

Exhibit 17

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

James Lenk

Recorded 10/11/2005 in Manitowoc, WI
11:08 am - 11:57 am, 48 mins. elapsed

Magne-Script

(414) 352-5450

15823 Condensed transcript with index

Video Deposition of James Lenk 10/11/05

<p style="text-align: center;">Page 1</p> <p>Witness James Lenk</p> <p>Tuesday 10/11/2005 at 11:00 by: Barbara Cohen Joseph</p> <p>Nash, Spindler, Grimstad & McCracken 201 East Waldo Boulevard Manitowoc, WI</p> <p>Caption: Avery v. Manitowoc County Case No.: 04 C 986 Venue: United States District Court Eastern District of Wisconsin</p>	<p style="text-align: center;">Page 3</p> <p>1 Amy J. Doyle 2 Crivello, Carlson & Mentkowski, S.C. 3 710 N. Plankinton Ave. #500 4 Milwaukee, WI 53203 5 On behalf of Tom Kocourek and Manitowoc County 6 7 John F. Mayer 8 Nash, Spindler, Grimstad & McCracken 9 201 East Waldo Boulevard 10 Manitowoc, WI 54220 11 On behalf of Tom Kocourek 12 13 Also Present: Steven Avery 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p style="text-align: center;">Page 2</p> <p>1 A P P E A R A N C E S 2 Walter F. Kelly 3 Walter F. Kelly, S.C. 4 700 W. Michigan St. #400 5 Milwaukee, WI 53233 6 On behalf of the Plaintiff 7 8 Stephen M. Glynn 9 Glynn, Fitzgerald & Albee, S.C. 10 526 E. Wisconsin Ave. 11 Milwaukee, WI 53202 12 On behalf of the Plaintiff 13 14 Amanda J. Kaiser 15 Boardman, Suhr, Curry & Field 16 1 S. Pinckney St. #410, PO Box 927 17 Madison, WI 53701-0927 18 On behalf of Denis Vogel and Manitowoc County 19 20 Timothy A. Bascom 21 Bascom, Budish & Ceman, S.C. 22 2600 N. Mayfair Rd. #1140 23 Wauwatosa, WI 53226-1308 24 On behalf of Manitowoc County 25</p>	<p style="text-align: center;">Page 4</p> <p>1 I N D E X 2 EXAMINATION BY PAGE NO. 3 Mr. Glynn 4 4 Ms. Doyle 41 5 EXHIBIT NO. PAGE NO. 6 125 - 9/12/03 report statement. 15 7 (The exhibits were retained by Mr. Kelly) 8 (The sealed original transcript was sent to Mr. Kelly) 9 10 E X A M I N A T I O N 11 BY MR. GLYNN: 12 Q Morning, Mr. Lenk. 13 A Morning. 14 Q I'm going to have a few questions for you about your 15 own background and then a few questions that will 16 relate to your involvement with the Steven Avery case 17 and some related matters. Okay? 18 A Okay. 19 Q Let's start out with some obvious things. How old are 20 you, please? 21 A 56. 22 Q And can you give me your employment, say, starting, 23 oh, 1980? 24 A 1980, I believe I was working at that time for 25 Michigan Bell Corporate Security in Michigan.</p>
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1 Q Okay.

2 A Prior to that I had worked for the Detroit Police

3 Department. And then I moved over here in '88, and I

4 worked at Fleet Farm for a year and then I got on the

5 sheriff's department in December of '88.

6 Q In what capacity were you with the sheriff's

7 department?

8 A I started out as a jailer and then I worked up to the

9 road, became a road officer.

10 Q Okay. And when did you become a road officer?

11 A I think it was about a year later, so it must have

12 been around December, maybe, of '89.

13 Q Okay.

14 MR. GLYNN: The record should also reflect

15 that Mr. Avery is here now.

16 REPORTER: Thank you.

17 BY MR. GLYNN:

18 Q How long did you stay as road officer?

19 A Oh, a couple years, then I became part of the Metro

20 Drug Unit.

21 Q And when was that, roughly?

22 A '92, maybe.

23 Q Okay.

24 A After that I became -- I got promoted to sergeant,

25 went back into the jail for a couple months and then

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1 became a road sergeant after that.

2 Q And where does that take us in calendar years?

3 A I was a road sergeant from '92, I believe, until I

4 became a sergeant up in the Detective Unit in I

5 believe it was '98. I became a lieutenant of the

6 Detective Unit in May of '93 -- or 2003.

7 Q So lieutenant of the Detective Unit in May of '03?

8 A Yes.

9 Q Okay. And you stayed in that capacity until when?

10 A Currently.

11 Q Okay. So that's where you are, on the same title and

12 same position?

13 A Right.

14 Q All right. Have you, while you were with the

15 sheriff's department, had any involvement with the

16 Steven Avery case that involves allegations of sexual

17 assault of Penny Beerntsen?

18 A Other than -- I wasn't aware of it until I got the

19 copy the other day. I did send out evidence in 2002,

20 or something like that.

21 Q Okay.

22 A And then the statement that you have in front of you.

23 Q Okay.

24 A That's the only involvement.

25 Q So back in 1988 when you were around, you didn't have

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1 anything to do with any of the ongoing Avery materials

2 if there was anything going on at that time?

3 A No, sir.

4 Q And similarly in '95-96 when there were postconviction

5 efforts, you were not involved in any of the

6 investigative aspects of that?

7 A No.

8 Q So you are aware, I take it, that in 2002, 2003 there

9 were -- actually 2001, there were postconviction

10 efforts again submitted on behalf of Mr. Avery that

11 related to DNA analysis of certain evidence; is that

12 correct?

13 A I knew that because I had to send stuff to the crime

14 lab.

15 Q Right. And in that capacity, as somebody associated

16 with the Detective Unit, you at one point were

17 involved at least to the extent of submitting evidence

18 to the crime lab, true?

19 A True.

20 Q Okay. Can you tell me who directed you to do that?

21 A I believe it was a court order that came over stating

22 that it should be sent to the crime lab.

23 Q And is that an order that would apply directly to you,

24 or would it go to the sheriff and then the sheriff

25 would give it to you, or how did that work?

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1 A I'm not exactly sure how that came through. Normally

2 it doesn't come to me directly. They just usually

3 send it to the evidence technician.

4 Q Sure.

5 A At that time I was in charge of the evidence room,

6 so...

7 Q Actually you anticipated my question. So it's because

8 of your role in relation to the evidence room, you

9 believe, that that would have come to you.

10 A True.

11 Q And it was a simple matter, I take it, of removing

12 items from the evidence room, bagging them in some

13 fashion and transferring them to the crime lab?

14 A Yes, sir.

15 Q And was that the Madison or the Milwaukee crime lab?

16 Do you remember?

17 A Other than -- I don't remember. I would assume it

18 would be Madison, but I wouldn't know unless I looked

19 at the transmit.

20 Q Did you physically involve yourself in the

21 transportation?

22 A No, sir.

23 Q Okay. That got delegated to somebody else, I take it.

24 A Yeah, it was either delegated or it was sent through

25 the certified mail.

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3 (Pages 9 to 12)

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<p>1 Q Okay. Now, let me come back to the document you've 2 already referenced, and let me ask the reporter to 3 mark this, please. 4 MR. GLYNN: Are we at 125 now? 5 MR. KELLY: Yes, we are. 6 REPORTER: Yes. 7 MR. GLYNN: Thanks. 8 BY MR. GLYNN: 9 Q Let me show you this document that now has the exhibit 10 sticker on it as 125. I take it that's something 11 you've seen before. 12 A Yes. 13 Q Okay. Before I get into questions about the specific 14 document, let me ask whether prior to September of 15 2003 you had any active awareness that this DNA 16 challenge to Mr. Avery's conviction was going on. I 17 mean, do you follow my question? I mean, I know that 18 you had something to do with locating evidence -- 19 A Mm-hmm. 20 Q -- and making arrangements to have it taken to a crime 21 lab. But is that something that registered in your 22 mind as an active investigation and wondering what was 23 going on with it, keeping tabs on it, that kind of 24 thing? 25 A No, sir.</p>	<p>1 Q And I take it as someone with the Manitowoc County 2 Sheriff's Department at that stage, you would have 3 been aware of that. True? 4 A Yes. 5 Q It was fairly big news at the time, presumably? 6 A Yes. 7 Q And, again, let me ask whether, before September 12 8 and the preparation of Exhibit 125, you had 9 conversations with anyone about the Avery case; for 10 example, conversations that may have involved 11 discussions of Gregory Allen. Do you recall any such 12 conversations? 13 A No, sir. 14 Q Did you know the name "Gregory Allen" prior to 15 September 12th, 2003? 16 A No, sir. 17 Q I take it that you had not, then, had any involvement 18 in any cases involving him, or if you did, you didn't 19 recall it at the time? 20 A I've never had -- To my knowledge, I've never had a 21 case with Gregory Allen. 22 Q Okay. And how about Steven Avery? Had you had any 23 knowledge of Mr. Avery or any cases of his, let's go 24 back to the time that you were involved in sending 25 evidence to the crime lab, as of that date?</p>
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<p>1 Q Okay. I mean, it sounds to me as though this was 2 simply one of the many tasks that may have come your 3 way in your position; is that right? 4 A Yes, sir. 5 Q Didn't have any special significance to you. 6 A No, sir. 7 Q Okay. Were there discussions that you engaged in with 8 anybody about the Avery case at the time that this 9 material was being gathered for shipment to the crime 10 lab? 11 A Not that I recall. I don't recall any specific 12 conversations about sending the evidence in other than 13 send it in. 14 Q Okay. No discussions about the history of the case? 15 A [Shaking head] 16 Q Or, you know, that this is now a second or third 17 challenge to his conviction, anything like that? 18 A No, sir. 19 Q Okay. Let me come back now to September of '03. You 20 see the Exhibit 125 has a date on it of 9/12/03, 21 correct? 22 A Yes. 23 Q By that time, Mr. Avery had gone through the court 24 process that led to his exoneration, okay? 25 A Mm-hmm.</p>	<p>1 A No, sir. 2 Q So I take it that in September of 2003, you were sort 3 of getting your education, such as it was, in the 4 Avery matter. True? 5 A That's true. 6 Q And is it fair to say that that came exclusively from 7 the media, as opposed to partly from the media, partly 8 from fellow officers or others involved in law 9 enforcement? 10 A I would say the majority, if not all, came from the 11 media about the case. 12 Q Are you able to identify anybody in the sheriff's 13 department with whom you had any conversations about 14 the case? 15 A The only one -- 16 Q Other than what's reflected in this memo. 17 A Okay. The only one that I had mentioned, or actually 18 had it mentioned to me, was when I saw the picture 19 that was drawn by then-time chief investigator Kusche. 20 Q Mm-hmm. 21 A And he told me that it was involving a case, sexual 22 assault case in Two Rivers. 23 Q And how did you happen to see that? 24 A It was hanging on his wall in his office. 25 Q And can you describe what it was? Was it only the</p>

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1 composite or was there also a photograph with it?
 2 A You know, to my knowledge it's a composite. I don't
 3 know if there was a photograph there or not.
 4 Q Okay. Could have been. I mean, it's not that you
 5 have a recollection that there was not a photograph
 6 there; is that true?
 7 A Right. It could have been or could not have been.
 8 Q Okay. But what you recall now is the composite.
 9 A Sure.
 10 Q And, I'm sorry, maybe you said this and I just lost
 11 it. Can you tell me about when it was that that
 12 happened, even if it's just when in relationship to
 13 something else as opposed to when on a calendar?
 14 A I'm sure it was sometime when I first came up to the
 15 Detective Unit, '98 or so.
 16 Q Okay.
 17 A I'm not positive.
 18 Q Do you recall conversation with Mr. Kusche at that
 19 time about the composite, circumstances under which it
 20 was prepared or the case?
 21 A No. He just said, "Doesn't that look like the
 22 information that was given about the suspect?" I
 23 said, "Yeah."
 24 Q What information about the suspect --
 25 A Just the description that was given.

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1 Q And how did you know what description --
 2 A He told me the description, and he said, "This is what
 3 they described and this is the picture I" -- And
 4 there may have been a picture next to it so I could
 5 compare it.
 6 Q Yeah. That's --
 7 A That's probably --
 8 Q That's what I was wondering.
 9 A Yeah.
 10 Q Because it would be easier, obviously --
 11 A Sure.
 12 Q -- if it's comparing the photo to a composite.
 13 A Yes.
 14 Q So that would have been roughly five years earlier
 15 than the memo that we've got in front of us as 125.
 16 A Roughly, yeah.
 17 Q And did Mr. Kusche say anything else about the
 18 composite, about the preparation of the document or
 19 that it was his first time or his best one or anything
 20 at all that stands out in your mind?
 21 A No, he was just happy that it turned out well.
 22 Q Sure.
 23 A Other than that, he really didn't elaborate.
 24 Q And, so now, you know, that the exoneration of Mr.
 25 Avery has occurred and the fact that Mr. Allen has

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1 been identified as the perpetrator of that offense,
 2 have you had any conversations with Mr. Kusche about
 3 the accuracy of the drawing in retrospect?
 4 A No, not really.
 5 Q I mean, obviously it's 20/20 hindsight at that stage.
 6 A True.
 7 Q But just wondering whether you've had any conversation
 8 at all with him about it.
 9 A Uh-uh [shaking head].
 10 Q You're shak--
 11 A No, other than looked like the picture.
 12 Q Right.
 13 A You know, looked like the drawing or whatever.
 14 MR. GLYNN: Okay. Could we go off the
 15 record for a second. I just want to close the
 16 door behind us.
 17 REPORTER: Off the record.
 18 (Off the record 11:23 - 11:23)
 19 REPORTER: Back on the record.
 20 MR. GLYNN: Thank you.
 21 (Exhibit 125 identified)
 22 Q Okay. Now, let me ask you to take a look at 125,
 23 please. You've already indicated that you'd seen that
 24 before. And let me back this up a little bit. I see
 25 the date on here of September 12th, '03. And I see

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1 that the content of the document indicates that you
 2 were talking to Sergeant Andy Colborn and had certain
 3 conversation with Sergeant Colborn, and at the very
 4 bottom it indicates that you later went to Sheriff
 5 Petersen. And obviously I'll come back and go through
 6 all of this. I'm trying to find out first of all
 7 whether this narrative describes events that all took
 8 place on September 12th, or did any of this take place
 9 on September 12th, or is September 12th simply the
 10 date on which you wrote the report?
 11 A It is my recollection that everything took place on
 12 this date.
 13 Q Okay.
 14 A September 12th.
 15 Q And can you tell me why it is that Exhibit 125 would
 16 have been prepared?
 17 A At the time that Officer Colborn gave me the
 18 information, although it was vague, because of the
 19 circumstances it had come out already about this Avery
 20 case, I thought it may or may not be relevant. So I
 21 said maybe you should pass that on to the sheriff.
 22 That's how we ended up going up to Sheriff Petersen.
 23 Q Okay. And when you say, "I thought that maybe you
 24 should pass it on," is that you talking to yourself?
 25 A No, no. I had --

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1 Q Or you talking to Colborn?
2 A I had mentioned that to Sergeant Colborn, that he
3 should probably go up and talk to the sheriff and at
4 least tell him what you have.
5 Q Okay.
6 A Whether it's relevant or not, that's not his decision.
7 Q Sure. Well, let's go through this then, please.
8 We've got a conversation on September 12th between you
9 and Sergeant Colborn, and it's apparently taking place
10 in your office; is that right?
11 A Yes.
12 Q And the conversation had something to do with one of
13 the detectives that I don't even need to get into with
14 you, I don't think, unless you're going to tell me
15 that that conversation was in some way related to the
16 Avery case.
17 A No.
18 Q Sounds like it wasn't.
19 A No.
20 Q Okay. So after this, or maybe it's part of this
21 unrelated conversation, something was said about the
22 Steven Avery exoneration, I take it.
23 A Mm-hmm.
24 Q Is it --
25 A Yes.

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1 Q Okay. Can you tell me, flesh this out a little bit
2 and tell me your recollection as to how that went?
3 A You know, I don't have any recollection. In fact I
4 had forgotten about this statement until it was
5 brought to my attention.
6 Q Okay.
7 A I didn't think anything of it too much at the time,
8 and I just forgot about it.
9 Q So having read this, your recollection is not
10 refreshed about that?
11 A No, I don't know what else was talked about.
12 Q Okay. But you do know that whatever the conversation
13 was about one of the detectives, it was not a
14 conversation related to the Avery matter.
15 A Right.
16 Q And I take it when you prepared Exhibit 125, you did
17 so in an effort to be accurate, correct?
18 A Yes.
19 Q And as complete as you thought was appropriate to the
20 circumstances?
21 A Yes.
22 Q You had by that time been involved in law enforcement
23 either in Detroit or in private law enforcement, if
24 you will, or in the sheriff's department for many
25 years.

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1 A Yes.
2 Q And had written many reports by that time in your
3 life?
4 A Yes.
5 Q And knew the importance of accuracy and completeness
6 in a report, correct?
7 A Yes.
8 Q So you also recognized that a person had been
9 incarcerated for some 18 years for an offense on which
10 he had now been exonerated, correct?
11 A Yes.
12 Q And knew that that was a very significant event in the
13 criminal justice system, correct?
14 A Yes.
15 Q So when the subject was brought up, it was a subject
16 to which you paid close attention. I mean, this was a
17 big deal in the media at the time, and you've already
18 indicated that it was a significant matter in the
19 criminal justice system, true?
20 MR. BASCOM: Objection. Multiple.
21 MR. MAYER: And form also.
22 BY MR. GLYNN:
23 Q You can answer.
24 A Oh, okay. Yeah, it was a big deal.
25 Q Sure. And because of that, I mean, this report came

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1 into existence, true?
2 A True.
3 Q I mean, you have lots of conversations about lots of
4 cases in your daily activities that don't lead to the
5 generation of a report statement like this, correct?
6 A That is correct.
7 Q So now let's go through the report. And, again, can
8 you tell me what your own report writing style was?
9 If you were trying to take down something verbatim or
10 a quote, would it be your practice to put quote marks
11 in, or did you not generally use quote marks in the
12 reports that you wrote?
13 A If it's an accurate quotable statement, I usually use
14 quote marks.
15 Q Okay. So this you would consider not to be a quotable
16 statement, but rather more in the nature of a summary
17 of a statement; is that fair?
18 A Right.
19 Q And Sergeant Colborn is telling you that he was
20 working in the jail division around 1995; is that --
21 A Yes.
22 Q -- safe to say? When it says "probably 1995," is that
23 Sergeant Colborn's term, "probably 1995," or is that
24 your term?
25 A That's my term.

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<p style="text-align: center;">Page 21</p> <p>1 Q Okay. And would that have been based exclusively on 2 what he said, or would you have attempted to relate 3 what he said to something you knew about for 1995? 4 A I didn't have any recollection of '95. It had to be 5 something that he was relating. 6 Q Okay. So would it be a fair inference for a reader of 7 this report to conclude that Sergeant Colborn 8 indicated that it was probably 1995 that the events he 9 was about to describe had occurred? 10 A Yes. 11 Q Okay. And he said he received a telephone call as 12 opposed to a personal visit, correct? 13 A Correct. 14 Q And, again, there isn't an issue about whether it's a 15 telephone call as opposed to a fax transmission or a 16 personal visit. I mean, it was a phone call because 17 that's what your report says. 18 A That's what he told me. 19 Q And he said that the person calling said he was a 20 detective, and the best that Sergeant Colborn could 21 recall is that he thought the caller might have been 22 from Brown County; is that correct? 23 A That's correct. 24 Q And where this abbreviation of BRO County occurs, 25 that's obviously supposed to be Brown County, true?</p>	<p style="text-align: center;">Page 23</p> <p>1 A That's what he told me, yes. 2 Q Okay. And that person, according to the detective, 3 had said that a few years earlier that person, the 4 suspect who is in jail, had committed an assault in 5 Manitowoc County. Am I reading that correctly? 6 A Yes. 7 Q And am I interpreting that correctly? 8 A [Nodding] 9 MS. DOYLE: You have to answer. 10 A To the best of my -- Yeah. To the best of my 11 knowledge, yes. 12 BY MR. GLYNN: 13 Q Okay. And you use the phrase, quote, "an assault," 14 close quote. And, again, the report doesn't use it in 15 quotes. I'm just trying to let -- 16 A Mm-hmm. 17 Q -- you know what words I'm quoting here. Does "an 18 assault," as the term would have been used by you in 19 September 2003, mean a sexual assault or could it be 20 any kind of assault? 21 A It could be any kind of assault. 22 Q Okay. If it had been referring to a sexual assault, 23 would you have put down "sexual assault" as opposed to 24 an assault, or don't you know? 25 A Yes.</p>
<p style="text-align: center;">Page 22</p> <p>1 A Yes. 2 Q And he said he isn't sure -- I'm sorry, I'm quoting 3 from the report. At the end of that sentence, the 4 four words are, quote, "but he isn't sure," close 5 quote. I take it that means that Sergeant Colborn 6 wasn't certain that the caller was a detective from 7 Brown County as opposed to some other area; is that 8 right? 9 A That's what he told me, right. 10 Q Okay. That's his best recollection? 11 A Correct. 12 Q Of something that had happened roughly eight years 13 earlier. 14 A Correct. 15 Q And wherever that detective was from, the detective 16 told him that he has a person in custody, and I note 17 that at first it said "have" and then it got changed 18 to "has" for being the present tense. 19 A Mm-hmm. 20 Q Is that what you were trying to convey, that -- 21 A Yes. 22 Q -- that Sergeant Colborn was saying that the detective 23 was saying to Sergeant Colborn that the detective, at 24 the time of the call to Colborn, had this person in 25 custody?</p>	<p style="text-align: center;">Page 24</p> <p>1 Q You think you would have? 2 A I would have wrote that down. Yes. 3 Q Okay. So you think that what Colborn was telling you 4 at the time was just the phrase "an assault"? 5 A Yes. 6 Q Okay. That is, that was what the detective told 7 Colborn, was "an assault"? 8 A That's what he told me, yes. 9 Q Yeah. Okay. Detective -- I'm reading the last 10 sentence of the second paragraph. "This detective 11 also told Sergeant Colborn that he believes someone 12 was arrested for this crime already." Did I read that 13 accurately? 14 A Yes. 15 Q And, again, what that sentence is telling us is that 16 the detective believed that someone had already been 17 arrested for that crime that the person in custody was 18 saying he had committed; is that correct? 19 A That's what it -- 20 MS. DOYLE: I'm going to object. Lack of 21 foundation. 22 BY MR. GLYNN: 23 Q Well, I mean, it's your report. That's what you 24 understood? 25 A That's what I understood from Sergeant Colborn.</p>

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<p>1 Q Sure. And continuing on to the next paragraph, 2 "Sergeant Colborn said the detective wanted to speak 3 to someone in the Detective Unit - but Sergeant 4 Colborn can't remember who he advised or passed this 5 information on to." Did I read that correctly? 6 A Yes. 7 Q Okay. And, again, that pretty much speaks for itself, 8 right? I mean, the detective that he thought was from 9 Brown County told the sergeant that he, the detective, 10 wanted to speak to somebody in the Manitowoc Detective 11 Unit, true? 12 A True. 13 MS. DOYLE: I'm just going to object. Lack 14 of foundation, unless you're saying what Colborn 15 told him. 16 MR. GLYNN: Sure. 17 Q I mean, that's all based on what Colborn told you, 18 correct? 19 A Exactly. 20 Q Yeah. And when we say "in the Detective Unit," are 21 you meaning that Sergeant Colborn was referring to the 22 Manitowoc County Sheriff's Department Detective Unit? 23 A Yes. 24 Q Because that's what you guys were in, correct? 25 A Yes.</p>	<p>1 informed by somebody that the case was already solved 2 and the right person arrested. 3 A Yes. 4 Q Okay. Excuse me. And, again, Sergeant Colborn 5 couldn't recall who it was that told him that the case 6 had already been solved, true? 7 A True. That's what he told me. 8 Q Did he make any guesses about that or say, "Gee, it 9 could have been this person, it could have been that 10 person, I'm not sure." 11 A He wasn't sure. He said it probably -- The only thing 12 he said is, "It probably wouldn't be Gene Kusche 13 because I didn't know Gene at the time." 14 Q Okay. 15 A So... 16 Q So he could sort of exclude Gene Kusche, but that was 17 about as much as he could do in terms of identifying 18 that source. 19 A Correct. 20 Q And you indicate that you later went to Sheriff 21 Petersen to pass on the information, correct? 22 A Correct. 23 Q Okay. Well, I'll come back and talk about that for a 24 minute. But let me just talk about your state of mind 25 on September 12th, 2003, after receiving this</p>
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<p>1 Q And Colborn can't remember who he advised or passed 2 this information on to. Did Colborn tell you that he 3 did in fact advise someone or pass the information on 4 to someone, but he just couldn't remember who it was? 5 A That's the way I took it, yes. 6 Q As opposed to saying, "I don't know if I told 7 somebody," or "I don't know if I advised anybody." 8 A No, I didn't take it that way. 9 Q You took it that he did in fact pass the information 10 on to someone, but today, eight years later, wasn't 11 sure of who that person was. 12 A Correct. 13 Q And, again, that's based on what Sergeant Colborn said 14 to you. 15 A Exactly. 16 Q And this indicates that Colborn said he was later 17 informed by someone that the case was already solved 18 and the right person was arrested. Now, the "he" 19 that's in that sentence that I just read in the second 20 to last paragraph here, that's Sergeant Colborn, 21 correct? 22 A Correct. 23 Q I mean, he's not saying that he's still quoting this 24 person from Brown County. I mean, that's Sergeant 25 Colborn saying that Sergeant Colborn was later</p>	<p>1 information. You recognized that what Sergeant 2 Colborn was saying could be important information, 3 correct? 4 A Yes. 5 Q And, again, I mean, that's why the report is prepared? 6 A Correct. 7 Q And that's why the decision is made to go to Sheriff 8 Petersen to pass on the information? 9 A Correct. 10 Q And, again, I have to state some obvious things, but 11 certainly it wasn't your job to pass on every single 12 bit of information that came to you on every single 13 case that crossed your desk to Sheriff Petersen, 14 correct? 15 A Correct. 16 Q Part of your job as a supervising law enforcement 17 person was to use your own discretion and your own 18 judgment in determining what's important and what's 19 not and what needs to go to the sheriff and what 20 doesn't, correct? 21 A Yeah, most of the time. 22 Q Sure. And, I mean, and sometimes you might be ordered 23 by somebody to give me all information that comes in 24 on something. 25 A Correct.</p>

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1 Q And you would do that then, true?
 2 A Correct.
 3 Q But I take it nothing like that had been given to you
 4 as a directive with respect to the Avery case.
 5 A No.
 6 Q In point of fact, do you have a recollection of there
 7 being a directive from Sheriff Petersen that the Avery
 8 case was not to be discussed outside the department
 9 with anybody, and that directive coming out around
 10 September 12th, '03?
 11 A I don't know when it came out. I remember at some
 12 point there was a directive that it shouldn't be
 13 discussed.
 14 Q Okay. And as specific dates, that's just not
 15 something that you have recall of.
 16 A I don't recall.
 17 Q Okay. So the state of mind that you had on September
 18 12th was that this information should go to the
 19 sheriff, right?
 20 A Yes.
 21 Q And can you tell me why that would be?
 22 A Although it had really no specifics into it, I thought
 23 maybe under the circumstances with the Avery case that
 24 it may or may not have some relevance, and I thought
 25 it should be brought to the sheriff's attention.

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1 Q Okay. And how do you do that physically? I mean, do
 2 you call to make an appointment or do you go knock on
 3 a door, or what was your access like in September of
 4 2003 to Sheriff Petersen?
 5 A I think I just went up and knocked on his door.
 6 Q And did you go with Sergeant Colborn?
 7 A I believe we went together.
 8 Q Okay. And was Sheriff Petersen available?
 9 A I believe he was.
 10 Q Did you talk to him right then?
 11 A To my recollection, I would assume it was right then,
 12 but I can't say absolutely it was right then.
 13 Q Yeah, okay. Do you have a recollection of whether --
 14 well, whether any part of the report that's Exhibit
 15 125 had been prepared by that time?
 16 A No.
 17 Q That is, by the time you went to see Sheriff Petersen.
 18 A No.
 19 Q So this document, 125, didn't begin to get prepared
 20 until after you had talked to Sheriff Petersen. Is
 21 that a fair statement?
 22 A Correct.
 23 Q So do you recall at any time during the meeting with
 24 Sheriff Petersen there being anyone else present
 25 besides yourself, Sergeant Colborn and Sheriff

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1 Petersen?
 2 A I don't recall.
 3 Q Do you recall whether the meeting stayed in Sheriff
 4 Petersen's office as opposed to moving anywhere else?
 5 A I don't think I've ever had a conversation with the
 6 sheriff that didn't stay in his office. I mean, we
 7 never left the office and went somewhere else.
 8 Q Okay. Do you recall whether Sheriff Petersen took any
 9 notes of what you were saying?
 10 A I don't recall.
 11 Q Do you recall whether what you were saying was
 12 recorded in any fashion?
 13 A No.
 14 Q No, it wasn't, or no, you don't recall?
 15 A I don't believe it was, but I don't recall
 16 specifically.
 17 Q When you and Sergeant Colborn were there, did you
 18 report what Sergeant Colborn had said to you, or did
 19 you simply ask Sergeant Colborn to tell the sheriff
 20 what Sergeant Colborn had told you?
 21 A I don't know exactly how it went down. Usually if I
 22 take someone to talk to a supervisor, I usually lead
 23 into it with a quick summary of what it was and then
 24 let someone else explain it.
 25 Q Sure. And that's, I mean, again, that's probably what

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1 would have happened based on your own experience and
 2 practice.
 3 A It's probably what happened.
 4 Q Okay. It certainly would not be the case that
 5 Sergeant Colborn would not be allowed to speak to the
 6 sheriff.
 7 A No.
 8 Q I mean, that's the point of his being there, correct?
 9 A Correct.
 10 Q So that if the sheriff has questions, he can follow
 11 them up with Mr. Colborn?
 12 A Correct.
 13 Q And do you have any recollection as to how long the
 14 meeting lasted?
 15 A You know, I don't, other than it was probably very
 16 short.
 17 Q Mm-hmm. Do you have a recollection of anybody saying
 18 anything in particular?
 19 A Other than the sheriff said, "Give me a statement as
 20 to what you just told me."
 21 Q Okay.
 22 A That's how this came about.
 23 Q And -- Well, and when you say that's how this came
 24 about, it is that direction from the sheriff, together
 25 with your own feeling of the significance of the

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1 event, that caused you to prepare the statement that's
 2 here as Exhibit 125.
 3 A Correct.
 4 Q And after you prepare that statement, what's your
 5 practice in terms of what you do with it? Does it go
 6 to a case file, does it go to the sheriff, does it go
 7 any particular place?
 8 A This particular statement went to the sheriff.
 9 Q All right. Did you see it after it went to the
 10 sheriff?
 11 A No, sir.
 12 Q When's the next time you did see it?
 13 A When Amy came to talk to me last Friday.
 14 Q Okay. And Amy, for our record, is Ms. Doyle, the
 15 lawyer --
 16 A Correct.
 17 Q -- seated to your left. And I take it at that time
 18 you read the statement?
 19 A Yes.
 20 Q Were you able to recall anything beyond what you've
 21 told us so far about the obtaining of the statement?
 22 A No.
 23 Q Besides Sheriff Petersen, do you recall having any
 24 discussion with anyone else concerning what it is that
 25 Sergeant Colborn had said?

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1 A I don't believe so.
 2 Q Do you recall having any conversation with Sergeant
 3 Colborn after September 12th, 2003, about this
 4 subject?
 5 A Other than a couple days ago when he mentioned he got
 6 a phone call and he had to do a deposition.
 7 Q Okay. And actually I was going to be coming to asking
 8 you that. But I'm talking about in, roughly,
 9 September of 2003, for example, any follow-up in which
 10 you bump into Colborn and say, "Remember yet who it is
 11 that you got the call from or" --
 12 A No.
 13 Q -- "who it is that you talked to," or him coming to
 14 see you and saying, "You know that conversation we had
 15 earlier, I think the guy that I talked to was so-and-
 16 so"?
 17 A No.
 18 Q So as of today, Mr. Lenk, is it -- I'm sorry. What's
 19 your title? You're lieutenant?
 20 A Lieutenant of Detectives.
 21 Q Okay. I don't mean to diminish your title by not
 22 using it all the time. Lieutenant, when you came in
 23 today, did you have any more information about the
 24 subject matter of Exhibit 125 than you can recall
 25 having back in 2003?

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1 A [Shaking head]
 2 Q That is, had you picked up any new information of any
 3 kind since you prepared the report that you don't
 4 remember?
 5 A Other than -- No, other than actually getting the
 6 report and remembering I actually did it. I had
 7 totally forgotten about it.
 8 Q Okay. So no conversa-- Well, setting the report aside
 9 and talking only about the incident described in the
 10 report, that is a contact from some other law
 11 enforcement agency about a person in custody for an
 12 assault and wondering if that person was involved in
 13 an assault that was prosecuted earlier or that was
 14 going on earlier in Manitowoc County, was there any
 15 conversation about that general subject matter that
 16 you can recall having with anybody else?
 17 A No.
 18 Q Did you ever talk to any other people from Brown
 19 County about it or any other Brown County law
 20 enforcement agency including, for example, the City of
 21 Green Bay Police Department?
 22 A No.
 23 Q Or Ashwaubenon or anybody else?
 24 A No, sir.
 25 Q Okay. So, again, I think I'm approaching beating the

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1 dead horse, but I just need to make sure that the
 2 horse is in fact dead. There is not any more
 3 information that you have right now, today, about the
 4 subject matter of the statement contained in 125 than
 5 you had at the time you prepared 125; is that true?
 6 A That's all I have.
 7 Q Okay. Now let me shift to conversations with anybody
 8 in connection with this litigation that's going on
 9 now. Okay?
 10 A [Nodding]
 11 Q You had some conversation with Sergeant Colborn in
 12 which, presumably, you told each other about this
 13 process that you're involved in here today.
 14 A Yes, sir.
 15 Q Is that right? Do you recall whether you contacted
 16 him or he contacted you?
 17 A I believe he contacted me.
 18 Q Is he still with the sheriff's department?
 19 A Yes.
 20 Q Okay. So you're both active members --
 21 A Right.
 22 Q -- of the sheriff's department today. And when he
 23 approached you, however the contact occurred, whether
 24 it was he to you or you to him, was it limited to the
 25 question of the existence of a subpoena or did you

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1 discuss this document? Did you discuss the fact that
 2 the events described in 125 had occurred? Did you
 3 have any other conversation?
 4 A No, not really. He had mentioned to me that he had
 5 gotten some kind of contact that he had to make a
 6 deposition, and he asked me if I had any contact and I
 7 said yes. I said, "I have no idea what it's about. I
 8 wasn't even hired at the time." And he had mentioned
 9 something about a phone call. And it still didn't
 10 register to me until he came out and he said, "No,
 11 it's about that information I gave you about a phone
 12 call I got." I said, "Oh, okay." That's how I
 13 remembered it. So...
 14 Q And did he say anything about having an improved
 15 recollection or increased amounts of information --
 16 A No.
 17 Q -- today as opposed to what he had back then?
 18 A Not to my knowledge.
 19 Q How about conversations with Sheriff Petersen? Was
 20 this matter taken up between you and him at any time
 21 after September 12th, '03, to your recollection?
 22 A No.
 23 Q So, again, I mean, it's as though as of September 12,
 24 '03, sort of a door gets closed on the issue, at least
 25 in your mind, and that door isn't opened again until

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1 the subpoena comes around.
 2 A Correct.
 3 Q And, well, you're not aware of any other person
 4 besides Sheriff Petersen, Sergeant Colborn and
 5 yourself that has ever had conversation about this or
 6 discussion about this; is that right?
 7 A Not to my knowledge.
 8 Q "This" meaning --
 9 A This document.
 10 Q This subject, yeah.
 11 A No.
 12 Q Okay.
 13 (Counsel consulting off the record 11:51:10 - 11:52:35)
 14 Q In Exhibit 125, in the third paragraph, quote,
 15 "Sergeant Colborn said the detective wanted to speak
 16 to someone in the Detective Unit, but Sergeant Colborn
 17 can't remember who he advised or passed the
 18 information on to." Do you remember that?
 19 A Yes.
 20 Q Okay. Again, that's Sergeant Colborn indicating that
 21 the person he recalled as a Brown County detective
 22 wanted to speak to someone in the Manitowoc Detective
 23 Unit, correct?
 24 A He said whoever he had talked to wanted to speak to
 25 someone in the Detective Unit.

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1 Q Right. And, again, I think we've already agreed that
 2 that's the Manitowoc County Detective Unit that he's
 3 referring to?
 4 A That the person he wanted to speak to?
 5 Q Yes.
 6 A Yes, sir.
 7 Q And, in short, he wanted to speak to a Manitowoc
 8 County detective who might know something about this
 9 other case. I mean, that's what you understood --
 10 A Correct.
 11 Q -- Sergeant Colborn to be saying that the other person
 12 had said to Sergeant Colborn.
 13 A Correct.
 14 Q And the testimony that you gave earlier about the
 15 composite drawing that -- What's Mr. Kusche's title at
 16 the present?
 17 A At that time he was chief investigator.
 18 Q Okay. That Chief Investigator Kusche had in his
 19 office, as I understood your testimony toward the end
 20 of that discussion, you were thinking that there
 21 probably was a photograph there as a comparison point?
 22 A I think there probably was now that I'm thinking about
 23 it. There probably was a picture there so you could
 24 compare the two.
 25 Q Let me try one other thing, then see if that refreshes

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1 your recollection at all. Obviously Inspector Kusche
 2 would have had to have gotten a description verbalized
 3 to him by the victim in the assault, true? In order
 4 to prepare the --
 5 A That would be normal procedure.
 6 Q That's the ordinary way of --
 7 MS. DOYLE: I'm just going to object. Lack
 8 of foundation.
 9 BY MR. GLYNN:
 10 Q Sure. And that's the ordinary way that that kind of
 11 composite would be prepared?
 12 A Usually from the victim or from a witness or --
 13 Q Sure. Sure. But, I mean, from somebody who says they
 14 saw the person.
 15 A Correct.
 16 Q And could it have been that what Inspector Kusche was
 17 saying to you was the description he had received from
 18 the victim and asking you to compare that to the
 19 composite, as opposed to comparing the photograph to
 20 the composite?
 21 A No, I think actually it was comparing the photograph
 22 to the composite.
 23 Q Okay.
 24 A To see how close they were.
 25 Q Okay. And so what he had was then a photograph of --

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1 And I take it the photograph was of Mr. Avery?
2 A I believe so. I --
3 Q Yeah. And, again, this was obviously before Mr. Avery
4 had been exonerated of the crime.
5 A Mm-hmm.
6 Q This was, I think you said, in what, like, '98 or '9,
7 something like that?
8 A Somewhere in my first part of coming up in the
9 Detective Unit.
10 Q Yeah. Okay. And at that time, again, I think you've
11 indicated that the Avery case was not something
12 significant to you.
13 A No, sir, not at all.
14 MR. GLYNN: Okay. I think I'm finished.
15 Anybody else have any...
16 MR. BASCOM: I don't have any questions for
17 this witness.
18 MS. DOYLE: I just have one question.
19 E X A M I N A T I O N
20 BY MS. DOYLE:
21 Q I believe you stated that Exhibit 125 was prepared
22 because of a request made by Sheriff Petersen that you
23 prepare a report; is that correct?
24 A Correct.
25 Q Would you have prepared Exhibit 125 if the sheriff

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1 didn't direct you to prepare a written report
2 regarding your conversation with Colborn?
3 A Probably not.
4 MS. DOYLE: That's all I have.
5 REPORTER: There being nothing further for
6 the record, the deposition is concluded at 11:57
7 a.m. Off the record.

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