most incriminating statement was, "So about this person that's in this gold car that I shooting at, what's his name, you said, Sto?" However, after the reading of *Miranda*, Defendant admits to being the shooter, explains his motivation for shooting at Victim 3, how he learned Victim 3 was going to be in his area, where he went after the shooting occurred and what he did with the murder weapon. These post-*Miranda* statements are much more than a mere recitation of his pre-*Miranda* inculpatory statement.

20. For all of these reasons, the Court concludes that Defendant's confessions were not the product of coercion and were instead made freely and voluntarily. Thus, Defendant's statements made during the second interrogation need not be suppressed.

IT IS HEREBY ORDERED

1. Defendant's motion to suppress his statement from June 2, 2016 is GRANTED.

2. Defendant's motion to suppress his statement from January 23, 2017 is DENIED.

BY THE COURT:

Dated: 11.27.17
jal

Tamara Garcia
Judge of District Court
Fourth Judicial District

SUPREME COURT RULE 14.1(g)(i) STATEMENT

1. Petitioner's attorneys raised Petitioner's Fifth Amendment claims (Question 1)—relating to Petitioner's constitutional right to counsel, Petitioner's *Miranda* rights, the applicability of *Maryland v. Shatzer*, 559 U.S. 98 (2010) to Petitioner's case, and Petitioner's January 23, 2017 statement being involuntary— before the court of first instance and in the appellate court. These issues were raised before the court of first instance in Petitioner's Memorandum in Support of Motion to Suppress Custodial Statements (Oct. 24, 2017). *See* 2017 WL 8792599 (Minn. Dist. Ct.). The same or similar issues were raised before the appellate court in Petitioner's Opening Brief and in Petitioner's Reply Brief. *See* Pet. Opening Br., at 25-41 (Minn.) (unpublished); Pet. Reply Br., 2019 WL 2291801, at 1-4 (Minn.).

2. Petitioner's attorneys never raised the Sixth Amendment right to counsel claims now raised by Petitioner (Question 2) in either the court of first instance or in the appellate court; Petitioner's attorneys did, however, argue that Petitioner's custodial statements should be suppressed because they were obtained in violation of Petitioner's right to counsel and were involuntary. Petitioner believes the Sixth Amendment issues raised in this petition are a simple enlargement of the extremely similar right to counsel arguments and involuntariness arguments previously made by Petitioner's attorneys. While the Sixth Amendment issue has not been briefed previously, the facts in the record are sufficiently developed as to make review by this Court eminently practicable. As such, and in light of the manifest injustice that will result if Petitioner's Sixth Amendment claims are not heard, Petitioner seeks review of this issue under Fed. R. Crim. P. 52(b), or alternatively, under this Court's inherent *sua sponte* authority to notice constitutional issues of import.

3. Petitioner's trial counsel failed to object to the jury instruction regarding the elements of premeditated murder in the court of first instance (Question 3). Petitioner's appellate counsel argued that the jury instruction regarding the elements of premeditated murder was plainly erroneous. *See* Pet. Opening Br., at 41-53 (Minn.) (unpublished); Pet. Reply Br., 2019 WL 2291801, at 4-6 (Minn.). Petitioner's appellate counsel invoked Petitioner's Sixth Amendment right to a trial by jury under the Sixth Amendment. *See* Pet. Opening Br., at 43 (Minn.) (unpublished). Petitioner's trial counsel did not have occasion to object to the "clear and obvious test" used by the Minnesota Supreme Court, but Petitioner's appellate counsel did argue that the jury instruction's error was "plain" and that it affected Petitioner's substantial rights, and that reversal, in the exercise of discretion, was warranted. *Id.* at 42-49; *see also* Pet. Reply Br., 2019 WL 2291801, at 4-6.

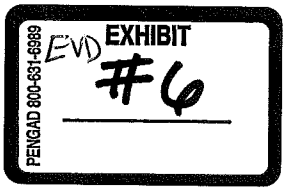
With all due respect, my family has been harassed and terrorized by the police. It has been very traumatic and embarrassing for our entire family.

We contacted an attorney and he has instructed us to not give any interviews or information to the police or detective ***unless*** he is with us.

If you want his name, it's Richard Hechter. 952-920-0840

We respectfully ask that you now communicate through our attorney.

THE EZEKA FAMILY.



Count 1, aiding and abetting murder in the first degree-premeditation, defined. Under Minnesota law, a person causing the death of another person with premeditation and with the intent to kill the person or another is guilty of the crime of murder in the first degree.

Aiding and abetting murder in the first degree-premeditation, elements. The elements of murder in the first degree as alleged in this case are:

First, the death of Birdell Beeks must be proven.

Second, the defendant, or someone he intentionally aided and abetted, caused the death of Birdell Beeks.

Third, the defendant, or someone he intentionally aided and abetted, acted with the intent to kill Dwayne Garner or another person. To find the defendant had the intent to kill, you must find the defendant acted with the purpose of causing death or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence but may be inferred from all the circumstances surrounding the event.

Fourth, the defendant, or someone he intentionally aided and abetted, acted with premeditation. Premeditation means the defendant considered, planned, prepared for or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly

subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary for premeditation to exist for a specific length of time. While premeditation requires no specific period of time for deliberation, some amount of time must pass between the formation of the intent and the carrying out of the act. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill, is not premeditated.

If the defendant, or someone he intentionally aided and abetted, acted with premeditation and with the intent to cause the death of a person other than the deceased, the elements of premeditation and intent to kill are satisfied and may be transferred to another victim, even if the defendant did not intend to kill the other person. This concept is known as transferred intent.

Fifth, the defendant's act took place on or about May 26, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

Count 2, aiding and abetting murder in the second degree-intentional, defined. Under the laws of Minnesota, a person intentionally causing the death of another person but without premeditation is guilty of murder in the second degree.

Aiding and abetting murder in the second degree-intentional, elements. The elements of murder in the second degree as alleged in this case are:

First, the death of Birdell Beeks must be proven.

Second, the defendant, or someone he intentionally aided and abetted, caused the death of Birdell Beeks.

Third, the defendant, or someone he intentionally aided and abetted, acted with the intent to kill Dwayne Garner or another person. To find the defendant had an intent to kill, you must find the defendant acted with the purpose of causing death or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

If the defendant, or someone he intentionally aided and abetted, acted with the intent to cause the death of a person other than the deceased, the element of intent to kill is satisfied and may be transferred to another victim, even if the defendant did not intend to kill the other

person. This concept is known as transferred intent.

Fourth, the defendant's act took place on or about May 26, 2016, in Hennepin County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If find any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

Lesser crimes. The law provides that upon the prosecution of a person for a crime, if the person is not guilty of that crime, the person may be guilty of a lesser crime.

The lesser crime which can be considered for Count 1 and for Count 2 is aiding and abetting unintentional murder in the second degree-while committing a felony.

The presumption of innocence and the requirement of proof beyond a reasonable doubt apply to these lesser crimes.

If you find beyond a reasonable doubt that the defendant has committed each element of the lesser crime but you have a reasonable doubt about any different element of either of the greater crimes, the defendant is guilty only of the lesser crime.

Counts 1 and 2, lesser included, aiding and abetting unintentional murder in the second degree-while committing

a felony, defined. Under Minnesota law, a person causing the death of another person without intent to cause the death of any person while committing or attempting to commit a felony offense is guilty of the crime of murder in the second degree.

Aiding and abetting unintentional murder in the second degree-while committing a felony, elements. The elements of murder in the second degree as charged in this case are:

First, the death of Birdell Beeks must be proven.

Second, the defendant, or someone he intentionally aided and abetted, caused the death of Birdell Beeks.

Third, the defendant, or someone he intentionally aided and abetted, at the time of causing the death of Birdell Beeks, was committing or attempting to commit the felony offense of assault in the second degree. It is not necessary for the state to prove the defendant had an intent to kill Birdell Beeks or another person, but it must prove the defendant committed or attempted to commit the underlying felony.

Under Minnesota law, whoever assaults another with a dangerous weapon is guilty of a crime.

The elements of assault in the second degree are:

First, the defendant, or someone he intentionally aided and abetted, assaulted Dwayne Garner.

The term "assault" as used in this charge means an act

done with intent to cause Dwayne Garner or another to fear immediate bodily harm or death or the intentional infliction of bodily harm upon another or the attempt to inflict bodily harm upon another.

"Bodily harm" means physical pain or injury, illness or any impairment of a person's physical condition. It is not necessary for the state to prove that the defendant intended to inflict bodily harm or death but only that the defendant acted with intent that Dwayne Garner or another would fear that the defendant would so act. In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.

"With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.

"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally." To have knowledge requires only that the actor believes that the specified facts

exist.

Second, the defendant, or someone he intentionally aided and abetted, in assaulting Dwayne Garner, used a dangerous weapon. A firearm, whether loaded or unloaded or even temporarily inoperable, is a dangerous weapon.

Third, the defendant's act took place on or about May 26, 2016, in Hennepin County.

Fourth, the defendant's act took place on or about May 26, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

Count 3, aiding and abetting attempted murder in the first degree-premeditation, defined. Under Minnesota law, a person is guilty of an attempt to commit a crime when, with intent to commit the crime, the person does an act that is a substantial step toward, and more than mere preparation for, the commission of the crime.

An attempt to commit a crime requires both an intent to commit the crime and a substantial step toward the commission of the crime.

In determining whether a substantial step has been taken, you must distinguish between mere preparation for

and actually beginning to commit the criminal act on the other. Mere preparation, which may consist of planning the offense or of obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. An act by a person who intends to commit a crime is an attempt if the act itself clearly indicates the intent to commit that specific crime and it tends directly to accomplish the crime. The act itself need not be criminal in nature. Under Minnesota law, a person causing the death of another person with premeditation and with the intent to kill the person or another is guilty of the crime of murder in the first degree.

The elements of a completed murder in the first degree are:

First, the death of Dwayne Garner must be proven.

Second, the defendant, or someone he intentionally aided and abetted, caused the death of Dwayne Garner.

Third, the defendant, or someone he intentionally aided and abetted, acted with the intent to kill Dwayne Garner. To find the defendant had the intent to kill, you must find the defendant acted with the purpose of causing death or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence but may be inferred from all the circumstances surrounding the event.

Fourth, the defendant, or someone he intentionally aided and abetted, acted with premeditation. Premeditation means the defendant considered, planned, prepared for or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary for premeditation to exist for a specific length of time. While premeditation requires no specific period of time for deliberation, some amount of time must pass between the formation of the intent and the carrying out of the act. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill, is not premeditated.

Fifth, the defendant's act took place on or about May 26, 2016, in Hennepin County.

Aiding and abetting attempted murder in the first degree-premeditation, elements. The elements of an attempt to commit aiding and abetting murder in the first degree are:

First, the defendant intended to commit the crime of aiding and abetting murder in the first degree. Minnesota defines that crime as follows: Under Minnesota law a

person causing the death of another person with premeditation and with the intent to kill the person or another is guilty of the crime of murder in the first degree.

Second, the defendant did an act that was a substantial step toward, and more than mere preparation for, the commission of that crime.

Third, the defendant's act took place on or about May 26, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Count 4, aiding and abetting attempted murder in the second degree-intentional, defined. Under Minnesota law, a person is guilty of an attempt to commit a crime when, with intent to commit the crime, the person does an act that is a substantial step -- step toward, and more than mere preparation for, the commission of the crime.

An attempt to commit a crime requires both an intent to commit the crime and a substantial step toward the commission of the crime.

In determining whether a substantial step has been taken, you must distinguish between mere preparation for and actually beginning to commit the criminal act on the

other. Mere preparation, which may consist of planning the offense or of obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. An act by a person who intends to commit a crime is an attempt if the act itself clearly indicates the intent to commit that specific crime and it tends directly to accomplish the crime. The act itself need not be criminal in nature. Under the laws of Minnesota, a person intentionally causing the death of another person, but without premeditation, is guilty of murder in the second degree.

The elements of a completed murder in the second degree are:

First, the death of Dwayne Garner must be proven.

Second, the defendant, or someone he intentionally aided and abetted, caused the death of Dwayne Garner.

Third, the defendant, or someone he intentionally aided and abetted, acted with the intent to kill Dwayne Garner. To find the defendant had an intent to kill, you must find the defendant acted with the purpose of causing death or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, the defendant's act took place on or about

May 26, 2016, in Hennepin County.

Aiding and abetting attempted murder in the second degree-intentional, elements. The elements of an attempt to commit aiding and abetting murder in the second degree are:

First, the defendant intended to commit the crime of aiding and abetting murder in the second degree. Minnesota defines that crime as follows: Under the laws of Minnesota, a person intentionally causing the death of another person without -- but without premeditation is guilty of murder in the second degree.

Second, the defendant did an act that was a substantial step toward, and more than mere preparation for, the commission of that crime.

Third, the defendant's act took place on or about May 26, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Count 5, aiding and abetting assault in the second degree-dangerous weapon, defined. Under Minnesota law, whoever assaults another with a dangerous weapon is guilty of a crime.

Aiding and abetting assault in the second

degree-dangerous weapon, elements. The elements of assault in the second degree are:

First, the defendant, or someone he intentionally aided and abetted, assaulted Ne'Asha Griffin.

The term "assault" as used in this charge means an act done with intent to cause Ne'Asha Griffin or another to fear immediate bodily harm or death or the intentional infliction of bodily harm upon another or the attempt to inflict bodily harm upon another.

"Bodily harm" means physical pain or injury, illness or any impairment of a person's physical condition. It is not necessary for the state to prove that the defendant intended to inflict bodily harm or death but only that the defendant acted with intent that Ne'Asha Griffin or another would fear that the defendant would so act. In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.

"With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.

"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if

successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally." To "have knowledge" requires only that the actor believes that the specified facts exist.

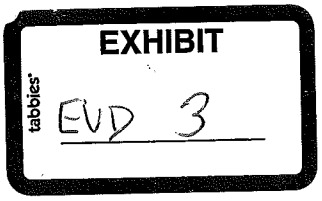
Second, the defendant, or someone he intentionally aided and abetted, in assaulting Ne'Asha Griffin, used a dangerous weapon. A firearm, whether loaded or unloaded or even temporarily inoperable, is a dangerous weapon.

Third, the defendant's act took place on or about May 26, 2016, in Hennepin County. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty.

If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

During these instructions I have defined certain words and phrases, and you are to use those definitions in your deliberations. If I have not defined a word or phrase, you should apply the common, ordinary meaning of that word or phrase.

In this case the defendant has been charged with multiple offenses. You should consider each offense and the evidence pertaining to it separately. The fact that you may find the defendant guilty or not guilty as to one



Q: Hi Josh?
Q: What's going on JOSH?
Q: You remember us?
A: Hmm mm.

Q: Yeah. Alright. Sergeant Thomsen. This is Sergeant Green. If you don't remember us? We talked together about uh June.
Q: June 2.

Q: June 2. Remember that?
A: Yes I do.

Q: Alright. Well, we had a chance to work on this case a little more. We have some more information and um, the case has kind of come together and uh, you're arrest on a warrant for your arrest, right? In Saint Paul.
A: Supposedly, yeah.

Q: Supposedly, okay. We'll that's why you're down here. Um, we got some additional questions for you. Um, Sergeant Green and I, we, we've talk to a lot of people since this thing happened and we kind of got the case put together and we know what happened uh, wasn't a intentional act on your part that uh, this old lady was killed but that's what happened and uh....
A: I didn't do it.

Q: Okay, well, we're not gonna ask you any questions about uh, the case, I guess before we um, read you your rights. Before that, you got anything Sergeant Green?
Q: Uh speaking, I wanna echo what Sergeant Thomsen just told you is that, sometimes things don't happen on purpose and bullets don't have names and it's unfortunate this woman was killed. But the fact is that, that she is and people are talking. They're being frank with us. We have a lot of records that shows video, cell phone, witness statements, people that know you, just some of the people that you think are close to you are talking. So Josh...
Q: We know who called you, you went out the back door, you shot the car thinking that it was some of the highs in there, so, we got Sto's car. Sto's car's got a bullet in it, the same, we can't give you all the information but just maybe that, to tell you that we're not, we're not bluffing here. We know that, one of the highs is being followed, we know by who, we know that you went out and shot 9 rounds of your uh Bursa .380 that you had at the time.
A: [Inaudible]

Q: And here's, we know, here's the biggest thing is that, we know where you were when that happened. Your phone puts you right there. You said you were in Columbia Heights. Josh, you don't wanna get caught behind it in this. I mean, it's one thing to commit something and do something but it's another thing to take

responsibility for it and step in and say I made a mistake and mistakes happen. People can get over it and, your family is still gonna care about you. Your friends are still gonna care about you. But mistakes happen. It's like a person that's drinking and driving, they don't mean to kill the person. But they made a mistake when they drink and drove the car that they killed the person. You know Josh, this is a lot to get out from underneath, okay? Cause we have a, we have people that will, quite frankly, they'll testify against you. A lot of people, but if you could explain to us what happened and give us some explanation about what happened. This is gonna go a long way for you. You know other people is gonna, I don't know what to tell you man, it's, but we, we can show you some things, but we can't show you everything. Cause we have to have some cards in our hand. We're giving you opportunity Josh.

Q: This might be your only opportunity to talk about this because…

A: Y'all not talking about how much time all this is gonna carry over. That's not helping me. You want me to say I did something I didn't do but…

Q: No we don't want, we, that's the last thing we want Josh. We want, we want, you know this, this will go before a Judge and Jury sometimes. You wanna be that, the guy that shows some remorse that he made a mistake. You wanna be the guy that uh, you know with all the evi, evidence stacked up against you, um just blatantly lies in here? I mean that's, that's up to you. How you wanna be looked upon. I was starting to say this might be your opp-only opportunity to talk to us because you go on the stand and I can't give you legal advice but with your record, they might not put you on a stand because, they can bring up a bunch of old shit, so this might your only opportunity to get your story out. Don't let these people speak for Josh and what happened that day. We know that…

A: Before I speak to you guys, can I see some things first?

Q: Sure you can say whatever.

A: I said can I see some things first?

Q: Oh, see some things. Sure. Well before you, we show you…

A: You can't show me all, but you said show me some.

Q: Yup we can show you some things that'll help you understand.

A: Yeah I need something to explain you know I be young.

Q: What's that?

A: You know I'm young, I need some explanation, that's what I need.

Q: Right. We…

A: [Indiscernible] understand my situation.

Q: All right, can we tell him what he's charged with?

Q: Yea.

Q: You're charged with two counts of [Indiscernible] one count of murder and one count of attempt murder. That's 60 total years Josh.
A: It's a long time.

Q: It's a long time, you're too young for this. Josh have you, you ever been given a chance in your life by, by people that don't know you? This is the time. We're giving you a chance. We waited all this time to make the case against you. Because we wanted a solid case. This wasn't something we just threw together. This is months of work. And you know what...
Q: Here's the thing you gotta understand too Josh is that you know this, in this case, it was a old lady, a grandmother that got killed and it wasn't your intention to do that right? Now, if it was Tez Blood or Matt Lord, Sto or somebody else that you had a beef with that got shot, I think people wouldn't be so apt to talk. But people are talking about this and they want some closure. So you gotta decide now how you want the rest of this to go. But before we start showing you any of these pictures and talking to you about that, um, we gotta read you your rights. You been read your rights before right?
A: [Inaudible].
Q: Okay.

Q: Can, can I say some'n quick though?
Q: Sure.

Q: Before you read that, we, we know what's going on at your house there, your house as been shot up twice last weekend. Maybe, maybe some admi, admission on your part of this, we don't know where it's coming from but we don't wanna see your mom get killed or your dad get killed because they're in the house when it gets shot up. Josh, we would give you the same...
A: [Inaudible] some people are still gonna come and do that but [Indiscernible]

Q: You can't say that.
A: I don't know where it's gonna come from.

Q: But, but we're, we would give you the same consideration Josh Ezeka that we would give anybody else just like this family. Okay? We would give you the same consideration.
A: But me talking to y'all is like how is that gonna, I mean of course I, what type of closure you guys are looking for exactly?

Q: Well, we're looking, the family is looking for closure. We're looking for answers. We have the answers. But, what he's saying is, there is people out there, and I don't know who's shooting, shoot up your house. If it's the lows, or the highs, I mean, I'm sorry, you're the lows. It's the highs or if it's some people that are affiliated with uh, you know Birdell or whatever that who shooting up your house but if you can provide us with some answers, maybe some explanations here, maybe that stuff will stop. I don't think they're out to get your mom or [Inaudible]

or Jim, I think, this is some stuff that comes from your association with you know, some of the lows and the beef that's going on. So…

Q: I can sense you, I can sense you're being remorseful right now. I can sense that Josh…

A: Man.

Q: And you know what if that's the case, let's read you your rights, let's, let's, let's find out what happened that day. Cause accidents happen. There's a big difference between doing it on purpose and doing it by accident, alright? You just give us what it is.

A: [Inaudible] y'all trying yell at me about it man [Inaudible] y'all is trying to make it's like, things just happen purpose [Inaudible]…

Q: Oh we're not saying it happened purpose at all Josh. We're, we're saying that you shot at that car that was heading southbound uh, Sto's car, Deandre's car on purpose but you didn't purposely didn't shoot Birdell Beeks and, you know, you're arrested. Sometimes when we have probable cause. You know like we, we talked to you the first time, we, we talked to you in, in June. And this time we contemplated not even talking to you, just because we have a warrant for your arrest to send you to jail but we both talked and said, you know maybe the guy wants to come clean. This is not us trying to trick, trick you or anything Josh. This is something we could've just had you arrested and booked you in jail on your warrant and then you have your first appearance and all that stuff. This is kind of your opportunity to tell your side because right now it's everybody else telling what, what happened to them but they're also telling what Josh did or saying why Josh did it. But this is something you wanna speak on your own behalf. This is your opportunity. If not, that's, that's fine too. Sergeant Green and I don't know how you been treated by the Minneapolis Police before, maybe you've been treated bad, maybe you haven't, you know, some cops might, might treat you rough or whatever. Maybe over step some bounds but Sergeant Green aren't here, and I aren't here to try to trick ya. You, you, you know I think we have a little contentious meeting the first time, but um, this meeting with you, you been respectful to us and we're giving you the same respect back Josh. I know you're not a evil man at heart but bad stuff happened sometimes

A: [Inaudible] in the evening, at the end of the day, with this warrant ah I would have to pay, what you say, 60 years, over some, over some…

Q: That's, you know there's a lot of, Josh there's a lot of room there. There is the most and then there is the least and somewhere in there, if you're found guilty, if this goes to trial, you'll be in there but…

Q: I'm gonna get a copy of the complaint and show him?

Q: Yeah.

Q: Hang on a second Josh, I'll give you everything I can give you, so you, you understand.

A: I wanna talk to you guys but unless, you know I wanna see some things first.

Q: Yup. Uh it's understandable.
A: What's in that packet, ya'll got too many pictures. You have to at least show me, at least half of it or something. Can I go through it so I know…

Q: No, no, It's, it's, we'll kind of explain it to you. I mean…
A: [Indiscernible] explain it, you show me pictures, I can't even see all the way over there, you know, I don't have my glasses or anything…

Q: You wear glasses?
A: No, I wanna see it.

Q: Yeah I'll show you.
Q: My eyesight is going bad.

Q: Yeah some of this stuff doesn't apply to you, this, this is just a packet we've been showing other people but, but yeah, if you wanna see it, we'll uh,
Q: Here's the complaint. Okay? I wanna show you this part. You and your birthdate. You're being charged with murder in the second degree, murder in the second degree attempt, it says attempted right there. And then the murder. Okay?
Q: Now it be on Ms. Beeks and then uh, the granddaughter that was in, in the van too.
Q: Or it can be um Deandre Gardner. 40 years maximum sentence, 40 years, maximum sentence 20. Even if you did half, if you did half of 60, that's still 30 years. Okay?
A: [Goaning Sound. Intelligible]

Q: The prosecutor, I think will entertain an explanation of what happened, who else was involved because their, their relatives involved is talking too now.
A: So about this person that's in this gold car that I shooting at, what's his name, you said, Sto?

Q: Sto.
A: Yup. Who told you guys that?

Q: Well, that's some stuff, just like…
A: Some of my close friends and some'n but I don't, I don't [Inaudible] know some things? You guys least just give me that information.

Q: Yeah we can't give you up our, our witnesses. We can't give you names. I mean we, we have to go out and make them some, you know, promises of confidentiality until this thing gets rolling. We can't just say this is, who is saying what against ya. In court, if it goes to court, if you wanna take it all the way, I guess you're, you're entitled to, to um, you know, see who your accusers are.
Q: Josh you have to understand some'n too Josh. This happened in the middle of the, the, daylight, 6:00 at night. As a matter of fact, it's like 6:52, 40, was the first

trigger pull. We know the time of the first trigger pull. We have the gun shots audio. Right? We have people are outside. We have cars and busses and witness and people seen you running and we know where you were before, during and afterwards Josh. Okay? We're not, we're just trying to tell you, we have a strong case. We need an explanation from you about what happened. Did someone tell you to do this or did you do this on your own?

Q: I think before we start asking you questions about the case, like he's asking...

Q: Yes.

Q: I'll read you your rights.

Q: The Constitution requires that I, Josh, I inform you, you have the right to remain silent. You understand what that means Josh?

A: Yes I do.

Q: Anything you say, can and will be used against you in court. Do you understand what that means?

A: Yes.

Q: You have the right to talk to a lawyer now, and have the lawyer present now or at any time during questioning. Do you understand what that means? Josh?

A: Yes.

Q: Okay. If you can't afford a lawyer, one will be appointed for you without cost. You understand what that means?

A: Yes.

Q: Okay, so you understand all these rights and having these rights in mind, do you wanna talk to us, see some of these pictures and kind of get the, get through this thing today with us or?

A: Yeah I wanna see, I wanna see some closure.

Q: You wanna see some closure? Well that's good, I think that's a big step in doing the right thing. We'll just show you some of this stuff here, you asked to see it, that's just a...

A: I wanna see it.

Q: A aerial photo of where it happened.

Q: Josh. On this photograph, where do you live? That. Yeah, this, this is uh, that's, this is Broadway right? Yeah, this is, no...

Q: No, Wally's is down here.

Q: Nope, this is Broadway, down here, right?

Q: No, down here.

A: I think you guys had it right the first time.

Q: Did you?
A: Yeah.

Q: This is where you live, back here, in this house. This is where you were shooting from and this is where Miss Beeks was and this is the way that Sto was driving, down the street like this. Just to give you orientation alright?

Q: Yeah, Yeah, this is you at Wally's, just uh, like an hour or two before the thing happened so we have your, we know the way you were dressed. There's, it looks better on video, it's you're down there with uh, the guy coming in the door is Tywan Williams. He was one of the guys that was in the house um, when we came in there after the cops surround your place, with your mom and dad in there, and Uchie was in there. Um, who else was in there?
Q: Dijon Roberts was in there.
Q: Dijon, DJ was in there.

A: Yup, he was.

Q: Char, Chartez.
Q: Chartez.
Q: Yup, um, William Watson.
Q: William Watson was in there, Uchie was in the house. Your mom and dad were in the house. Here, let me, want us to show ya?
A: Show me, show me what?

Q: This is, I'm gonna show you the big one, the phone record?
Q: Oh yeah.
Q: I'm gonna show you this okay?
Q: Do you know what your phone number was back then Josh?
A: Uh, I thought it was 651-366-2110. My same cell, you took out my cell, my room.

Q: Okay.
A: That's my cell phone, now that's there.

Q: Here's your, here's your T-Mobile cell phone number. 644-1952. Alright. This is what it was on that date…
A: That lists to somebody, my cell phone number.

Q: Yup. That list, that list to you. T-Mobile says it lists to you. And this is where you were. There's a crime scene and these are the towers you hit off of, it shows you right in the area of the crime scene. You weren't, you told us you were in Columbia Heights. You weren't realty there.
A: So it's probably cause I came back over here.

Q: No, no. The crime scene. See this little circle right there, you're within in the crime scene. So you lie to us earlier, which we understand because you're probably scared. We also know where you went afterwards. We know that you were shooting at this car. Now that's the car that that had STO, Deandre Garner, the high.
A: [Inaudible]

Q: So Josh, this is some of the stuff that we have. Okay? What I'm really looking for is the cell phone numbers. Let me show you something, okay? On this date, alright, at 6:07, you had 147 second, almost 2.45 minute phone call with Freddy Scott at 651-404-3440, alright?
A: [Intelligible]

Q: Alright.
Q: What do you know Freddy as?
A: I don't know, know what I'm saying.

Q: Little Zo? And we know that you have the phone, okay because we know, we talked with some of the people further down if we said that they talked to you so we know the phone was in your hand.
Q: I don't know if we told you we could probably tell you this little piece is that, we found this car and there's a bullet in this car that matches the bullet that was taken out of Ms. Beeks so we know that, that was the car you were shooting at.
Q: Josh, these are just little things that we have. Okay this isn't the, this doesn't include the witness statements that people that are providing testimony against you. I know it's, it's tough to understand man but we're not bad guys. We could of had you got right to jail and said let him deal with it. But we're giving you the opportunity to swing the bat.
A: Swing the bat, what you saying become a snitch?

Q: Give, give the prosecutor something to show that you know what, yes you were shooting at Sto, okay? For whatever reason, there's a problem and this woman was not your intention. Did you mean to kill the lady?
A: No.

Q: You didn't mean to kill her. So you didn't aim at her. You swear?
A: Swear.

Q: Who did you um, who did you intend to kill, to shoot?
Q: Or scare?
A: I didn't, I didn't intend, I didn't intend to scare anybody. I didn't intend to kill nobody, I intend scare this person that I had told about because I was told you know, that some people was on the way to come shoot up my house.

Q: So you thought Deandre was coming to shoot at your house?
A: I was told.

Q: I understand that.
A: Told people on the way to shoot, shoot at my house and then told basically they [Inaudible]some more story some people end up getting behind them, whatever they had they blinkers on, turn left, you see how the car is still, aiming a little bit towards the left like he's he fitting like [Inaudible] he was going to turn and he was gonna be there. We was having a family little thing going on over there. Too many kids, too many kids was over there before they left.

Q: Who was in, who was in that car?
A: I don't even know his name. But y'all just told me, what, what y'all called him?

Q: Sto.
Q: Sto.
A: I guess that's his name.

Q: Was there anybody else in the car besides him?
Q: Were you told that Tez, Tez was in there or Matt Lord?
A: I was told it was three people.

Q: You're told that it was 3 people?
A: I don't know their names but I was told it's three people.

Q: Who told you that?
A: [intelligible grunting]

Q: This is kind of a, a, integrity test because we know who told you that.
A: If y'all know who told me and then, they...

Q: We're just looking to see if you're, if you're being honest with us.
A: So then there's your answer. Well I be honest, honest but you know, I, I still...

Q: Do you know whose car that is? That's by PYC, that's right down by your house.
Q: Look at the time, 6:03. Josh, we're giving you, giving you the information man. Who told you that they were running south?
A: You guys know already.

Q: Josh, give us a, give us a nickname. Was it, was it Dijon? DJ? Was it Uchie, was it your mom or your dad? Your saying no.
A: It wasn't them that told me.

Q: What's that?
A: It wasn't them that told me.

Q: Was it uh, was it Travon Blackman?
A: No?

Q: Was it Gargy?
A: Who?

Q: Gargy.
Q: Travon.
A: [Inaudible] what the fuck [Inaudible]

Q: I know you know Gargi. Don't, don't act like you don't know him. All right? He's up in Saint Cloud. You pointed to who?
A: No, I know who this person is....

Q: But...
A: But...

Q: Travon?
A: But Gargy, that's who I don't know. I don't know what name, I don't know, I don't know that type of street name, what name is that?

Q: Is Travon the person that told you that they are rolling south?
A: No.

Q: Was it, Dajun Wiley? Was it Freddy Scott? Was it anybody else up here, Julie Flynn?
A: Julie Flynn, who is [inaudible].

Q: Just a number that was on your phone records. I thought you wanted to help out with some closure here Josh? But you kind of going right here. You're going right here but you gotta go right here to get any, I, I guess credit, to show that you're being honest. We're, we're asking a simple question as kind of a test to see if you're, you're being truthful. All we're doing is asking you who told you that Deandre was heading south on Penn? It's not a difficult question but at this point, people are talking about this thing because an old lady got killed. People aren't closed lipped about it so I don't think you have...
A: If, if Freddy told y'all that I did it and [Indiscernible] supposedly.

Q: I'm not saying...
Q: What's that?
A: See...

Q: Uh we're not, we're not telling you what Freddy said or even if we talked to Freddy yet.
A: Y'all must've cause y'all, Y'all been bringing his name up since I been up in this room.

Q: No, it's because it's right here. So last person you talked to before the shooting is Freddy Scott. Everybody knows Freddy Scott as Little Zoe. Cause he's got the, he's got the rap video out there, what's it called again:
Q: Pull up.
Q: Pull up.
Q: You seen the video right?
Q: Phone records, this phone…
A: Yeah.

Q: Registers to, to, to his mom. That's how we know it was him and she doesn't deny it you know, you know and, and we also know from his mom that owns a car that looks just like this.
A: Uh…

Q: So you don't know that we talked to, to Freddy Scott or not. Hold on a second.
Q: I just turned the fan on.
Q: Okay so you, you, you fired the, you know let's get this, get past this hurdle. Did you fire up the gun that shot at Gargie at the time? I mean not Gargie, it was Sto at the time?
A: Yes I shot at that car.

Q: That day, the old lady was killed?
A: Yes.
Q: Okay. Is that a yes or no? Say it again.
A: Yes I shot at…

Q: [Indiscernible]
A: [Indiscernible]. Yes I shot at that car.

Q: So that means you shot the old lady too. Okay? Let's get over that. What happened before that Josh? What led up to this?
A: I say I had a call, I got a call said somebody is gonna shoot at my house.

Q: What's that?
A: I got a call said somebody was gonna shoot at my house.

Q: Tell us about that call.
A: [Sighing] we gets the call, boom, bla'zee, bla'zee we just got a call from this, somebody called me from this number but I don't think it was Little Zoe who I spoke to. It's was a female. It's a female who told me that they was coming from somewhere and they, they were proclaiming they was gonna shoot at my house. They was coming from somewhere like, you know somewhere you know in they, in their part of town.

Q: What's their part of town? The highs? Anything above Broadway, north of Broadway?
A: North of Lowry.

Q: Of Lowry? Did you talk to a girl or a boy?
A: I spoke to a girl but…

Q: You trying to protect Lil Zoe?
A: [Indiscernible], say what?

Q: You try'na protect Little Zoe in this now?
A: To protect, I don't protect Zoe, I'm facing all by my damn self, you're not making no sense.

Q: I'm not making any sense?
A: How am I trying to protect somebody, that I'm already [Inaudible] undue my predicament, what's gonna happen to me?

Q: Because that's exactly why. I think you gotta let the old um, snitching thing go on this because other people like I told you, they're not reluctant to talk because this old lady got killed Josh. And if you're up there telling me that Little Zoe's phone called you but it was some female, unknown female, talking to you, I think that's bullshit. And the jury is gonna think that's bullshit. So when we talked about full disclosure early on this, this interview, it's something that's gotta stick with you Josh. We can't be getting half truths and stuff that doesn't match up with the evidence. No girl called you from Zoe's phone. Zoe called you and told you that Sto was coming down, from the duce-six.
A: Is that what he told y'all?

Q: We haven't [Inaudible],
A: [Inaudible]

Q: We haven't talked about that. Just like…
A: [Inaudible]

Q: What's that?
A: [Inaudible] cause from the jump y'all, y'all been saying that you all been knew this happened and this happened.

Q: We do a lot of work in this.
A: [Inaudible]

Q: We do a lot of work in this and this…
A: Y'all kept try'na say, y'all keep try'na say people, you supposed to be talking to me and so, if, if we gonna play this, let, let that old system go you might as well let go of the high and the witnesses saying too and come out with it so I come

out. You gonna screw with me, screw with me. I say tell the people, tell me the people who saying that I had some'n that I know that. [Inaudible].

Q: What do you think Little Zo is gonna say when we arrest him? For, making this phone call to you? What, what you think he's gonna tell us? He's not the, he's not the trigger man, you already admitted to being the trigger man Josh. I respect you for that, more than you understand. That goes a long, long way. But what do you think Little Zoe is gonna say when, when, we talk to him about this? He's gonna say well yeah, you know, he's got nothing to lose by telling the truth. If you talked to Little Zoe, tell us you talked to Little Zoe.

A: You must, you must talk to him already or something. Y'all's been bringing his name up since I been up in this room.

Q: Look I can tell you why.

Q: One, that's, that's his car right there going down to your house to pick you up. Can I ask you a question though? When, when Little Zoe picked you up.

A: There the phone record right there, pull it up.

Q: This is your phone record.

A: No. you sit there and talk to like I'm short. [Inaudible]

Q: I'll show you this one .

A: That's not gonna help me out on paper.

Q: Do you know, do you know whose number that is? That's Travon Blackman's phone on the way to your house. People have Travon Blackman outside.

Q: Was he in the car when Zoe picked you up, was Travon? Or was he in the car with John?

A: [intelligible sighing]

Q: This is one of those tests again Josh. The truthfulness test.

A: He was, he wasn't in the car with Little Zoe.

Q: Little Zoe was by himself?

A: Yes.

Q: Where were you when you got the call?

Q: Were you downstairs with the other guys, were you upstairs? With your mom and Jim?

A: I was upstairs.

Q: Upstairs?

A: Ah hmm [Affirmative response].

Q: What, when you, what door did you leave, the front or the back door when you leave to go shoot at this car?

A: I left the back door.

Q: Okay. When you left the house, were you by yourself or with anyone else?
A: By myself.

Q: What were you wearing? Were you wearing the same clothes your wearing this day? At Wally's?
A: Was I? Yeah. Yes I was.

Q: How many times did you pull the trigger?
A: [Indiscernible]
Q: Was it more than once?
A: It was more than once. I can't remember, I have a bad memory, I can't remember to well.

Q: I can tell you cause we got ShotsSpotter, you fired 9 rounds.That, that gun, does that normally hold 7 rounds or have an extended magazine on it? That Bursa that you had. You remember Josh? Was it a 7 and 1 or was it 8 and 1?
A: I think it was a um, 8 and 1, I think it was a 8 and 1.

Q: 8 and 1, so if you fired all 9 rounds, you, you emptied the gun out, is that right?
A: Yes.

Q: Yeah? What, what happened to that gun afterwards? Remember, full disclosure Josh. Can we still get that gun back?
A: I left it there in the scene.

Q: You left it on the scene?
Q: Where?
A: Where I was standing on the side of the house, in the grass.

Q: You left it there?
A: That's why when I first got investigated why I thought that y'all found it.

Q: Mm mm (Negative response). Well…
A: I got locked the whole summer, springtime, you probably found it or where it went to, the city, or I don't know where that weapons at.

Q: We had a dog scouring that that, the grass over there because the grass was kind of long and I think if the gun was over there Josh, we would've found it cause the dog turned us on to…
A: So you try'na say I'm lying? I'm already coming out [indiscernable]

Q: I'm just saying, I'm just saying the dog found casings and I think, I would think the dog would find the gun. Or is it a…
A: That's where I left it though.

Q: You just dropped it? Why would you do that after shooting at what you thought were rival gang members?
A: You said up.

Q: Well...
A: It weren't no, weren't no rival gang I was told some people's coming in a Toyota to come shoot at my house.

Q: Well you know they're highs, you're from the lows, that's why I say rival gangs.
A: [Indiscerable]

Q: You didn't
A: [Inaudible]
Q: Usually people don't get rid of it right...
A: Some person with dreads and that's who I seen the car that day, reds and dreads.

Q: The driver was?
A: Yeah and that's who I shot at.

Q: But you just told us earlier that they told you it was three people. They named three people but you couldn't remember the names.
A: I, I got told a description, I don't know their names. I really don't.

Q: So usually, it's my understanding that people usually don't rid of guns unless they, they know they killed somebody. Why would you just shoot the gun and drop it right there? That doesn't make any sense.
A: I don't normally playing with guns, I don't know how they, granted the situation. I, I seen the car stop and then you know me...

Q: The car didn't stop, the car kept on going. He went down to Wally's, hooked a left and it was gone. It didn't, it didn't stop.
A: I thought...

Q: Or the van stopped?
A: I thought that the gold car stopped.

Q: No, that turning right there, that's Wally's, at the intersection of Wally's there, Golden Valley Road and Penn.
Q: Took a left, took a left turn.

Q: Unless you got the cars mixed or something. Maybe some cars stopped. There was a bus there I know.
Q: And Josh, you shot multiple times. We have one gun. These guys, they, they didn't even shoot back did they?

A: Yes they did.

Q: No. They didn't. I can show the audio, it's all, all you shooting. Don't lie about this part man.
A: Yeah.

Q: Alright? If they were come shoot your house is one thing. They weren't shooting back were they Josh? Be honest with us. Because we have evidence.
A: So, so what did, what, what the, what do you think since I got evidence, so I know so damn much. You tell me right now my supposed story you want me to tell you and then I give you some corrections, or so I'll tell you if your wrong about certain things.

Q: We want to know who else was involved in this Josh? You're not the only person. You didn't do this all by yourself. Someone told you about this. You say it's a girl, who's the girl?
A: I said I don't know but it came from, you know, through a number. I'm getting irritated now.

Q: What?
Q: What?
A: I'm getting irritated.

Q: Some'n we said?
A: Hmm just this whole ordeal.

Q: Yeah. You really irritated the Beeks family too. Cause they lost their grandma.
A: I'm gonna lose my life, shit. I'm not telling, you know and I know it wasn't intentional. But y'all try'na make seem like it's intentional?

Q: We know you intended to shoot this car. And you, by your own admission you intended to shoot this car but we know that this car, my, my partner just told you, she was here and the car was going southbound when he got shot at on the driver's side. So we think [Inaudible] that's what, how many, how far away do you think that is Josh? From the area where were you standing, right over here? To where the car was?
A: A couple blocks.

Q: What?
A: More like what 50 feet , a 100 feet. [Indiscernable]

Q: You know you have, you have a pretty good aim. Was the car stopped or was it moving?
A: I thought it stopped, y'all said it kept going and turned on what's the name.

Q: Yeah but when you first, when you first shot at it. Was it stopped, or was it moving.
A: It was still moving. I shot two or three times, I started to, you know go back towards my house. I wasn't even looking that direction no more. [Inaudible] what the car is.

Q: When you ran back to your house, did you go inside or you just run along the side of the house and hop in Sto's car? I'm just asking…
A: How'd I hop in Sto's car?

Q: Zoe's car.
Q: What?

Q: Zoe's car, I'm sorry. Did you go inside or did you just go straight alongside the house?
A: I dropped the, I dropped the gun in the grass and I ran to the side of the house, and hopped in Zoe's car.

Q: So you never went inside your house?
A: No.

Q: Okay.
A: I don't know where they, I don't know where they, where the world got that from.

Q: We're just asking.
Q: There's a, you know, people have different recollections and it's like 7 months ago. Some people were saying that in Zoe's car was Gargy or Travon Blackman as you know him, and then he hopped out of the vehicle.
A: Some people?

Q: What's that?
A: Some people? Who's, who's telling you guys this?

Q: We got neighbors, we got people, we got…
A: Neighbors, they don't know him. Nobody but me.

Q: Well I know you know, back then…
A: Shit y'all said people too though.

Q: But back then Gargy had a, a cast on his leg because he had been shot at 21st and Oliver, so people recognize him. Somebody said that he get out of Zoe's car before you hopped in. Somebody is saying he didn't. What can you tell me? That Zoe was the only one in the car? Yeah? Alright.

Q: What did, what did the person that called you, what did they say, do you remember? I'm not asking you word for word, or to quote them but, what, what did they say?
A: It's been too long. The only thing I remember to it is it made my eyes spark, it's 3 people on the way to shoot my house.

Q: It's 3 people what?
A: It's 3 people on the, on their way to go shoot up my house and boom hung up.

Q: Okay.
A: But I thought it was a female little voice you know.

Q: Have you talked to, to Little Zoe before?
A: You said have I spoke to him before?

Q: Yeah, before all this has happened?
Q: Did you recognize the voice? You said it sounded like a girl but could that have been Little Zoe talking to you? Maybe you just thought it was a girl cause he has a different voice?
A: I don't know I probably thought it was a girl. I see y'all think it's girl than shit...

Q: No, you told us it's a girl that called you.
A: I, I, I, I think, I think it sounded like a female but you know his voice kinda a little high pitch and uppity like that.

Q: After this happened...
A: [Indisceranable]

Q: After you ran to Little Zoe's car, where did you go? What's the first place that you went? Now this is a truth test. Okay? Where's the first place that you went?
A: The first place that I went? I don't remember. I just close my eyes. I just remember telling them, get me away from here.

Q: Was it somewhere, maybe on hillside in the 1700 block?
A: [Sighing].

Q: Like another spark went off huh? Is that where you guys went?
A: Is that where we was at when we, when I woke up.

Q: When you woke up?
A: I'm sayin when he woke me up, I'm try'na think, I remember that.

Q: I don't think you laid your head down there. I think he stopped there and then you were picked up.
A: I told you I fell asleep inside his car. I closed my eyes.

Q: Going from Wally's to 17th and Hillside, you fell asleep?
A: Coming from Wally's nah [indiscerable]

Q: The area of Wally's, 21st and where the shooting happened by your house to the Hillside, you're not gonna fall asleep. You got adrenaline going, you just shot 9 rounds at somebody.

Q: Dude, we go to target range and we shoot and...
A: I never been to target range in my life.

Q: What I'm saying is, is that, we know, we know from personal experience that when you shoot, you, your adrenaline heart rate gets up. You, you can't fall asleep when that happens.
Q: Have you shot so many times that you're bored with it Josh? I find that hard to believe.
A: No.

Q: So you went over to Zoe's girlfriend's place, is that right?
A: Yeah.

Q: Why is it, why do we have to pry shit out of ya? If you want full disclosure and you wanna, you want some, some, closure on this thing, for your side and for the family side, we shouldn't have pry shit out of you Josh. I know this is not your, the, the best day of your life but...
A: It's not the best day of life at all. [Indiscerable]
Q: But it's the first day
A: Your guys are right about that.

Q: Yeah, that's the first day of the rest of your life isn't it?
A: That's how I see it.

Q: Yeah, I mean, you might have to do some time for this, you will do some time for this but you're gonna get out, Birdell Beeks isn't. You know, we, we're just looking for some closure, you're looking for some closure.

Q: Do you recognize this guy?
A: Yeah I do.

Q: Who is that?
A: Who the fuck do you think?

Q: Well I need to ask you.
A: Now you're, now you're making me mad.

Q: No, no, no, no, no listen.
A: No.

Q: We have a certain things that we have to follow, in order to, to submit this case and make sure that we do it correctly for you. Okay?
A: Uh…

Q: We so what we have to do is say we showed you this picture, this picture, this picture, he looked at this picture. Who do you know this person as?
A: Why you put the pen right there for?

Q: I need you to write it on there. Just write however you know him as on there. You got through the hardest part. Why is this part so hard for you?
A: Because man…

Q: You already said, you already that somebody picked you up. You already said you pulled the trigger. Do you wanna sign it? I need you to sign it.
Q: Okay, do you, don't, don't put the name on it, just put your initials on there and today's date. So that you think saw that photograph. I'm asking you, It's a yes or no question. Is that the person that drove you away from your house after you shot at, at, at uh Sto? Yes or no? Bottom line. You're shaking up and down, what does that mean? Say, yes or no? Yes or no josh?
A: I can't do this shit man.

Q: Well what, what if we, what if when we talk to him, he tells us who you are and we ask him the question, is that Josh and he says yes.
A: Well can y'all do that first then you'll be investigating me, this don't feel right.

Q: It doesn't feel right?
A: No, hell no it don't. If you go talk to that person [indiscernible].

Q: Let me tell you something. You're not snitching nobody already talked to, talked to, on you, okay? Other people have talked on you. You're just not seeing all those, all those people.
A: [Indiscernible] something man.

Q: We want a case against him too. Cause you shouldn't be going down on this alone.
A: I shot. I'm going down on it alone. I'm gonna be I'm gonna have myself when I get out so…

Q: It, is this…
A: [Indiscernable]

Q: Little Zoe?
A: [Indiscernable] feel right.

Q: You got anything to add Josh? Uh do you feel bad about what happened at all?

A: Yeah I do.

Q: You do?
A: What I can say on my behalf, it wasn't intentional.

Q: No, we know it wasn't, you didn't intend to kill the lady, we know that. But when you start throwing 9 rounds at a time down range, sometimes bullets strike stuff that it's not intended for, right?
A: Right.

Q: You can't, you can't control it.
A: I can't control it.

Q: Once they leave the barrel it's like. Okay man. Alright, we'll get you out of here. We'll get you over to jail and you'll have your first appearance, I supposed, in a day or two and then we'll figure out where this is going. Alright?
Q: You know when we came in here, Josh, seriously, when we came in here and read you your rights, you said you understood and you talk to us I think, I'm, I'm glad that you talked to us and I think you did do yourself a favor. You believe me what I'm saying? Josh? We could've taken, we could've just taken you to jail and we didn't have to talk to you but we gave you an opportunity to talk and I'm glad that you used that opportunity to talk to us. Alright?
A: Alright.

Q: I mean it's not, we got a solid case against you, it's not a who did it, it's kind of why it happened. Now we kind of have an understanding why it happened. I don't think that's gonna hurt you in the long run alright?
A: Oh yes it is.

Q: By talking, do you think talking to us hurts you?
A: No for like you know case wise but…

Q: No case wise I don't think it did.
A: Out in the world wise yeah.

Q: Out in the world wise?
A: I need to move.

Q: Alright, I'll uh, You mean move out of town?
A: Yeah.

Q: Oh.
A: Move.

Q: Well, maybe this will stop so that stuff, do you know who was shooting at your house over there? Is that some of the highs or it's somebody that's related it Miss Beeks or I mean do, do you know? Or not?
A: I don't know but I, I, I think it's the highs but I'm not too sure who...

Q: Yeah.
A: [Inaudible] I weren't there when it happened. It happened twice, I weren't there when it happened so...

Q: Yeah that's twice in the same weekend it happened. We don't want anybody innocent, whether it's your neighbors, whether it's your mom or dad or Uchie or Anthony, we don't anybody else getting hurt on this. So maybe if whoever it is, maybe if they know that you're locked up for a little bit, the shooting will stop, I hope. But if you hear anything, you know how to get a hold of us right? Are we good?
A: I'm trying my best, I just wish you all just tell me who's talking on me.

Q: Who, who's talking [indiscernible]
A: [Indiscernible]

Q: Yeah I mean it's...
A: Not, nothing can happen, I'm not a, no, aggressive angry person, you know.

Q: Yeah, no it's...
A: [Indiscernible] it may come out to everybody you ask about a small thing but I just don't wanna, I just wanna know. so I feel like if I'm gonna talk to you guys, say I only talk to you guys then I'm not gonna feel bad cause they talked on me first but if I talk on somebody but they didn't talk on me, that's not alright.

Q: Right. [Indiscernible]
A: [Indiscernible] talk to you.

Q: I, I, yeah, I understand what you're saying Josh and I understand that that's the way you were raised and that's the, the culture around.
A: It's not about the culture I'm in. I don't give a fuck a about that. It's not about that.

Q: Well for me to do my job properly, when I talk to people, we gotta have some confidentiality. You know, if you were a witness on a case, I, I show you the same respect. But I say Josh, you know who did such and such, you know, it's, and I always tell people when they, when we were talking to witnesses, I say the only people that are gonna know what we talked about in here are people you tell. Say if you're a witness in this case. I don't go around speaking of other people. Cause that's not how we get cases solved Josh. I gotta have some, you know why would somebody talk to me knowing I'm gonna go to the next guy and say you know, put their name on the front street?

A: But can I have my name is blocked off on whatever I said about somebody else?

Q: Yup.
A: Can I have my name excluded out of there

Q: Yes.
A: For my safety?

Q: Yeah. Absolutely. But did you talk about anybody else? I mean you talked about Zoe a little bit right?
A Yeah.

Q: Yeah.
A: So if y'all do go talk to him, my name is blacked out?

Q: Yeah, Zoe's not gonna know what you and I talked about. This [indisceranable]
A: I mean I have an\ idea but just for like, you know computerwise.

Q: Computer wise. Yup.
A: Block my name out?

Q: Yup, yup, we could do that. You got any other questions about what's happening?
A: No [indiscernible] man I don't even wanna think about that.

Q: Yeah well just take it one day at time alright?
A: Can't, can't do that when you facing life.

Q: Yeah.
A: [Indiscerible]

Q: Life in Minnesota sometimes isn't life, Josh and you're gonna have some time to think about this but, you're gonna have, I, I think you'll have your freedom too someday. But, I'm gonna go out and fill out some paperwork and then I'll be right back alright?
Q: Feel better man? No? You can stop running worrying about people [indiscernable]
A: I wasn't running from nobody but.

Q: How?
A: I want my name blocked.

Q: What?
A: I want my name blocked out. I know ya'll gonna go talk to Freddie or whatever, I want my name blocked out.

Q: You want your name blocked out?
A: Hell yeah, on the piece of paper I don't want my name be like Josh Ezeka told us that your the one called us, that's gonna put my family in way more danger, you understand?

Q: If I ever tell you [indiscernible].
A: [Indiscerible]

Q: [Indiscernible]
A: You understand what really going on or whatever, you know that the lower side.

Q: Don't you think that he needs to know who you are so he's honest with us and he comes clean and he says yes, I'm the other part of this, were gonna say hey Josh told us...
A: But, you, you guys not telling me that though. If y'all told me that then I would've told y'all more than what y'all, y'all saying...

Q: No, no, no...
A: [Indiscernable]

Q: Shouldn't we be able to tell him that Josh told us this, you need to come clean?
A: No, hell naw.

Q: So [Indiscernible]
A: [Indiscernible] that what my family in more danger. I ain't not worry about high, I'm worry about the lows.

Q: Hold on a second, alright
A: That's put my family more in danger, that's what's gonna get me killed before I even have a chance to get out. And you know that.

[OFFICER LEAVES THE ROOM; RESUMES AT 1:01:35]

Q: So you wanna, I understand you wanna know if, Freddy talked to us?
A: Yes.

Q: We never promised Freddy any anonymity in this. You know we never, he, he is kinda responsible for this too because he called you and told you that Sto was coming down the street right?
A: Okay, how y'all explain to me, it make it seem like, basically like he the one that talk to y'all that y'all putting all, put the pieces together.

Q: [Indiscrenible]
A: [Indiscernible]

Q: We have a lot of pieces before that though. But we, but we needed him to talk just like we need you to talk, to get him in trouble now too.
A: But he [indiscernible] talk got me in trouble.

Q: What's that?
A: So he don't talk that got me in trouble. Y'all ain't got to say yes [indiscernible] just [indiscernible] did he talk to you guys?

Q: I told you.
A: He did, basically.

Q: He's not the only one though. Some of your friends aren't really that good of friends. And some of your neighbors, have eyes, people walking down the street have eyes.
A: [Indiscernible]

Q: People in the cars have eyes. The, the video. The forensic evidence. The cell phone evidence. I mean I, we're, we're gonna get these, these, these DCC's tested. These discharge cartridge, the, the bullet, shell casings that came out of the gun, we're pretty convinced that your DNA is gonna come back on it. Your DNA is already in already in the system. So you already admitted to be, to be shooter [indiscernible] but your [indiscernible]
A: Well I don't touch bullet though, that's one thing I don't do.

Q: [Indiscernible]
A: [Indiscernible] like I said, you know, [indiscernible]

Q: All you gotta do is breathe on him. All you gotta go is breathe on him. They can also be in your pocket and it get sweat. It was a hot day that day
Q: So now you um, you said that if we told you about Freddy, that you would tell us what really happened. What, what are you leaving out? Did Freddy call ya? Yeah?

Q: It wasn't a girl that called you?
Q: No. And, the thing about uh, Trevon, was Trevon in the car with Zoe?
A: No that, he, he wasn't in the car with us.

Q: Okay. Cause some people said he was. Was he in the car with uh John Jackson?
A: I believe so, uh, but, they never you know, I don't know where the hell they went. They, he, Zoe called me and said that shit, that they, they was behind him. So when he came and pick me up, you know he came and picked me up by himself so, I don't know, where they was at, I ain't seen them since either.

Q: You haven't seen John and Trevon? Well Trevon is in St Cloud.

A: Yeah I know, I just seen [indiscernible] and said some'n about him like seen his mom at the store that day she's like yeah he [indiscernible] I asked [indiscernible] you seen him.

Q: I'm sorry what you just say, your fingers are inside of your mouth?
A: I said I seen his mom the other day.

Q: Who, Trevon's?
A: Hmm mm [affirmative response]. She told me that he got sent to prison, and then, he's fighting some other case, and he got sent to prison for some, some, some I don't know what happened to him. [Indiscernible] locked up.

Q: Did you see Trevon with, with, was it John?
Q: John, yeah.

Q: John Jackson? John...
A: I just, I just, I just heard about it, I was with Tawan and them, a few guys in my basement that day really. I wasn't even hanging out with Zoe that day or nothing, he just called me and was leaving, he said Sto and them leaving the fucking barbecue [indiscernible] with guns, I'm following them right now.

Q: There wasn't a girl in the car was there? And not a girl that called? It was Freddy?
Q: Do you remember if he, he mentioned uh any other names beside Sto? That was in that, that was supposed in that car?
A: The guys like you said, they said Tez and um Matt Lord.

Q: Were supposed to be...
A: Tez Blood and Matt Lord supposed to be in the car with him.

Q: With Sto? Okay.
Q: Okay, did we give you that, or is that something he really told you?
A: That's what he really told me.

Q: That's what he really told you?
A: He really told me. That's why I knew that, y'all had some, some, form or fashion, y'all spoke to him some extent because nobody else whatever still to this day, we haven't discussed, who's all was in the car. People knew okay it was Sto, everybody in the world know who else was in Sto's car. And you know just sometime Sto and stuff been in the area and we was come go shoot up his crib and fat lucky mother fucker came across the side but ended up hitting me, hitting the car, ended up hitting somebody else in the process. And he said he heard we got up out of there and shit got rid of his gun and some shit like the high end people do.

Q: Is he Ray Ray?

A: No.

Q: Oh I though you said Ray Ray, I'm sorry. I mean you fast like I do sometimes, it's hard to completely understand you. I'm not saying you stutter, cause you're not stuttering okay?
A: I do stutter a lot.

Q: I know. But you're not doing it now.
A: They told me I talk fast kind so I just told that if I talk too slow you might catch on, to stutter you know?

Q: So, Little, Little Zoe calls you and told that, that, Sto was driving south and he said that Matt Lord and Tez Blood, were in the car right? Is that what you're saying? Yes or no? You have say yes or no?
A: Yes, yes that's what I was told.

Q: Did, did you see Matt Lord and Tez Blood in the car? Did you really see them in the car?
A: No, there's windows in the back, and I just, windows was up and the, the only window was down was Sto, all I seen is Sto and somebody else in the back but the window is tinted…

Q: You could tell there was some people in there?
A: Yeah it was other people up in there.

Q: Was that in the front passenger seat or the back seat?
A: Both.

Q: Cause you know what we learned, there's a 4 year old girl in the car.
A: Really?

Q: Yeah.
Q: Maybe.
Q: That's what we were told but.
Q: Yeah, but, some people are lying to us too about who's in that car. We know Sto was in the car. One last, well, one last thing that I have is, did you really drop the gun there in the, in the grass?
A: Yeah.

Q: Why wouldn't a fucking dog find the gun but he finds the shell casings?
A: Uh, I don't know.

Q: You think somebody might of picked it up really quick or not.
A: Mm mm [Negative].

Q: Nobody was with you?

A: No.

Q: So honestly, you dropped the gun right there?
A: Honestly. I swear to God on my mother's [indiscernible]

Q: Why you look, why you look down when you say that?
A: I'm looking at you.

Q: Alright.
A: Honestly, I swear to God, I dropped the gun.

Q: Okay.
A: At the scene.

Q: So, can, will you confirm or, can you, will you tell us if we're right. Was it a Bersa?
A: Was it a Bersa? I think it was, Is that what they call it? I think it said Thunder on it or some'n that. But it said Thunder .380 or some type of or I believe something like that.

Q: Did it have a little extension on it or something? Extended clip.? Yup.
Q: Did it hold, did it hold more than 8 or 9?
A: No I think it held, I think it's 8 and 1 in the head was 9.

Q: 8 and 1.
Q So Little Zo pull up in front and you ran, which side of your house?
A: That side.

Q: So it would be the, the side by the white old lady or the yellow house?
A: It's by the white old lady.

Q: So you ran, you didn't go in the house at all?
A: No.

Q: You went to the front, on the north house at your house and to the front yard?
A: He pulled up just in time, boom.

Q: Did you ever go up into the porch and into the car, or did you just go right to the car?
A: Just right to the car.

Q: You got in the front, front passenger seat or back seat?
A: Front passenger seat.

Q: Cause you're a big guy, you probably can't get in the back huh?
A: I mean I could but there was nobody [indiscernible] in the front seat.

Q: And there's nobody else in there besides you and Little Zoe?
A: Nobody else.

Q: That picture that I showed you of that cat in the uh, that pic-picture that you wouldn't sign, who was that?
A: Little Zoe.

Q: You got anything else that you're not telling us Josh, that you're holding back?
A: That was it.

Q: Did anybody else that was in the house or is anybody else responsible for what happened to that old lady?
A: Nobody else.

Q: So Uchi's not?
A: No, nobody. They was in the front, they, they heard the shots, I told them go in the house and I left.

Q: So they were in the front yard?
A: Well, my Uchie and Anthony they, they was, my, my old man just got off work, he pulled up so him and Uchie outside talking and they, Uchie was playing basketball, they outside talking in the front yard. But they ain't know I came out the back door to go do anything, they didn't have no idea.

Q: When you left the, when you left out the back door, was there, any of those guys that were down stairs were they upstairs, like was Twan up there…
A: No.

Q: Was Dijon?
A: No.

Q: Chartez?
A: Was, they playing game.

Q: All of them were downstairs?
A: Playing game. They ain't know what was going on either. They just they said actually the raid was coming I guess someone said it was going on and then I got a call about…

Q: Did, did, did, Uchie? hear the phone call?
A: No.

Q: Does your mom, does your mom or dad hear the phone call?
A: No, I told you it's like, no one had knew nothing happened until…

Q: You got it on speaker phone?
A: No.

Q: No? Alright, I think that's uh, answers all my questions.
Q: Okay, so you're gonna go to jail right now for murder warrant. Okay? If, if you were to say anything to the daughter of Birdell Beeks right now, or the grand daughter who watched her grandmother get killed, what would you say?
A: It wasn't intentional, but I know, I, I, can't, I'm sorry what happened to you guys family. God bless her soul, like I [indiscernible] I see one that I [indiscerible]] I know that I can't reverse time, I can't control what them bullets did to her or them that day. But all that was on the news, some of that, the bullet was meant for them or I shot them, I don't know where she got that from. I was upset about that made it sounded it worse, I agree I maybe not come out with it.

Q: Yeah, there was a lot of misinformation that came out originally.
A: She talking about, I guess news aiming for me and I'm going whoa, whoa, whoa, whoa, wait, hold on, wait a minute.

Q: I bet you heard a lot of...
A: [Indiscernible] I wanna figure out why would she said some'n like that but you know, I'm already in the wrong for my actions, so I'm, I'm not gonna question her about it but like I said you ain't have to all that but like I said my line from me to them, or whatever you know, sorry your mama got hit, grandmother got hit but I promise the bullets weren't meant for her them but then I can't reverse the past and uh...

Q: Do you want us to talk, do you want us to pass a message on to your family at all? Or, or you do it yourself?
A: You can pass it on to them.

Q: What should I tell them?
A: Tell them, I'm sorry I cause, cause, caused them enough bullshit in my life but I did for them all the stuff I know put them through till the last little [indiscernible] on this bullshit t that, shit, I pray, uh hope, hope they alive when I get out. You know my parents are getting old and I, and I don't wanna be the person to be locked up, I can't go to they funeral, that's what devastating me.

Q: Alright.
Q: [Indiscernible].
A: [Indiscernible] tell them I love them and [Indiscernible].

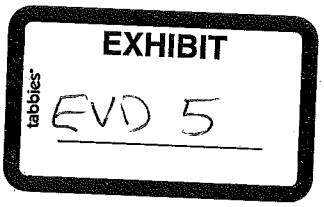
Q: Alright.
A: I'm gonna get some money sent to me, I'm gonna call them.

Q: Alright just have a seat. We're gonna grab some guys to grab you here and we should be with you just shortly.

[OFFICERS LEFT THE ROOM AND DEF WAS TAKEN TO JAIL]

END OF STATEMENT

T:\Division\CommPD\Yang, C\GANG UNIT\00 TRANSCRIPTIONS\2017\Ezeka, Joshua 17A00824 (2nd Scales) Bates and Mathews cy.docx



State v. Joshua Chiazor Ezeka
MNCIS# 27-CR-17-1879
ProCase# 17A00824

Defendant's Interview

Q: You can step in.
A: [Inaudible] take 'em off first.

Q: Okay.
A: [Inaudible] if I take 'em off or some'n [Inaudible] take 'em off?

Q: I just want ya in here so I can take 'em off.
A: I want you to leave me the fuck alone.

Q: Alright, have a seat. [Inaudible]

[DEF IS LEFT ALONE; INTERVIEW RESUMES AT 9:45]

Q: What are ya reading there?
A: [Inaudible] for you guys.

Q: Huh?
A: [Inaudible] for you guys, of course.

Q: Oh. You need some help?
A: No I got it.

Q: [Inaudible]
A: Yeah [Inaudible].

Q: Hey remember me from, a, Mark Profit's deal?
A: Mm-mm *[Negative]*, I remember I talked to a lady.

Q: You talked to a lady there?
A: That night, um…

Q: Did you ever find out any more on that?
A: Me?

Q: Yeah.
A: [Inaudible] found out the, they just, [Inaudible] made it to a cold case.

Q: No it's not made to a cold case it's just we ran out of information. We didn't even know…
A: [Inaudible]

Q: [Inaudible] that Josh or shooting at Mark, they could have been shooting at you or shooting at the other guy in the car.
A: Well how do you know that?

Q: Come again?
A: Well how do you know this, you talking about…

Q: How do I know that?
A: Yeah talking about they shooting at me, what's this, I mean, you might know something I don't.

Q: No I'm just saying, they're shooting, remember, remember they were across the street and they were down in that, the abandoned house?
A: Yes my, that's my [Inaudible] remember.

Q: No it was one direction but, they were a long ways [Inaudible]
A: [Inaudible] they said they, they found shell casings some, some house down the street, some house by that abandon house.

Q: No we didn't find any shell casings, we found one bullet right behind where Mark got killed.
A: You said one bullet?

Q: Yeah.
A: I mean we heard like, twelve, thirteen, fourteen shots.

Q: I know but…
A: [Inaudible] one bullet [Inaudible]

Q: Yeah. [Inaudible]?
A: [Inaudible] that's what, I don't know which squad car took me down to the investigation that's what he told me, he told me in the car.

Q: Oh yeah?
A: Yeah.

Q: Hmm.
A: Cop me he had [Inaudible] it was like fourteen, fifteen, how you cannot hear it [Inaudible] every time somebody shoot at somebody.

Q: Hmm? You're kinda fast talker aren't you Josh?
A: Yeah I stutter, I got to.

Q: Yeah.
Q: Oh stutter, me too.

Q: This Sergeant Green.
Q: I was a kid till I was five.

A: Hmm.

Q: I talk slow. Sergeant Green…
A: When I talk slow I stutter too much.

Q: Yeah.
Q: Sergeant Green. It's nice to meet you. [Inaudible] see ya again. I actually went to a school for that, for my stuttering.
A: I had so-, so-, some type of, some type of education centers [Inaudible] stuttering they help me all out [Inaudible] and everything with them. So I talk better [Inaudible] worse than years ago.

Q: You said it used to be worse?
A: Yeah a lot [Inaudible] I almost, almost like couldn't talk at all.

Q: Mine was so, yeah I couldn't either.
A: Till at least like eleventh grade.

Q: Eleventh grade? I was twenty-three.
A: Whew.

Q: Yeah.
A: I'm sorry to hear that.

Q: So I know how you feel man. Did ya get teased a lot as a kid?
A: Yeah, a lot.

Q: What'd they call you?
A: Stutter box.

Q: Stutter box? [Laughing] I was called Ch-ch-ch-ch-ch-chuck. So I know how ya feel man.
Q: Welp, you know why we're down here talking to ya right?
A: Uh-uh [Negative], why?

Q: Well, we were investigating that case where that a, a, Birdell Beeks, a Grandma, Mother, a, got shot at 21st and Penn right out your back door there and across the alley.
A: Oh that's what happened [Inaudible] news they were saying, they were talking about that stuff back there?

Q: Yeah, so, um, that's why you're here. You, you also got I guess, a probation violation warrant. From a, your probation officer.
A: What's the violation for?

Q: [Inaudible]
Q: Um, well, the shooters, shooter went into the back of your house, um, that's why everybody was taken out of your house and we took all your computers and phones and stuff but [Inaudible].

A: We ran.

Q: Yeah.
A: In the house?

Q: Well some of, some of the people ran in the house, some of the people didn't but we've talked to a lot of people.
A: People?

Q: Yeah. We kind of know what happened, we don't know why it happened, we think maybe, could have been an accident or something, could have been a case of misidentification but we know that, um, the person that did the shooting wasn't out there to shoot a, lady who was a Grandma and who was a, just sitting at the stop sign so, we know that sometimes, bullets don't have names on 'em.
A: That's correct.

Q: Sometimes you just put bullets down range and it, it, hits something, maybe accidentally or whatever so.
A: Mm-hmm [Affirmative].

Q: But, um, it, it has to be dealt with you know, there still has to be some consequences...
A: [Inaudible]

Q: For who, pulled the trigger.
A: That's my Grandma.

Q: That's what?
A: That's my Grandma, hell yeah. That's one, that's one of my uh, that's one of my cousins Auntie. On my Dad side, I was trying to explain to my…

Q: Oh yeah.
A: Female cousin Danaje, that's her Auntie.

Q: Yeah.
A: I just found out she was my cousin [Inaudible] like a year or two ago.

Q: Yeah.
A: [Inaudible].

Q: Yeah.
A: But I can't remember though, so young.

Q: Well.
A: [Inaudible] that's true [Inaudible] I can't identify, I can't [Inaudible] she looked familiar, she [Inaudible] now so I'm like, wow.

Q: Yeah. How does that make you feel?
A: Makes me feel, makes me feel a little bad.

Q: Yeah.
A: Not because [Inaudible] you know like this stuff is around North side, that was probably out of control.

Q: Right.
A: [Inaudible]

Q: Yeah when Roy…
A: And it sh…

Q: Got killed [Inaudible]…
A: Sh-, sh-, should never [Inaudible] should never have been, should have never went that far [Inaudible] reckless.

Q: Right.
A: Unless somebody, that's reckless endangerment to me.

Q: Yeah.
A: Mm-hmm [Affirmative].

Q: Well, um, so that's why you're here and you're probably wondering why, we're, we're talking to you about Ms. Beeks' death, but um…
A: Yeah I was told, I was told, I was [Inaudible] you know they said that, I mean the Fourth Precinct, I guess since it's my house [Inaudible] something that, I had something to do with this, some, some dumb situation like that.

Q: Yeah.
A: [Inaudible]

Q: We've been looking for ya I mean since it happened and you know we, your Dad told us you kind of went into hiding after, you left that day so…
A: That's incorrect.

Q: What's, okay, well, I, I'd [Inaudible]…
A: [Inaudible] I be, I be arguing with my parents [Inaudible] arguing about [Inaudible] dumb stuff, man I got anger issue so I just leave…

Q: Yeah, well…
A: [Inaudible] I weren't angry but I had storm out.

Q: Your Dad hadn't seen ya for a couple days…
A: [Inaudible] and forget everything, yeah.

Q: [Inaudible] there on Sunday I worked all weekend for Memorial Day.
A: [Inaudible] messed up.

Q: Yeah your Dad was worried about ya though.

A: Talking shit, told me to get the hell out.

Q: Yeah.
A: [Inaudible] outta sight for a while, [Inaudible] space.

Q: Yeah.
A: Irritating, he's irritating me, we irritating each other each other, we know [Inaudible] we argue for years.

Q: Yeah.
A: [Inaudible] I just left.

Q: Yeah, well I can, I can answer your…
A: [Inaudible]

Q: Question ya asked, about there, you know why, why you got locked up on your probation violation, and we can talk about that stuff but…
A: Yeah…

Q: Because you're in here I gotta, I gotta read your rights, alright? You know, have you ever been read your rights before?
A: Yeah.

Q: Yeah. You know you have the right to remain silent, right?
A: Mm-hmm [Affirmative].

Q: Anything you say can and will be used against you in court. You have the right to talk to an attorney and have an attorney present now or at any time during questioning.
A: I do have some paper for you [Inaudible].

Q: [Inaudible], if you can't afford a, a attorney one will…
A: [Inaudible]

Q: [Inaudible] do you underst-, do ya understand your rights Josh?
A: I understand everything.

Q: Okay. Having those rights in mind do you wanna talk to me about your, why you're violated on your probation…
A: I will, I wanna talk about that.

Q: You'd like to talk about that?
A: Yeah cause I'm [Inaudible]…

Q: We did a search warrant after it happened, um, the shooter in this case, um, you know you can, you can play dumb if you want but…
A: [Inaudible]

Q: I know you're a lot smarter than that, you're a smart guy.

A: Um…

Q: The shooter in the case ran into the back of your house…
A: [Inaudible]

Q: People, people that did the shooting ran in, into your yard, some of 'em went in the house, some didn't.
A: [Inaudible]

Q: So we didn't…
A: So, so you saying [Inaudible]

Q: People were pulled out of your house, people were pulled out of your house and initially, a, one of the witnesses identified your brother as the shooter, um, we did a search warrant on your house and we found your loaded .22 in your bedroom. Um, the room that your Mom and Dad say is your bedroom. We found ammunition from .45's, .30, .380's, .38's, .22's in your bedroom along with a bunch of marijuana so. Alistar and your, probation officer, obviously has access to all these reports and stuff and sees that and, he said prior to this you were kind of towing a thin line, um but, you know, I, I think if you're on probation and I don't know what you're on probation for, for theft or something?
A: Mm-hmm [Affirmative].

Q: But um, to be on probation like that you can't be around guns, loaded guns, you can't be around ammunition I think you can't obviously have marijuana and, so, that's, that's where we're at, that's why, you were violated on your probation. Um, we're here to talk to you about the other issue, about the murder of Birdell Beeks and we know you were out there, we know that Travon was out there…
A: [Inaudible]

Q: Travon Blackman was there.
A: Out, out where? You fucking lie?

Q: Out at 2107 Oliver.
A: Out where, so show me a video that says I was out there then.

Q: Well…
A: [Inaudible]

Q: That's just the thing you know we, we…
A: [Inaudible] wasn't there so what you talking about?

Q: Yeah.
A: [Inaudible]

Q: Your brother, [Inaudible] I mean your braids are shorter than your brothers. [Inaudible]
A: [Inaudible] shorter than my brother.

Q: Yeah, your brother's got some long braids. Ouchie.
A: You said braids?

Q: [Inaudible]
A: Dreads?

Q: Whatever you call it, what is it? Dreads?
A: Yeah.

Q: Yeah dreads.
A: These are medium sized and short dreads can't be braided.

Q: Come again? Short hair can't be braided?
A: Mm-mm [Negative].

Q: I braided my hair once.
A: Your hair, I wish my hair was [Inaudible] like yours, cause I, I've had to deal with naps.

Q: Yup.
A: I mean I know everybody hair get nappy but it's like…

Q: I can give ya a card.
A: Alright.

Q: Heard of Crossings Barber?
A: Where about?

Q: That's where I go, Crossings Barber.
A: That's where you go to?

Q: Yeah, they hook ya up when ya get out.
A: Yeah.

Q: So, that's the issue we, we a…
A: Probation violation.

Q: Probation violation and then um…
A: What else, yeah…

Q: Yeah. And then the, the shooting deal, shooting your .380 that day.
A: My .380, I don't have a .380.

Q: No, what kind of guns you shoot?
Q: You got all kinds [Inaudible], you got, you got ammunition for a .380. What do you put that in a .45? Come on man.
A: Hmm.

Q: You can't put it in your .22.

A: [Inaudible] had them old ass bullets for years.

Q: Yeah?
A: Bullets been there way before I was even on probation, just like that.

Q: What do you think should happen to somebody that shoots a lady like that?
Q: Accidentally.
A: I don't know.

Q: You know I mean it's…
Q: You gotta have an opinion?
A: Have an opinion?

Q: You're the Judge and jury what, what would you do if somebody was shooting at say a rival gang member and accidentally shot a woman, what do, you think they should get some serious time or maybe get some consideration cause it was an accident or?
A: I wouldn't jail nobody, that's just me from [Inaudible].

Q: [Inaudible]
A: [Inaudible]

Q: Do you know where you…
A: [Inaudible]

Q: Do you know where you were that day?
A: [Inaudible]

Q: If you weren't at home?
A: [Inaudible]

Q: Javon was over there, William was over there…
A: [Inaudible]

Q: Chartez was over there.
A: When I get mad, I always [Inaudible – *storm?*] I leave so [Inaudible] went to the store [Inaudible] left, left after three.

Q: [Inaudible] house, you left at three?
A: Like 3:50, something like that, left a little bit almost 4, it was 4. After we got into an argument I left and then I went to the store, walked down to the store [Inaudible] right away.

Q: What store?
A: I smoke, Wally's, I smoke too much. [Inaudible]

Q: How'd you get down to Wally's?
A: On foot, always.

Q: I mean did you walk down on a, Penn? Or did you walk down Oliver and then cut over?
A: I walked down Oliver and then I come up from Oliver and went to the store. I don't ever walk down Penn, Penn.

Q: You don't like walking down Penn?
A: Mm-mm [Negative].

Q: Too busy?
A: To open.

Q: Yeah. What were you wearing that day?
A: You said what I wearing that day?

Q: Yeah.
A: This.

Q: You were wearing a black shirt, black pants, tan boots?
A: Cause when I was shot, my clothes was [Inaudible] for investigation.

Q: You know we got cameras at Wally's right?
A: Yeah.

Q: So we should see ya walk in there about 3:00?
A: Right, naw, not by three. I'm trying to think, I think it was 4 something.

Q: [Inaudible]
A: [Inaudible] walk somewhere first.

Q: Did you…
A: [Inaudible]

Q: Go up to the Olympic Café that day?
A: Mm-mm [Negative], no.

Q: Where'd you go to after you went to Wally's?
A: Hmm, walked down and blow some steam off, I was mad, we talk too much, I be on that shit [Inaudible].

Q: How come y-, your buddies, Tawon and um, William and Chartez, Deshawn, they're all over at your house but you're saying you ain't there [Inaudible]…
A: [Inaudible]

Q: You let them play your games downstairs?
A: Oh, but they've been coming over for years.

Q: K.
A: Long time friends from school.

Q: You walked up…
A: William, William's uh Chartez's older cousin. I just meant him not too long ago.

Q: Yeah, yeah, William.
A: I don't know him like that, I know him like when we met each other [Inaudible] a month or two but I ain't know him like [Inaudible].

Q: Who, whose car were they in that day, there's, it's like a black Yukon or something or a? The guy with little twisties. He's got little twisties about this long.
A: You said, a black Yukon?

Q: You know a guy like that?
A: [Inaudible]

Q: Yukon or a GMC?
A: I mean [Inaudible] dropped off, [Inaudible] cars.

Q: Cause that day they were at the Olympic Café, I got the video from there and they leave the Olympic Café, Chartez and William are together but the guy that's driving is, he's got some twisties in the hair, in his hair, you know who that is? A smaller guy than you, kind of thing?
A: [Inaudible]

Q: Did Trayvon meet with ya too? Your buddy with the black boot on his leg?
A: Mm?

Q: When your, your dad get pissed at you or did he stay back at the house? Do you remember?
A: No. [Inaudible] he's waiting on something and I just [Inaudible] and I left but I know that, know that Chartez and them, they was gonna be their way to come meet me but [Inaudible] I left, I was too mad [Inaudible] I want you to get out, I'm gonna call the police if you don't get out, I'm gonna call the police if you don't get out [Inaudible] leave. [Inaudible]

Q: So Trayvon [Inaudible]
A: [Inaudible] I left.

Q: [Inaudible] is Trayvon like a, he's your buddy right, you guys are together a lot, you've been together when shit has happened right?
A: Some shit happened?

Q: Yeah like when he, when he was shot you guys were close by, you guys were with each other?
A: You talking about when he was shot?

Q: Yeah, no, when…
A: Naw.

Q: When you were shot.
A: [Inaudible], when I was shot.

Q: He was there, when [Inaudible] when you were shot. But [Inaudible] does he help control your anger is like hey, calm down a little bit? Did he do that that day?
A: [Inaudible] no cause he was, he was quiet [Inaudible].

Q: He was quiet?
A: You know, he, he kinda like an orphan in a way. It's like he not but he is.

Q: What do you mean by that?
A: I [Inaudible] we treat him like one of our family members.

Q: So, when you got into the argument with, with your Dad…
A: [Inaudible] when he get into it with parents he's always coming to my house.

Q: I understand, but when you got in the argument with your Dad right, that day, before you stormed out, were you guys downstairs with everybody else or were you up the, up the stairs?
A: I was upstairs in the living room.

Q: Okay, was, was Trayvon in the living room, bedroom or downstairs?
A: He was downstairs, I think he waiting on a ride with somebody.

Q: Was he uh, who is it, the one that's quiet is that Tawon, Tawon Williams? He's kind of white and…
A: He's always, he's always a quiet person [Inaudible] he's always been [Inaudible] school.

Q: Cause he's the…
A: [Inaudible] quiet kid, he say stuff and he just quiet.

Q: No he's, he was decent with us. You know they, they brought all those people down here right?
A: Yeah, from what, from what I heard, a couple days later.

Q: Yeah.
A: [Inaudible]

Q: Tawon did?
A: No my Dad.

Q: Oh your Dad did?
A: Cause I left my phone there so I guess, y'all, I guess when, when y'all came and raid the house or whatever you all did [Inaudible] they ran the yard, he just told me. Left my phone was so I couldn't get a hold of nobody. He would've told me sooner, I cam back sooner.

Q: Yeah. Where were ya hanging out the last couple days?

A: I don't know.

Q: Yeah.
A: [Inaudible]

Q: Did you ever, have you ever been down here in this office or this building?
A: Yeah the exact same room, yeah, a few times.

Q: I thought I talked to ya when a, when Mark Profit got shot. Didn't you come down here?
A: Yeah well that [Inaudible]…

Q: Okay.
A: [Inaudible]

Q: Okay.
A: Yeah I think she left [Inaudible] went to sleep, woke up, I was still in his room [Inaudible] still in the room, then she came back. [Inaudible] four in the morning [Inaudible] dropped me back off at home [Inaudible] drop me back off at home.

Q: Did you come down here the other night?
A: Other night, yeah.

Q: Who were ya with?
A: Who was I with?

Q: Yeah.
A: I wasn't with nobody, I'm with somebody.

Q: [Inaudible] twelve year old kid or something you were with, so.
A: Kid, hell no it weren't do damn kid. [Inaudible] he said that the Kris guy whoever [Inaudible].

Q: Karakostas yeah.
A: Say he was going [Inaudible] so I left.

Q: Oh they thought you were with some kid.
Q: You, you were by yourself though?
A: Yeah.

Q: But you talked to a detective right?
A: Yeah, [Inaudible] somebody with like a plain little clothes with a badge [Inaudible] a gun. I think he, he was taking a cigarette break or something and he's waiting for the other partner, the other partner walked up.

Q: Okay.
A: [Inaudible] my information.

Q: What you wearing that night?

A: [Inaudible] a red shirt.

Q: But you, the night, the night that you left when [Inaudible]. You wearing the black and the wh-, and the black pants?
A: Yes sir.

Q: So we'll see you on video at the…
A: Wally's.

Q: Wally's at about four o'clock?
A: Maybe it was, maybe a little farther [Inaudible] cause I don't remember [Inaudible]…

Q: How about…
A: This, this time frame, there's a time frame before that.

Q: How about between three and six, we'll see you there?
A: You said three and six?

Q: Yup, pm that night. The night of the 20, what 20…
A: Between like three, maybe three, maybe five. [Inaudible]

Q: Were you ever with somebody else when you went to Wally's?
A: Mm-mm [Negative].

Q: No. And was your hair just like it is now?
A: Mm-mm [Negative] it was down.

Q: Hey, I got a question I know when William went over there, how long after William and Chartez, how, how long after they got there did you leave? Like half an hour, ten minutes?
A: Man, you tripping.

Q: I'm not tripping I just…
A: I told [Inaudible] I never seen them, I never ran and seen them that day, this [Inaudible] come back [Inaudible]

Q: Chartez said that? That he never saw you that day?
A: No I spoke to him, I spoke to all of 'em that day, they never seen me, that day. [Inaudible] the only person that seen me, that was Trayvon.

Q: Did you tell him to say, "I never saw you?"
A: No.

Q: Like the wink, wink, nod, nod thing?
A: [Inaudible]

Q: [Inaudible]
A: [Inaudible]

Q: [Inaudible]
A: Read that paper, I don't wanna talk to ya no more. You just pissed me off with that.

Q: [Inaudible]
A: [Inaudible] y'all think this a joke or something.

Q: This ain't a joke, a lady [Inaudible]…
A: [Inaudible] y'all think this is a joke or something, obviously, if ya'll [Inaudible]…

Q: [Inaudible] joke…
A: [Inaudible] fuck I said, hell no [Inaudible]…

Q: Yeah, somebody, matching your description goes to your house…
A: [Inaudible]

Q: With the guy, with the guy with a boot on his leg which is Treyvon, Trevon.
A: No.

Q: Yeah. Which is your running buddy.
A: Running buddy?

Q: Yeah and you shot this lady and you killed her.
A: Me?

Q: That's why we're talking to ya.
A: Na.

Q: You can deny it all you want and think it's a big fuckin joke.
A: Okay, show me then.

Q: Show you what?
A: That I shot her, since y'all said I shot her.

Q: Look me in the eye and tell me ya didn't.
A: I did not shoot that lady at all, [Inaudible] never. [Inaudible] ever.

Q: How do you feel about that?
A: [Inaudible] I feel about it.

Q: Yeah.
A: Whatchu mean how I feel about it?

Q: How do you feel about killing a Grandma? Killing somebody's Mom?
A: I didn't kill nobody.

Q: Well you didn't do it on purpose right?

A: [Inaudible] ain't kill nobody. I don't where you got that idea from, [Inaudible] too or anything else you gotta say, na, na.

Q: How ya sleeping at night? You sleep okay?
A: Yeah, normal as hell.

Q: Do you have bad dreams about that day?
A: Dream about what day?

Q: About killing that lady?
A: I didn't kill a fuckin lady.

Q: You think…
A: [Inaudible]

Q: Your friends are your friends but your friends are not tellin us what you told us. You can think that.
A: [Inaudible]

Q: [Inaudible]
A: Whatever.

Q: Yeah whatever [Inaudible].
A: Can I, can I go get booked in [Inaudible] warrant.

Q: You'll get booked in when we're ready.
A: Na, [Inaudible] go to sleep.

Q: Yeah that's fine.
A: [Inaudible] sleep.

Q: Yeah cause you can't sleep at night because of what you did.
A: Whatchu mean sleep at night? [Inaudible] wake up early in the morning. If I had a job I'd get up in the morning or nothing [Inaudible] like you do [Inaudible].

Q: Do you have a conscience?
A: Yes I got a conscience [Inaudible]

Q: You're there when Mark Profit gets killed, you're there when Roy Davis gets killed and now you're here when Birdell Beeks gets…
A: Whatchu mean here? I wasn't fuckin [Inaudible]…

Q: You're there, you're there, you're around [Inaudible]…
A: [Inaudible]

Q: [Inaudible] I'm gonna show you [Inaudible]
A: [Inaudible] there.

Q: I'm gonna show you weren't at Wally's that's for sure. Cause I've looked at the video of Wally's.
A: [Inaudible]

Q: And I know you weren't there.
A: Alright.

Q: So you can, you can tell me [Inaudible] all day.
A: Alright.

Q: But you know what, either you did it on purpose and you're…
A: I didn't do shit.

Q: You're that cold, or you did it on accident.
A: [Inaudible]

Q: But you can't say you didn't do it.
A: I didn't do it. I told you that already.

Q: Yeah.
A: If you think I didn't do it, if you think I did that's your fault. That's for you to figure out, not me.

Q: Well if I wanted the easy way out I would have booked your brother. I would have booked Ouchie when the girl said that, yeah that's the shooter. But then you know what, they said, no, that person had shorter braids that shot [Inaudible]…
A: [Inaudible] shorter braids [Inaudible] mother fucker around my neighborhood...

Q: Yup.
A: [Inaudible]

Q: You're the only one…
A: 'Ey man [Inaudible]…

Q: Talking to people running around…
A: [Inaudible]

Q: With, with black boots [Inaudible] right?
A: [Inaudible]

Q: [Inaudible] yeah, Trayvon for getting shot in the foot.
A: Shit I guess.

Q: Your boy Trayvon.
A: [Inaudible]

Q: What do you think he said?
A: I don't know what the fuck he said.

Q: Is he a good friend of yours? You gotta think about that for a second.
A: [Inaudible] I need to fuckin go out to get booked, I'm…

Q: [Inaudible]
A: I'm done talking to [Inaudible].

Q: [Inaudible] desperate.
A: Desperate?

Q: [Inaudible] say things.
A: I'm not desperate for nothing like I said. Tell you what.

Q: Tell me what?
A: [Inaudible] to the county and get myself booked for my probable cause warrant…

Q: In time, when we're ready for you okay?
A: [Inaudible] ready for me. What do you mean when you're ready for me?

Q: You can have nappy time if you want for a little bit okay?
A: Nap for a little bit, for what? Can I, can and I go and get processed already. I don't wanna talk to you [Inaudible]…

Q: How come you can't look at somebody in the eye when you talk to them?
A: You guys are disrespectful. Why [Inaudible].

Q: Disrespectful, we're…
A: Yeah.

Q: Trying to understand…
A: Yeah.

Q: Where you were, what you're doing.
A: You don't understand [Inaudible]

Q: If you didn't do it, tell us why you didn't do it. Tell us…
A: I didn't do it.

Q: What were you doing?
A: I told you I walked to the store, I went to the store [Inaudible].

Q: [Inaudible]
A: [Inaudible] other shit, mm, every time [Inaudible] talk to you mother fuckers. [Inaudible]

Q: We're, we're actually good guys, I don't know if you know that…
A: [Inaudible]

Q: But we really are so…
A: [Inaudible] get the fuck out of here.

Q: [Inaudible] same time.
A: Same time nothing, fuck out of here. [Inaudible]

[OFFICER LEAVES THE ROOM; RESUMES AT 39:12]

Q: Hey. I got a favor, a favor to ask you. Okay?
A: A favor.

Q: Yup.
A: A favor for what?

Q: Well, we're not gonna ask you more questions.
A: [Inaudible] disrespecting me now.

Q: No, why?
A: Accusing me of shit I didn't do. Hell yeah I feel disrespect. Y'all violated my civil rights.

Q: [Inaudible] come on man, that's not, that's not violation of civil rights.
A: [Inaudible]

Q: Listen, okay, so…
A: [Inaudible] my personal wellbeing. You can't just [Inaudible] shit I didn't do.

Q: Listen, everybody in this case, that was in your house has submitted a DNA sample to compare against DNA that we have from the scene. Okay? Are you willing to provide a DNA sample to exclude you as a suspect in the investigation? We're giving you that out. You can say you know what if we find DNA, if we, we get DNA off these things and, it says, you know what it does not match, Joshua, and then that would kind of exclude you wouldn't it? But there is a chance though it could include you if you did shoot. Does that make sense? [Inaudible] set of keys alright, say these were evidence, part of the scene and they said yup we have DNA from somebody [Inaudible] male on there, k, [Inaudible].
A: Mm-hmm [Affirmative].

Q: And you can say, and, and then we say, hey Joshua we want you to submit to this DNA. So you…
A: I thought you already got my DNA.

Q: Hold on, oh…
A: In the system already [Inaudible] use it again.

Q: [Inaudible] no, a, we, we, we would need it to get again.
A: No ya'll do not.

Q: So…
A: No I'm not giving y'all [Inaudible]

Q: Hold on, hold, just hold, listen…
A: Disrespect [Inaudible]…

Q: I'm not disrespecting you [Inaudible]…
A: [Inaudible] that bullshit [Inaudible] that one time, they'll do it again. Oh, I forget their names.

Q: I, I'm not them, I…
A: Well that's…

Q: [Inaudible]
A: [Inaudible]

Q: This is me and you…
A: Look at the system.

Q: They're not in here, okay.
A: Even when my PO [Inaudible] DNA [Inaudible] years ago [Inaudible] blood DNA, they got my blood, they got my spit, uh, I'm not doing it twice. Fuck I'm do it for?

Q: Could you exclude yourself as a, as a…
A: [Inaudible]

Q: [Inaudible] as a person that left the DNA on those items.
A: What items?

Q: I'm not gonna tell, I'm not gonna tell you…
A: [Inaudible]

Q: That part, but everybody that was there…
A: How you wanna tell me something, but you want me to tell you something I didn't fucking do?

Q: [Inaudible] everybody that was in your house in the basement and then Shavon has given DNA, you're the only person that, that, that won't give it.
A: Okay, come on.

Q: You wanna give it?
A: Sure.

Q: Alright. Do me a favor, spell your first name for me? I…
A: [Inaudible] I ain't giving y'all shit.

Q: [Inaudible]
A: Man.

Q: It's a [Inaudible] do you wanna give it or not?
A: No, I do not. [Inaudible] no I don't…

Q: Cause you can't, you can't unconsent, I mean you cannot consent.
A: Yes I can…

Q: This was an option given to you.
A: Okay and my options no. You can go book me in [Inaudible]…

Q: Everybody else does it but you.
A: Y'all gotta [Inaudible] talk to people, I feel like [Inaudible] disrespecting me, you didn't do nothing wrong so I, I can't just put it on you but still.

Q: No, I didn't disrespect you, I want, I, if you didn't do something I, we have to, we-, if you did it we have to prove that you did.
A: You're talking about DNA already [Inaudible] I just did this not even like three weeks ago. I just been shot [Inaudible] under a month ago [Inaudible] it ain't even been thirty day. Y'all got the shi [Inaudible]…

Q: Where'd ya get shot?
A: In my stomach and my chest [Inaudible] brought me back to life and my, my, my [Inaudible] no type of contact, no investigators nothing cause all [Inaudible] for some other case.

Q: You [Inaudible] contact with the police?
A: [Inaudible] no type of contact with investigators [Inaudible] nothing, anything.

Q: [Inaudible]
A: [Inaudible]

Q: But that's what you're being violated for is because…
A: I have some in the house, that's not committing a crime. That's [Inaudible] been in the house for years.

Q: Are you a felon?
A: Yeah I'm a felon.

Q: Are you a violent felon?
A: No.

Q: [Inaudible] probation?
A: [Inaudible] anything.

Q: Okay but [Inaudible]…
A: [Inaudible] forgot about it to be honest.

Q: Well.

A: [Inaudible]

Q: So anyway, so everybody has consented to, give their DNA sample.
A: [Inaudible] man, you're, you're making it [Inaudible] pissing me off [Inaudible]…

Q: I'm not, I'm not here to piss ya off.
A: Cause…

Q: I'm asking for your cooperation.
A: [Inaudible]

Q: You're not going to jail for murder.
A: [Inaudible]

Q: [Inaudible]
A: [Inaudible] because [Inaudible] nothing until…

Q: But this is…
A: [Inaudible] prove that I really [Inaudible]…

Q: But you're an adult, so, so…
A: Oh hell yeah I'm fuckin an adult so I gave it already so give it from the same ass lady [Inaudible]. I got my phone back at the, a evidence, [Inaudible] up here.

Q: [Inaudible]
A: [Inaudible] she, she, [Inaudible] hospital…

Q: So Joshua [Inaudible]…
A: The day before, a, a, a day before court, she, she got [Inaudible] fifteen days old, it's not dried up nothing, if my DNA's in the system already what you [Inaudible] redo it for, they gotta store it away or something [Inaudible] system [Inaudible].

Q: Cause this is a separate case.
A: Separate case [Inaudible].

Q: Separate investigator, separate situation.
A: Okay.

Q: Different day.
A: Listen sir.

Q: Would…
A: [Inaudible]

Q: You like to give…
A: [Inaudible] I would not like to give nothing.

Q: Would you consent to…

A: [Inaudible] I don't consent shit.

Q: Okay then, alright.
A: [Inaudible]

Q: Well, well…
A: [Inaudible]

Q: [Inaudible]
A: [Inaudible]

Q: So you're the only person in this investigation that's been asked that's refused to give DNA sample.
A: [Inaudible]

Q: You don't want, want to give it.
A: [Inaudible]

Q: You're confusing me.
A: Cause you're confusing me.

Q: You wanna give it or not give it?
A: [Inaudible]

Q: It's as simple as that, do you wanna give your consent, yup go ahead and take my sample like you did fifteen days ago or you can [Inaudible]…
A: [Inaudible] I'm not give it cause you got it already. It's already on system.

Q: It's a separate case.
A: [Inaudible] separate case you can go pull [Inaudible]…

Q: It's a separate, what, what do you know about…
A: [Inaudible] what if I was dead.

Q: Joshua.
A: What'd you do [Inaudible]…

Q: Joshua.
A: [Inaudible]

Q: I'm giving you a chance here.
A: [Inaudible]

Q: I'm giving you an opportunity.
A: What's, what's that [Inaudible] DNA [Inaudible] y'all gonna say, y'all gonna lie and say I did it?

Q: How I'm a…

A: [Inaudible]

Q: Gonna lie?
A: [Inaudible] I don't fuckin know cause [Inaudible]…

Q: [Inaudible]
A: [Inaudible] got it.

Q: You know what, the [Inaudible]…
A: [Inaudible] disrespecting me now.

Q: Hold on a second, the Senior County Attorney, Mike Freeman said DNA is like truth serum, okay?
A: True what?

Q: He said publicly, DNA is, is like truth serum okay? If you're DNA's not on there that it's, it's hard for to maybe prove. Okay? But we need to have your DNA sample to show that, okay, there's different procedural questions about how things are collected and not collected and how they're used and not used.
A: [Inaudible]

Q: We're asking you respectfully, Joshua, [Inaudible]…
A: [Inaudible] respectfully I'm not giving nothing.

Q: Okay, I'm not disrespecting you. I'm respecting you by asking you, by giving you the opportunity to give a DNA sample.
A: You say give like, if I don't give y'all gonna take it or something.

Q: [Inaudible] no, no.
A: Then come on [Inaudible]…

Q: [Inaudible]
A: Can I, can I, can I, can I go now?

Q: Do you wanna give it or not?
A: No I don't.

Q: Okay. Just stay right there.
A: Why, why do I gotta keep sitting here for that's [Inaudible]…

Q: [Inaudible]
A: [Inaudible]

Q: Okay, could you stand up for me? [Inaudible] just stand back in that corner for a second.
A: Stand in the corner for a second?

Q: Yup, [Inaudible] over there.
A: Why do I gotta stand in the corner for a second?

Q: Because, we're gonna have some pictures taken of you, so stand right there.
A: [Inaudible] pictures taken of me [Inaudible].

Q: Nope, just…
A: [Inaudible]

Q: Eh, nope, no you're, you're, you're…
A: [Inaudible] for nothing.

Q: [Inaudible]
A: [Inaudible] no damn pictures, who can't?

Q: Why don't you go back over there?
A: [Inaudible] no, what [Inaudible] jail like I'm already going now?

Q: [Inaudible] stand over there. Nope, nope, Joshua. Go back in the room.
A: [Inaudible] leave now.

Q: Joshua.
A: You can't force me [Inaudible]…

Q: Joshua, go back in the room.
A: [Inaudible]

Q: In custody. [Inaudible]
A: [Inaudible]

Q: Sit down in the chair Joshua, you're in custody.
A: [Inaudible] okay send me to fuckin to jail if I'm in custody, it's not, it's not [Inaudible].

Q: Alright, put your hands behind your back.
A: [Inaudible] fuckin picture [Inaudible].

Q: [Inaudible]
A: [Inaudible] take a picture for, take a picture of my mugshot. [Inaudible]

Q: Put your hands behind your back.
A: No, [Inaudible]…

Q: [Inaudible] hands together.
A: [Inaudible]

Q: The handcuffs aren't a, shut, [Inaudible].
Q: [Inaudible]
A: I ain't going to jail yet?

Q: Nope, stand right here.

A: You wanna take a picture of me.

Q: Joshua. Stay right here. You're not going anywhere you're still in custody. Sit down, sit down.
A: [Inaudible]

Q: Okay, stand up. [Inaudible] k Josh, stand up.
A: Mm.

Q: Turn around. Alright. [Inaudible] you know what, Joshua?
A: [Inaudible] taken a picture of me, for what?

Q: [Inaudible] come on Joshua just relax man [Inaudible].
A: [Inaudible] pissing me off [Inaudible].

Q: I know that we're probably making you mad, but you know what, you're in custody.
A: [Inaudible] force to take a picture of me.

Q: Now turn.
A: You telling me turn, turn around?

Q: Yup that's fine, [Inaudible], hair cause that's what she saw. Perfect, now have a seat.
A: [Inaudible] can I leave now?

Q: [Inaudible]
Q: K [Inaudible] get your head up, get your head up I'll be done and out of here.

Q: Put your head up and he's done and out.
Q: [Inaudible]
A: [Inaudible]

Q: Hey, you making fun of my stuttering?
A: No I'm not [Inaudible].

Q: [Inaudible]
A: I'm stutter, I stutter right along with ya.

Q: Joshua, sit down. We gotta get [Inaudible].
A: I thought it was all done [Inaudible]…

Q: [Inaudible] no, no.
A: [Inaudible], fuckin touch me, [Inaudible] mother fuckers no, [Inaudible] touching me.

Q: Alright.
A: [Inaudible] I get booked in. [Inaudible]

Q: Whatcha need?
A: I need the bathroom.

Q: K hold on.
A: [Inaudible] for a minute [Inaudible] damn. [Inaudible], can I go to the bathroom now, damn. [Inaudible] man.

Q: Alright, let's get over here. We'll walk over [Inaudible] to use the bathroom over there okay.

[End of interview]

State of Minnesota
County of Hennepin

District Court
4th Judicial District

Prosecutor File No. 17A00824
Court File No. 27-CR-17-1879

State of Minnesota,

Plaintiff,

vs.

JOSHUA CHIAZOR EZEKA DOB: 02/12/1996

2107 Oliver Ave N
Minneapolis, MN 55411

Defendant.

COMPLAINT

Warrant

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Murder - 2nd Degree - With Intent-Not Premeditated
Minnesota Statute: 609.19.1(1), with reference to: 609.11.5(a), 609.19.1
Maximum Sentence: 40 YEARS
Offense Level: Felony

Offense Date (on or about): 05/26/2016

Control #(ICR#): 16188486

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, caused the death of Victim 1, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.
Minimum Sentence: 3 YEARS

COUNT II

Charge: Murder - 2nd Degree - With Intent-Not Premeditated
Minnesota Statute: 609.19.1(1), with reference to: 609.11.5(a), 609.17.4(2), 609.19.1
Maximum Sentence: 20 YEARS
Offense Level: Felony

Offense Date (on or about): 05/26/2016

Control #(ICR#): 16188486

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, attempted to cause the death of Victim 3, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.
Minimum Sentence: 3 YEARS

Filed in Fourth Judicial District Court
1/23/2017 10:07:30 AM
Hennepin County, MN

STATEMENT OF PROBABLE CAUSE

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On May 26, 2016 at approximately 6:03 p.m., Victim 1, a 58 year old woman whose initials are B.B.B., and her teenaged granddaughter, Victim 2, were seated in a vehicle at the intersection of 21st Avenue North and Penn Avenue North, Minneapolis, Hennepin County, Minnesota. A male suspect discharged a firearm multiple times from a known location toward the vicinity of the vehicle. Victim 1 was struck by gunfire, received medical attention, and subsequently died from those injuries.

Officers responded immediately. On the scene and during subsequent interviews, witnesses provided general physical and clothing descriptions of the gunman. Forensic scientists processed the scene and continue to process evidence from the scene. Investigators have interviewed multiple witnesses, executed numerous search warrants, reviewed pertinent video surveillance, utilized sequential and confirmatory photographs, analyzed multiple cell phones and accessed social media accounts. Many witnesses have expressed fear of retaliation. The ongoing investigation has confirmed the following:

On May 26, 2016, at approximately 6:00 p.m., an individual known to law enforcement approached the area in a known vehicle. This individual is known to associate with "the highs", an alliance of several known criminal street gangs. JOSHUA CHIAZOR EZEKA, the DEFENDANT herein, is known to associate with "the lows", another alliance of several known criminal street gangs. "The highs" and "the lows" are rivals. As the individual associated with "the highs" neared the area of 21st and Penn, a known individual communicated with DEFENDANT who was at his family's home in the area. The known individual alerted DEFENDANT of the presence of the rival in the area. Shortly after receiving this information, DEFENDANT, armed with a firearm of a known caliber, ran toward the rival's vehicle, and shot multiple times toward the rival's vehicle. DEFENDANT was approximately 30 yards from the rival's vehicle when he fired the gun. Some bullets struck the rival's vehicle, and others struck the vehicle in which Victim 1 and 2 were seated. After firing multiple times, witnesses confirmed that DEFENDANT fled from the area in a known vehicle, and with known individuals. A witness confirmed that DEFENDANT admitted shooting at the rival's vehicle. The rival is identified as Victim 3.

Cell phone records, cell phone tower analysis, video surveillance, Shotspotter, and forensic comparison of firearms evidence from the scene and from the involved vehicles corroborates the events described above.

In a prior interview, DEFENDANT denied shooting. DEFENDANT described his clothing and hairstyle at the date and time of the shooting. Investigators observed that these descriptions were consistent with some witnesses' description of the shooter. During the interview, crime lab personnel arrived to photograph DEFENDANT, his clothing and his hairstyle. DEFENDANT was uncooperative with the process.

SIGNATURES AND APPROVALS

Filed in Fourth Judicial District Court
1/23/2017 10:07:30 AM
Hennepin County, MN

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant

Chris Thomsen
Sergeant
350 S 5th St
Minneapolis, MN 55415-1389
Badge: 7201

Electronically Signed:
01/23/2017 09:36 AM
Hennepin County, Minnesota

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Vicki Vial-Taylor
300 S 6th St
Minneapolis, MN 55487
(612) 348-5550

Electronically Signed:
01/23/2017 09:28 AM

Filed in Fourth Judicial District Court
1/23/2017 10:07:30 AM
Hennepin County, MN

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☐ **SUMMONS**

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____ ___, _____ **at** _____ **AM/PM** before the above-named court at 300 S Sixth Street, Minneapolis, MN 55487 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☒ **WARRANT**

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ ***Execute in MN Only*** ☒ ***Execute Nationwide*** ☐ ***Execute in Border States***

☐ **ORDER OF DETENTION**

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: $1,500,000.00
Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: January 23, 2017.

Judicial Officer Ronald L. Abrams
District Court Judge

Electronically Signed: 01/23/2017 09:43 AM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

State of Minnesota
Plaintiff
vs.
Joshua Chiazor Ezeka
Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
I hereby Certify and Return that I have served a copy of this Warrant upon the Defendant herein named.

Signature of Authorized Service Agent:

State of Minnesota
County of Hennepin

District Court
4th Judicial District

Prosecutor File No. 17A00824
Court File No. 27-CR-17-1879

State of Minnesota,

Plaintiff,

vs.

JOSHUA CHIAZOR EZEKA DOB: 02/12/1996

2107 Oliver Ave N
Minneapolis, MN 55411

Defendant.

COMPLAINT

Warrant

[X] Amended

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Maximum Sentence: 40 YEARS
Offense Level: Felony

Offense Date (on or about): 05/26/2016

Control #(ICR#): 16188486

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, caused the death of Victim 1, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.
Minimum Sentence: 3 YEARS

COUNT II

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Maximum Sentence: 20 YEARS
Offense Level: Felony

Offense Date (on or about): 05/26/2016

Control #(ICR#): 16188486

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, attempted to cause the death of Victim 3, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.
Minimum Sentence: 3 YEARS

STATEMENT OF PROBABLE CAUSE

App. 169

COMPLAINT AMENDED: PROBABLE CAUSE AMENDED TO ADD INFO ON SECOND INTERVIEW; OFFENSE REMAINS THE SAME.

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On May 26, 2016 at approximately 6:03 p.m., Victim 1, a 58 year old woman whose initials are B.B.B., and her teenaged granddaughter, Victim 2, were seated in a vehicle at the intersection of 21st Avenue North and Penn Avenue North, Minneapolis, Hennepin County, Minnesota. A male suspect discharged a firearm multiple times from a known location toward the vicinity of the vehicle. Victim 1 was struck by gunfire, received medical attention, and subsequently died from those injuries.

Officers responded immediately. On the scene and during subsequent interviews, witnesses provided general physical and clothing descriptions of the gunman. Forensic scientists processed the scene and continue to process evidence from the scene. Investigators have interviewed multiple witnesses, executed numerous search warrants, reviewed pertinent video surveillance, utilized sequential and confirmatory photographs, analyzed multiple cell phones and accessed social media accounts. Many witnesses have expressed fear of retaliation. The ongoing investigation has confirmed the following:

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Cell phone records, cell phone tower analysis, video surveillance, Shotspotter, and forensic comparison of firearms evidence from the scene and from the involved vehicles corroborates the events described above.

In a prior interview, DEFENDANT denied shooting. DEFENDANT described his clothing and hairstyle at the date and time of the shooting. Investigators observed that these descriptions were consistent with some witnesses' description of the shooter. During the interview, crime lab personnel arrived to photograph DEFENDANT, his clothing and his hairstyle. DEFENDANT was uncooperative with the process.

THE FOLLOWING HAS BEEN ADDED:

The DEFENDANT was interviewed a second time. In a post Miranda statement the DEFENDANT admitted to receiving a phone call from a known individual, the Co-Defendant herein, alerting him to the presence of rivals driving a vehicle in the area. The DEFENDANT then grabbed his firearm, ran out of his house with his firearm and fired several shots at the rival's vehicle. The DEFENDANT intended to shoot his rivals but missed and shot Victim 1. The DEFENDANT then got in the passenger seat of the Co-

Defendant's vehicle and fled the scene with the Co-Defendant in his vehicle.

An active warrant is also pending for the Co-Defendant.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant

Chris Thomsen
Sergeant
350 S 5th St
Minneapolis, MN 55415-1389
Badge: 7201

Electronically Signed:
01/24/2017 11:02 AM
hennepin County, Minnesota

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Dominick Mathews
300 S 6th St
Minneapolis, MN 55487
(612) 348-5550

Electronically Signed:
01/24/2017 10:53 AM

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☐ SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____ ___, _____ **at** _____ **AM/PM** before the above-named court at 300 S Sixth Street, Minneapolis, MN 55487 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☒ WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ ***Execute in MN Only*** ☒ ***Execute Nationwide*** ☐ ***Execute in Border States***

☐ ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: $1,500,000.00
Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: January 24, 2017.

Judicial Officer Ronald L. Abrams
District Court Judge

Electronically Signed: 01/24/2017 11:08 AM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

State of Minnesota
Plaintiff
vs.
Joshua Chiazor Ezeka
Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
I hereby Certify and Return that I have served a copy of this Warrant upon the Defendant herein named.

Signature of Authorized Service Agent:

Filed in Fourth Judicial District Court
3/9/2017 10:57:20 AM
Hennepin County, MN

State of Minnesota
County of Hennepin

District Court
Fourth Judicial District

COUNT	CHARGE STATUTE	MOC	GOC
1	609.185(a)(1)	H1H13	X
2	609.19.1(1)	H2013	X
3	609.185(a)(1)	H1H12	A
4	609.19.1(1)	H2012	A
5	609.222.1	A2326	X

☐ ✓ if more than 6 counts (see attached)

CONTROLLING AGENCY MN0271100
CONTROL NUMBER 16188486

ISSUE AS:
☐ Summons
☐ Warrant

State of Minnesota

PLAINTIFF,

vs.

PUBLIC INDICTMENT

Joshua Chiazor Ezeka	Date of Birth	MNCIS No.	Prosecutor File No.
	02/12/1996	27-CR-17-1879	17A00824

DEFENDANT.

INDICTMENT

The above-named Defendant is hereby accused and charged by the Grand Jury of the above-named County, in the State of Minnesota, by this indictment of the offense(s) of:

Count I

Charge: **Murder -1st Degree – Premeditated**
Minnesota Statute: **609.185(a)(1)**, with reference to: 609.11.5(a), 609.05.1, 609.05.2, 609.185
Offense Level: **Felony**
Offense Date (on or about): **05/26/2016**
Penalty: **LIFE**

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, caused the death of Birdell Beatrice Beeks, a human being, with premeditation and with intent to effect the death of that person, or another, while using a firearm.

Count II

Charge: **Murder - 2nd Degree - With Intent-Not Premeditated**
Minnesota Statute: **609.19.1(1)**, with reference to: 609.11.5(a), 609.05.1, 609.05.2, 609.19.1
Offense Level: **Felony**
Offense Date (on or about): **05/26/2016**
Penalty: **LIFE**

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, caused the death of Birdell Beatrice Beeks, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.

Filed in Fourth Judicial District Court
3/9/2017 10:57:20 AM
Hennepin County, MN

PUBLIC INDICTMENT CONTINUATION

App. 174

Count III

Charge: **Murder -1st Degree - Premeditated (A)**
Minnesota Statute: **609.185(a)(1)**, with reference to: 609.11.5(a), 609.17.4(1), 609.05.1, 609.05.2, 609.185
Offense Level: **Felony**
Offense Date (on or about): **05/26/2016**
Penalty: **20 YEARS, ONE-HALF OF LIFE**

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, attempted to cause the death of Victim 3, a human being, with premeditation and with intent to effect the death of that person, or another, while using a firearm.

Count IV

Charge: **Murder - 2nd Degree - With Intent-Not Premeditated (A)**
Minnesota Statute: **609.19.1(1)**, with reference to: 609.11.5(a), 609.17.4(2), 609.05.1, 609.05.2, 609.19.1
Offense Level: **Felony**
Offense Date (on or about): **05/26/2016**
Penalty: **20 YEARS, ONE-HALF OF LIFE**

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, attempted to cause the death of Victim 3, a human being, with intent to effect the death of that person or another, but without premeditation, while using a firearm.

Count V

Charge: **Assault-2nd Degree-Dangerous Weapon**
Minnesota Statute: **609.222.1**, with reference to: 609.222.1, 609.11.5(a), 609.05.1, 609.05.2, 609.101.2
Offense Level: **Felony**
Offense Date (on or about): **05/26/2016**
Penalty: **3 YEARS – 7 YEARS AND/OR $4,200 - $14,000**

Charge Description: That on or about May 26, 2016, in Hennepin County, Minnesota, JOSHUA CHIAZOR EZEKA, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with another, or otherwise procures the other to commit the crime, assaulted Victim 2, a Known Juvenile Female, while using a firearm.

Filed in Fourth Judicial District Court
3/9/2017 10:57:20 AM
Hennepin County, MN

PUBLIC INDICTMENT CONTINUATION

App. 175

Witnesses Examined Before the Grand Jury:

Sergeant Charles Green IV
Sergeant Christopher Thomsen
Officer Michael Nelson
Forensic Scientist Aaron Zirzow
Witness C
Witness OT003
Uchemudi Jackson Ezeka
Veronica Eguma Ezeka
Witness E
Jim Jackson
Witness OT002
Witness V002
Witness P
Witness S
Doctor Owen Middleton

In the above-named County, Minnesota.

DATE:

March 9, 2017

Signature of Foreperson of the Grand Jury:

STATE OF MINNESOTA COUNTY OF HENNEPIN

STATE OF MINNESOTA

Plaintiff

vs.

Joshua Chiazor Ezeka,

Defendant.

Clerk's Signature or File Stamp:

RETURN OF SERVICE
*I hereby Certify and Return that I have served a copy of this **INDICTMENT** upon Defendant(s) herein named.*

Signature of Authorized Service Agent: