

Exhibit 14

United States District Court
Eastern District of Wisconsin

Avery v. Manitowoc County

04 C 986



Video Deposition of

Andrew Colborn

Recorded 10/13/2005 in Manitowoc, WI

4:06 pm - 4:27 pm, 22 mins. elapsed

Magne-Script

(414) 352-5450

15858 Condensed transcript with index

Video Deposition of Andrew Colborn 10/13/05

<p style="text-align: center;">Page 1</p> <p>Witness Andrew Colborn</p> <p>Thursday 10/13/2005 at 09:00 by: Jeff 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 Raymond J. Pollen 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>
<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES 2 Walter F. Kelly 3 Walter F. Kelly, S.C. 4 700 W. Michigan St. #500 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 Claude J. Covelli 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 INDEX 2 EXAMINATION BY PAGE NO. 3 Mr. Glynn 4 4 Mr. Bascom 20 5 (There were no exhibits marked) 6 (The sealed original transcript was sent to Mr. Kelly) 7 ===== 8 EXAMINATION 9 BY MR. GLYNN: 10 Q Sergeant Colborn, my name is Steve Glynn. I'm going 11 to ask you a few questions. I'm here, along with Walt 12 Kelly, on behalf of Steve Avery. First, you have in 13 front of you a document that doesn't bear a sticker, 14 but I'll represent to you that that's a photocopy of 15 Exhibit 138 that's been earlier marked in these 16 proceedings, okay? 17 A Yes, sir. 18 Q Have you had a chance to look at that document today? 19 A Yes. 20 Q Have you seen it before today? 21 A Yes. 22 Q Can you tell me when the last time before today is 23 that you saw that? 24 A I believe when I penned it, when I authored it. 25 Q Okay. And from that time until today, you don't think</p>

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1 you've seen it?

2 A I take that back. I had a -- Thursday, I believe, of

3 last week, or Friday of last week, I was shown this

4 document by Amy Doyle.

5 Q As part of an interview with her?

6 A Yes.

7 Q Essentially prepping you for testimony here?

8 A Yes.

9 Q Okay. Did she show you anything else besides this

10 document?

11 A I don't recall. I don't believe so.

12 Q Okay. Well, let me ask a couple of background

13 questions and then we'll go into the document. And,

14 actually, let me start with the first sentence of the

15 document because that's part of the background. It

16 says that in 1994 or 1995, you were working as a

17 corrections officer in the Manitowoc County jail,

18 correct?

19 A Yes, sir.

20 Q How long had you been working as a corrections officer

21 in the jail?

22 A I was hired in January or February of 1992, so roughly

23 two or three years I had been employed as a

24 corrections officer in the jail.

25 Q Prior to that time, had you had any job connected with

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1 the jail?

2 A Prior to 1992?

3 Q Yes, sir.

4 A No, sir.

5 Q Had you had any law enforcement job prior to that?

6 A No, sir.

7 Q Okay. So in the time period that's discussed in this

8 memo, which is '94 and '95, do you recall whether you

9 were in the custom or practice of keeping notes in a

10 log book, in a memo book, in any data entry form?

11 A Prior to this?

12 Q At this time...

13 A At this time.

14 Q ...in '94 and '95.

15 A There was a computer daily log that you typed

16 significant events that occurred in the jail, but it

17 was a log that pertained specifically to the jail. I

18 did not keep a written notebook or notes of any kind

19 in the capacity as a corrections officer.

20 Q Okay. So short of this computer entry which would

21 have been intended to relate to activities in the

22 jail, you did not record events that occurred at your

23 work; is that correct?

24 A Only events that were occurring in the jail. Like,

25 you may have a prisoner on a suicide watch. There

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1 would be a written hard copy of why that prisoner was

2 on a suicide watch and what he was doing during the

3 course of his day.

4 Q Sure.

5 A But outside of jail business, no, there's no log.

6 Q How about your own private diary or calendar, memo

7 book, anything like that?

8 A No. I usually keep my appointments in my head, and I

9 don't keep a diary or a journal.

10 Q Okay. You've gone over what is Exhibit 138...

11 A Yes, sir.

12 Q ...today and earlier, correct?

13 A Yes, sir.

14 Q It describes you receiving a telephone call from

15 someone who identifies himself as a detective,

16 correct?

17 A Yes.

18 Q And am I correct in understanding that at the time you

19 wrote this memo, which is September 12, 2003, you

20 could not recall with certainty what law enforcement

21 agency that detective was associated with?

22 A That's correct.

23 Q Do you -- I hear your machine clicking. Does that

24 mean anything to you?

25 A I'm okay.

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1 Q Okay. I'm just going to go ahead, operating on the

2 theory that if your machine is going off and it

3 matters, you'll tell us.

4 A Yes, sir.

5 Q Okay.

6 A That would be great.

7 Q All right. With respect to this report, it says,

8 "receiving a telephone call in the central control

9 area." What is that? Part of the jail?

10 A Yes, sir.

11 Q And there is another report prepared by a Lieutenant

12 Lenk?

13 A Yes, sir.

14 Q Do you recall that?

15 A Yes.

16 Q Do you know if you've seen that report?

17 A No, sir.

18 Q Okay. Have you discussed this matter with him, I

19 assume?

20 A The fact --

21 MR. BASCOM: Object to the form. Vague as

22 to time.

23 BY MR. GLYNN:

24 Q Anytime. Anytime prior to today, have you had a

25 conversation with Lieutenant Lenk about the matter

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1 that is discussed in this statement?

2 A Yes, sir.

3 Q And do you recall in that conversation learning that

4 at least he had the belief that this was related to

5 Brown County or at least thought it might have been

6 related to Brown County?

7 A He never relayed that information to me, so I don't

8 know.

9 Q Let me show you what's been marked as Exhibit 125 and

10 ask you to take a look at that. Have you seen that

11 before, or do we need to give you a chance to read it?

12 A I've never seen Lieutenant Lenk's statement, no.

13 Q Okay.

14 MR. GLYNN: Then let's just go off the

15 record and give him a chance to read it.

16 REPORTER: Off the record.

17 (Off the record 4:12 - 4:13)

18 REPORTER: Back on the record.

19 BY MR. GLYNN:

20 Q Have you had a chance now to read Exhibit 125?

21 A Yes, sir.

22 Q Do you recall telling Lieutenant James Lenk that the

23 person from whom you received the telephone call was a

24 detective and that you thought he might have been from

25 Brown County?

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1 A Actually, I thought I had told Lieutenant Lenk that I

2 thought the individual was from Sheboygan County, but

3 I wasn't sure.

4 Q Okay. So as of today, you know, here we are in

5 October 2005, you're not sure what you told Lieutenant

6 Lenk back in 2003 with respect to the county?

7 A That's correct, sir.

8 Q Okay. At any rate, what the subject matter was of

9 this person's call was a statement apparently made to

10 the caller by a person who was in the caller's

11 custody; is that correct?

12 A You know, we're going back to '94 or '95.

13 Q Sure.

14 A I'm a little gray on exactly --

15 Q And you can use your own report, Exhibit 138, to

16 refresh your recollection if that helps you.

17 A I don't know if the pers-- I gathered, yes, that they

18 had someone in custody. I don't know if this person

19 had commented directly to the person who called me or

20 had commented to other people within that jurisdiction

21 and this eventually got to my caller.

22 Q But the detective indicated that there was a person in

23 custody who had made a statement about a Manitowoc

24 County offense, correct?

25 A Yes.

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1 Q Okay. And what that person in custody had said was

2 that he had committed an assault in Manitowoc County

3 and someone else was in jail for it, correct?

4 A Yes, sir.

5 Q And that much you're pretty sure of, correct?

6 A Yes.

7 Q I mean, that's a significant event.

8 A Right. That's what's stood out in my mind.

9 Q Sure. And you knew by September 12, 2003 that Steven

10 Avery is someone who had been in jail for an assault

11 that he had been convicted of, correct? Had been in

12 jail.

13 A Yes.

14 Q He was recently released by then.

15 A Yes. Mm-hmm.

16 Q And you knew that someone else had committed that

17 crime, Gregory Allen; that was in the media as well,

18 correct?

19 A Yes.

20 Q And so one of the things you believed was that there

21 may be a relationship between the Gregory Allen matter

22 and this telephone call, correct?

23 MR. BASCOM: Are you talking about 2003?

24 MR. GLYNN: In 2003.

25 Q Correct?

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1 A Yes. That -- Yes, sir.

2 Q Sure. And, I mean, the fact of the matter is also,

3 again, as reported in the media, Mr. Allen, at the

4 time of Mr. Avery's being released by the court, had

5 been convicted of a sexual assault in Brown County and

6 sentenced to prison, correct?

7 A That whole portion of it I wasn't aware of.

8 Q Okay.

9 A I am now. It's '05. At the time of '03, I really

10 wasn't -- can't say I was, like, following the case.

11 So I knew the name that you mentioned had come up, but

12 I didn't know where he was incarcerated; if he was

13 incarcerated, what his status was.

14 Q Have you seen any of the reports of the district

15 attorney's office indicating that it would not be

16 prosecuting Mr. Allen for the crime on which Mr. Avery

17 had been exonerated due to the fact that a statute of

18 limitations had run, and in any event, Mr. Allen was

19 serving a 60 year sentence?

20 A I can't recall viewing --

21 Q Recall any of that?

22 A -- no, viewing any reports from the district

23 attorney's office. No, sir.

24 Q And I'm not really talking about reports at the

25 moment, sir. I'm including any source: media, and by

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1 that I mean television, radio, newspapers; talk around
 2 the sheriff's department; talk in your own household,
 3 anything.
 4 A Certainly in the media.
 5 Q Okay.
 6 A I mean, there was a lot of media coverage on this
 7 case, and certainly I probably got most of the
 8 information that I knew about the case through the
 9 media.
 10 Q Sure. I mean, you yourself hadn't had any involvement
 11 in the Avery prosecution or investigation, correct?
 12 A I wasn't even in this country when that occurred.
 13 Q Sure.
 14 A I was stationed overseas in the military.
 15 Q And when you came back and were involved in '94 and
 16 '95 as a corrections officer, you were not otherwise
 17 working as a deputy sheriff, correct?
 18 A No, sir.
 19 Q So you hadn't had any involvement in any of the post-
 20 conviction investigative efforts with respect to Mr.
 21 Avery's case.
 22 A No, sir.
 23 Q So your sources of information would necessarily have
 24 been media-type sources, correct?
 25 A Correct.

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1 Q Okay. At any rate, you recognized this was
 2 significant enough that you should forward that call
 3 that was coming in from another detective to someone
 4 in the Manitowoc County Sheriff's Department to take
 5 it further, correct?
 6 A Yes, sir.
 7 Q It wasn't within your jurisdiction to take it any
 8 further, correct?
 9 A No, sir.
 10 Q And even if you had wanted to, you didn't have the
 11 legal authority under your job duties to do that.
 12 A Correct.
 13 Q So what you did was to give the calling detective a
 14 telephone number for a Manitowoc County Sheriff's
 15 office detective, correct, or the detective bureau?
 16 A Right. I believe I would have just given him that
 17 number in case -- I'm sure I tried to transfer the
 18 call.
 19 Q Okay.
 20 A Because that would have been the protocol that was
 21 required, you know, as my job. But I got in the habit
 22 of, since that's sometimes iffy, I would have given
 23 him the number of who I was trying to transfer him to.
 24 Q So let me see if I understand that because I think all
 25 of us at one time or another have had their calls

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1 transferred, and sometimes people give you a number in
 2 advance of the attempt to transfer and say in case we
 3 lose each other or the call doesn't go through, the
 4 number to call is such and such. Is that the way you
 5 were doing it?
 6 A Yes.
 7 Q Okay. So you gave the person the number and then
 8 attempted to transfer the call. And do you know
 9 whether the call went through to the other detective?
 10 A I don't know. I didn't hear somebody pick up. But as
 11 soon as the phone rang, I would have hung it up.
 12 Q Okay. Because at that stage, again, you've given the
 13 person the contact information if he chooses to follow
 14 up, correct?
 15 A Yes, sir.
 16 Q Did you ever make any inquiries of anybody in the
 17 detective bureau to find out whether they had received
 18 such a call?
 19 A No, sir.
 20 Q Or did you ever hear any feedback from anybody about
 21 --
 22 A No, sir.
 23 Q -- whether they had gotten such a call?
 24 A No, sir.
 25 Q Okay. So that's what's going on in 2003, correct?

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1 A No, the call --
 2 Q I'm sorry. That's what's going on in '94/'95.
 3 A Yes, sir.
 4 Q You then, in 2003, following the publicity that we've
 5 already discussed relating to Mr. Allen and Mr. Avery,
 6 and you're concerned that perhaps the caller that was
 7 calling was speaking about Mr. Allen and Mr. Avery,
 8 true?
 9 A I was wondering about that, yes.
 10 Q Sure. You brought that up to someone else, correct?
 11 A Yes, sir.
 12 Q And to whom did you bring that up?
 13 A To Lieutenant Lenk.
 14 Q And you and Lieutenant Lenk had a conversation about
 15 it?
 16 A Yes, sir.
 17 Q And in that conversation, is it safe to say that you
 18 told him what's reflected in Exhibit 138?
 19 A Yes, sir.
 20 Q There was also a conversation that followed that in
 21 which you spoke to Sheriff Petersen, correct?
 22 A Yes, sir.
 23 Q And do you recall that Lieutenant Lenk was there as
 24 well?
 25 A When I spoke with Sheriff Petersen?

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5 (Pages 17 to 20)

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<p>1 Q Yes. Was he or not; do you know? 2 A No, he was not. 3 Q He was not. Okay. Who all was there when you talked 4 to Sheriff Petersen; do you remember? 5 A I don't recall who was in the room. I remember coming 6 into work. Sheriff Petersen was downstairs where our 7 patrol division is, and I got the impression he was 8 waiting for me to come into work. There were other 9 people coming in and out of the room, but I don't 10 recall who. 11 Q Do you know what it is that gave you the impression he 12 was waiting for you? I mean, did he come right up to 13 you or ask you to come with him or something? 14 A I usually don't have contact with the sheriff, you 15 know. So that's what gave me the impression he was 16 waiting for me. 17 Q And when you and he connected that day, what happened? 18 I mean, did you say something to him? Did he say 19 something to you? 20 A No, he initiated the conversation by saying he had 21 spoken with Lieutenant Lenk and he felt that it would 22 be in the best interests of Lieutenant Lenk and myself 23 and the sheriff's department, I would suppose, that if 24 I was to give him a statement on the gist of our 25 conversation or what we had discussed. And I asked</p>	<p>1 conversations with Sheriff Petersen about this subject 2 matter? 3 A No. 4 Q How about any meetings with District Attorney Rohrer 5 about this subject matter, and again, I mean the 6 subject matter of Exhibit 138 that we've been 7 discussing. 8 A No, I've never had a meeting with the district 9 attorney about this. 10 Q Okay. How about an assistant district attorney named 11 Mike Griesbach? 12 A Never had a meeting with Mike Griesbach about this. 13 Q have you ever had any conversations with anybody else, 14 other than Sheriff Petersen and Lieutenant Lenk, about 15 the subject matter of Exhibit 138? Ever discuss it 16 with anyone else, any other officers, any friends, any 17 family? 18 A Not that I can specifically recall. I may have 19 mentioned it to other people, but I don't recall doing 20 it. 21 Q That is, as you're sitting here today, you don't have 22 any specific recollection of discussing it with 23 anybody else. 24 A No, sir. 25 Q But you're not ruling out the possibility that you may</p>
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<p>1 for clarification on that, you know. And he goes, 2 "Well, what you discussed about a telephone call that 3 you received while you were working in the jail." And 4 I said okay. And before I went out on patrol, I 5 provided this statement. 6 Q Do you know what time your patrolling duties were 7 then? 8 A Well, I worked noon to 8:00, but as a shift commander, 9 there's some times I don't get out on the road until 10 two, three o'clock depending on what sort of 11 administrative or office duties I have. 12 Q So if you look toward the upper right-hand portion of 13 that Exhibit 138, you see a time of 1330 hours. Does 14 1:30 seem like about an appropriate time? 15 A Yes. Sure. 16 Q And that would have been immediately after your 17 conversation with Sheriff Petersen? 18 A No. I believe my conversation with Sheriff Petersen 19 would have been like at quarter to twelve or 12:00. 20 Q Okay. Well, when I say immediately after, I mean 21 within an hour or two. 22 A Oh, yeah. Yes, sir. 23 Q Okay. 24 A Same day as the conversation with Sheriff Petersen. 25 Q All right. And do you recall any further</p>	<p>1 have discussed it. 2 A No, I'm not ruling out the possibility that I may have 3 discussed it with someone else, but I can't 4 specifically tell you names of people I may have 5 mentioned this to. 6 Q Okay. 7 MR. GLYNN: I think that's all I have. 8 That's all, thanks. 9 MR. BASCOM: I just have one question 10 because I'm confused about the testimony 11 concerning Sheboygan County versus Brown County. 12 And I wasn't sure if I heard you correctly. Let 13 me just ask you this question. 14 E X A M I N A T I O N 15 BY MR. BASCOM: 16 Q You said "Sheboygan County, but I'm not sure." And my 17 question is, is it that you heard that the detective 18 -- you think the detective that called you was from 19 Sheboygan County but you're not sure, or that you told 20 the Lieutenant that you thought the guy was from 21 Sheboygan County but you're not sure? Do you see the 22 difference between those two questions? 23 A Sure. 24 Q And I'm not sure which way your answer was aiming. 25 A You know, I can't recall the specifics of my</p>

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1 conversation with Lieutenant Lenk. I may have said he
2 was either from Sheboygan or Brown County, I don't
3 know, because I don't know. And I don't know why
4 those two jurisdictions stand out in my head other
5 than that is the area or outside jurisdictions that we
6 have the most contact with, you know, being centered
7 between the two of them. You know, I don't know if
8 that answers your question --

9 Q Well, as we sit here today --

10 A -- as it pertains to Lieutenant Lenk, I'm --

11 Q No, as we sit here today --

12 A Okay.

13 Q -- do you have a sense or a feeling that the guy was
14 from Brown County or Sheboygan County, or don't you
15 know?

16 A I really don't know, sir.

17 Q That's fine.

18 MR. BASCOM: That's all I have.

19 MR. GLYNN: Nothing else.

20 MR. BASCOM: Great. Thanks.

21 REPORTER: Okay. There being no further
22 questions, this deposition is concluded at 4:27
23 p.m. Off the record.

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