

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/41

Report Date:

Primary Information

Report Number: DCIR13280/41
Type Of Report: Investigative
Description: dci2intvogel
Approval Status: Approved
Approved Date: 04/12/2004
Approved By: Conversion User (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)

Narrative

CASE ACTIVITY REPORT Wisconsin Department of Justice
DJ-DCI-2 (Rev. 8/91) DIVISION OF CRIMINAL INVESTIGATION

1. Case Number

GC-13280

2. Date

11/04/2003

3. Case Title

STEVEN AVERY PROSECUTION

4. Activity

Interview/ Denis Vogel

5. Date of Activity

10/28/2003

6.

On 10/28/2003, Special Agents Amy A. Lehmann and Debra K. Strauss interviewed DENIS R. VOGEL. Also present during the interview were Assistant Attorney Generals Jennifer Nashold and Tom Fallon. The interview took place at the WI Department of Justice - Madison DCI office and began at approximately 1:00 p.m. In 1985, VOGEL was the Manitowoc County District Attorney and handled the prosecution of STEVEN AVERY. VOGEL provided the following information:

prior contact? you prpped by lawyer?
(It should be noted that prior to the interview of VOGEL he was given the opportunity to review the Manitowoc County District Attorney's Office case file of STEVEN AVERY).

VOGEL was the Manitowoc County District Attorney from January of 1977 until 1985. VOGEL then went into private practice in Minneapolis for a short time and is currently working for the law firm of Wheeler, Van Sickle & Anderson, S.C. located in Madison, WI.

W/ how?
VOGEL was asked when he first could remember hearing about the assault of PENNY BEERTNSEN. VOGEL stated that he could not remember if he was called about the assault on the day that it happened or the following day. However, VOGEL was contacted prior to a photo line-up being shown to BEERTNSEN. VOGEL stated that he could remember discussing with officers that they needed to make sure that the photographs were a fair representation of who BEERTNSEN was describing. VOGEL thought maybe he would have had this conversation with either TOM KOCOUREK or GENE KUSCHE. VOGEL said that it was possible that he saw the photographs before they were shown to BEERTNSEN but he was not sure.

VOGEL stated that he was not sure if he ever went to the hospital while BEERTNSEN was there being treated. VOGEL

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said that if someone said he was there then it was possible, although VOGEL could not recall that. VOGEL stated that it was not uncommon to be called by law enforcement to discuss cases, but it would have been uncommon for VOGEL to actually go to the hospital on this type of issue.

VOGEL stated that his first memory of the BEERTNSEN's was when he received a telephone call from TOM BEERTNSEN. TOM BEERTNSEN wanted to know if VOGEL was going to be the prosecutor on the case and TOM BEERTNSEN also wanted to know if it was possible for him to hire his own prosecutor. VOGEL told him that it was not possible.

VOGEL stated that he met with PENNY BEERTNSEN several times in his office. One such occasion would have been before she viewed the live line-up. VOGEL said that he could remember getting the public defender's office involved in the live line-up so that later there would be no disputing of how it was handled. VOGEL relayed that his conversation with PENNY BEERTNSEN about the live line-up would have consisted of telling her to come down to the sheriff's department to do it. It would not have included what she should expect or who was in the live line-up.

VOGEL was asked why there was both a photo line-up and a live line-up. VOGEL stated that he did not want BEERTNSEN challenged in court that her picking out AVERY in the courtroom was her first time identifying him. VOGEL was asked why AVERY was the only person that was in both the photo line-up and the live line-up. VOGEL stated that he did not know why that was. VOGEL stated that he knew that they tried to get bearded men for both line-ups.

VOGEL stated that he found out that AVERY was the suspect after the composite drawing was completed. VOGEL said that there was also someone at the hospital that believed that the description was that of AVERY.

VOGEL stated that the name STEVEN AVERY was not unfamiliar to him at the time of the attack on BEERTNSEN. VOGEL stated that AVERY had a history of animal abuse, assaulting a lady on the road, and burglary. VOGEL said that he assumed that the assault of the lady was sexually related. — explain that?

VOGEL was asked if he was aware of BEERTNSEN being shown a photograph of AVERY prior to being shown the full photo line-up. VOGEL stated that he was not aware of that.

VOGEL was asked if he was asked for or gave any guidance when it came to the composite drawing that was completed. VOGEL stated that he did not.

VOGEL said that it was his recollection that BEERTNSEN gave a verbal description of her assailant, a composite drawing was done and a detective made a comment that is sounded and looked like AVERY. VOGEL stated that it was then that a photo line-up was put together. BEERTNSEN then looked at the photographs and picked AVERY out as her assailant.

There was a decision made by Sheriff KOCOUREK to arrest AVERY and a search warrant was also drafted in front of Judge HAZELWOOD. Evidence was taken from the AVERY home, was inventoried and placed in a box.

VOGEL stated that in addition to the identification by BEERTNSEN, he focused on the physical evidence that was available for the case. VOGEL stated that the clothing that AVERY claimed to have worn on the day of the assault did not contain any cement dust. Two people from the State Crime Laboratory testified about the clothing at the trial. In addition there was a hair found that was consistent with AVERY's hair.

VOGEL relayed that there was not even a trace of cement powder on the clothing of AVERY's. VOGEL stated that he could not remember how certain pieces of clothing were linked to the day of the crime, but thought that AVERY must have pointed the clothes out. VOGEL stated that as far as ARLAND AVERY's observations, ARLAND would not have been in the position to see what was seized from the STEVEN AVERY home as it related to clothing. VOGEL was asked if he could recall any talk about LORI AVERY washing clothes that were possibly evidence. VOGEL stated that he could not recall that.

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VOGEL was asked who ran the STEVEN AVERY investigation. VOGEL stated that KOCOUREK and KUSCHE ran the investigation. VOGEL did not know if it was normal for the sheriff, KOCOUREK, to run an investigation or not. VOGEL stated that KOCOUREK might have gotten involved because there were no other investigators available.

VOGEL was asked if he received any pressure to prosecute the case against STEVEN AVERY. VOGEL stated that he did not.

VOGEL was asked about the Preventative Detention that was placed on AVERY after he was arrested. VOGEL stated that was a new process and because of AVERY's criminal history VOGEL decided to place AVERY in Preventative Detention. VOGEL stated that he would have solely made that decision. VOGEL was asked if he was aware of specific directives that KOCOUREK left with the jail staff as it pertained to AVERY. VOGEL stated that he was not aware of that occurring.

VOGEL was asked if he was aware of GREGORY ALLEN at the time of the BEERTNSEN attack. VOGEL thought that he probably knew of ALLEN as his office prosecuted him a couple years prior. VOGEL stated that he was also aware of other individuals who were previously involved in sexual assaults.

VOGEL was asked if other individuals besides AVERY were ever considered suspects in the case. VOGEL stated that at some point he must have spoken with someone about the concept of making sure that they had the right guy. VOGEL stated that he did not remember who he would have spoken to about that or how the conversation might have occurred. VOGEL said that he noticed while looking through the case file that an earlier conviction of ALLEN was in the AVERY case file. VOGEL said that someone must have brought it to his attention, however he could not recall any specific about how that might have happened.

VOGEL stated that BEERTNSEN picked AVERY out of a line-up and was sure that AVERY was her assailant. VOGEL also felt very strong about the crime lab reports of no trace of cement residue on the clothing and also the hair that was retrieved was consistent with AVERY's hair. VOGEL stated that he was convinced that AVERY was the assailant in the case where BEERTNSEN was attacked. VOGEL was asked since it has now been proven that AVERY was not the assailant, did VOGEL have any explanation for the lack of cement dust on AVERY's clothing. VOGEL stated that he did not.

VOGEL was asked if he could recall any of his own staff talking to him about concerns that ALLEN was the better suspect. VOGEL stated that there might have been a discussion, but that he could not remember it. VOGEL stated that he and his office staff often had discussions about cases.

VOGEL stated that he would have never thought lightly about other possible suspects that were brought to his attention. Again VOGEL stated that BEERTNSEN was very sure that AVERY was the guy and she was never unsure of herself.

VOGEL was asked if he could remember thinking that ALLEN could not be a suspect because he had an alibi. VOGEL stated that he couldn't remember that.

VOGEL was asked if he was informed about the arrest of AVERY prior to it happening. VOGEL stated that he could not remember but that it was possible that he discussed things like Miranda and the suspect's statement with the sheriff.

VOGEL was asked if the sheriff's department conducted a canvass of the area where BEERTNSEN was attacked. VOGEL stated that he was not sure. VOGEL said that he knew the detectives conducted timed drives from the crime scene to other locations to determine if there was enough time for AVERY to commit the crimes he was charged with. VOGEL was asked if he could remember the defense requesting copies of reports relating to a canvass that was conducted. VOGEL stated that he could not.

VOGEL was asked about his working relationship with the Manitowoc Police Department in 1985. VOGEL stated that he

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Was he asked if he recalled anyone telling him that?
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had a good working relationship with them. VOGEL stated that he was not aware that the police department was surveilling ALLEN at the time of the assault. VOGEL said that he did not know that until he read it in the newspaper.

VOGEL stated that over the years the relationship between the sheriff's department and the police department varied depending on the time period and the personalities involved.

VOGEL was asked if he had to ask the sheriff's department for follow-up during the AVERY investigation. VOGEL stated that he could only remember requesting a test on some vegetation.

As it related to discovery, VOGEL stated that he had an open file policy and that was true for every case. VOGEL stated that he withheld nothing. VOGEL relayed that he had a very good relationship with all the public defenders and that he always gave them access to what he had collected as part of the case file. VOGEL said that he would not be able to remember if he provided a complete copy or if the public defender's office were allowed to review the original case file.

VOGEL was asked if he ever had any problems getting police reports from the sheriff's department in regards to the AVERY investigation. VOGEL stated that he did not think that he had any problems and as far as he knew he received reports on all activities that were conducted.

VOGEL was asked if any investigators ever approached him with other possible suspects. VOGEL stated that he could not remember that happening. VOGEL said he believed that AVERY was the man who committed the crimes and did not seriously think it could have been anyone else.

VOGEL stated that he did not get involved in the day to day details of the investigation and as a result would not have known that the police department was watching ALLEN. VOGEL stated that he could not remember thinking that ALLEN was a possible suspect. ALLEN never struck him as a big time criminal, just someone who had a couple of exposure cases. VOGEL said that if there were any cops with a different perspective, he did not know about it. VOGEL stated that if he had thought AVERY had not committed the crime he would not have gone forward with the prosecution of him.

VOGEL was asked who had spoken to about the AVERY investigation since AVERY was released from prison. VOGEL stated that he spoke to TOM KOCOUREK briefly a week or two ago. VOGEL said that he just wanted to know if the reporters had contacted KOCOUREK. VOGEL also spoke with DA MARK ROEHR and ADA MIKE GRIESBACH before AVERY was released. VOGEL stated that he also had contact with JIM FITZGERALD and JIM BOLGERT to see if the press had contacted either of them.

The interview of VOGEL was terminated at approximately 2:15 p.m.

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Record Status Information

Record Origination Operator:	Conversion User (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)
Record Origination Date:	04/12/2004 14:13
Last Update Operator:	Conversion User (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)
Last Update Date:	04/12/2004 14:13

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