

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

Primary Information

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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

09/27/2003

3. Case Title

STEVEN AVERY PROSECUTION

4. Activity

INTERVIEW: BEERNTSEN

5. Date of Activity

09/26/2003

6.

On Friday, September 26, 2003, at approximately 11:15 a.m., S/A Debra K. Strauss, S/A Amy A. Lehmann, Attorney Janine P. Geske, Distinguished Professor of Law at Marquette University and Dr. Daniel D. Blinka, Professor of Law at Marquette University interviewed:

NAME: PENELOPE A. BEERNTSEN (PENNY)
ADDRESS: 2211 Markham Street, Manitowoc, WI
DATE OF BIRTH: 02/08/1949
HOME TELEPHONE: 920-684-5274 (NON LISTED)
CELL TELEPHONE: 920-242-8066
WORK TELEPHONE: 920-684-9616

This interview was conducted in a conference room at the Marquette Law School, 1103 W. Milwaukee Street, Milwaukee, WI.

The special agents told BEERNTSEN they originally contacted her because BEERNTSEN had previously contacted the Attorney General's office regarding some harassing phone calls she had been receiving. BEERNTSEN said she originally received three phone calls on Saturday, September 20, 2003 and one phone call on Monday, September 22, 2003. BEERNTSEN said when she received these phone calls, the person on the other end of the line would not say anything. Since Monday, BEERNTSEN has not received anymore of these phone calls and she said this was no longer an issue. The special agents told BEERNTSEN that if she starts receiving these types of calls again she should contact

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Page 1 of 6

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

NEUTRAL - Continued

either S/A Strauss or S/A Lehmann.

S/A Strauss and BEERNTSEN had a previous telephone conversation on Tuesday, September 23, 2003. During this telephone conversation, BEERNTSEN stated she had other issues she would like to tell the special agents regarding the events that occurred after her assault in July 1985. S/A Strauss asked BEERNTSEN what these other issues were.

BEERNTSEN said she was originally taken to the emergency room at the hospital. While there, the physicians completed a rape protocol kit. Besides having the rape protocol kit performed, BEERNTSEN said she sustained injuries such as a concussion, cuts to the back of her head, her vision was blurred, a broken nose and a jaw injury. BEERNTSEN also stated that while she was being questioned by the investigators from the sheriff's department, BEERNTSEN was also overhearing the emergency room doctor contact someone at the eye clinic saying he did not want to stitch BEERNTSEN'S injuries because they were so close to the eye. BEERNTSEN overheard the physician tell the person from the eye care clinic that he had never stitched anything so close to the eye. The person on the other end of the phone offered to verbally tell the physician what to do. While BEERNTSEN was overhearing this conversation between the emergency room doctor and the person at the eye care clinic, BEERNTSEN was also being questioned by Manitowoc County Sheriff Tom Kocourek and Manitowoc County Sheriff's Deputy Judy Dvorak. BEERNTSEN was asked why the Sheriff was involved and BEERNTSEN said she seems to recall the Sheriff was involved in this process because the deputy who was on call at the time did not answer the page.

BEERNTSEN stated Deputy Dvorak asked most of the questions and the Sheriff kept coming in and out of the room. BEERNTSEN said the entire time she was answering the investigator's questions she was being treated by the physician. BEERNTSEN did not think Deputy Dvorak ever left the room, however, the Sheriff left the room during certain parts of the examination by the physician. As part of the interview with Deputy Dvorak and the Sheriff, BEERNTSEN provided a physical description of her assailant and gave a statement as to what happened.

While still in the emergency room, BEERNTSEN was handed a statement and asked to read it and sign it. This statement had been completed by Deputy Dvorak and was a summary of the information BEERNTSEN had provided. BEERNTSEN told Deputy Dvorak and the Sheriff that she was unable to read the statement because of her blurred vision. BEERNTSEN was told to sign the document anyhow. BEERNTSEN said she could not remember if she was told to sign this document by Sheriff Kocourek or Deputy Dvorak. At the direction of the law enforcement official, BEERNTSEN said she signed the statement that night even though she could not read it.

BEERNTSEN told the special agent she did not read the statement she signed at the hospital until approximately July 31 or August 1, 1985. When BEERNTSEN read the statement, she said there were errors. Most of these errors were regarding the sequence of events and BEERNTSEN asked to complete a second, more accurate statement. BEERNTSEN said she did not think the original statement was wrong because Deputy Dvorak wrote things down incorrectly, instead, BEERNTSEN believes she may have made some errors in telling Deputy Dvorak what happened. For example, BEERNTSEN initially said her assailant had brown eyes but later said they were blue. BEERNTSEN told the special agent she originally told Deputy Dvorak that her assailant had brown eyes. BEERNTSEN referred to some of the statements she made the night of the assault as "excited utterances".

That same night, after BEERNTSEN was moved from the emergency room into a hospital room, Sheriff Kocourek and Gene Kusche from the Manitowoc County Sheriff's Department asked BEERNTSEN if she was able to give a physical description of her assailant for a composite drawing. BEERNTSEN said that she provided a physical description to Kusche, such as the shape of her assailant's face, facial features, etc. BEERNTSEN and Kusche worked together until they came up with an accurate representation of her assailant.

Within a half-hour after the composite drawing had been completed, Sheriff Kocourek displayed to BEERNTSEN nine photos of individuals who matched BEERNTSEN'S physical description. BEERNTSEN described these photos as fairly uniform in size and shape. Sheriff Kocourek placed these photos on her bed tray for her to look at. BEERNTSEN said she was not sure if she knew whether or not the Sheriff's Department had a suspect in mind at this time or not. After Sheriff Kocourek placed the nine photos on the bed tray he asked her if she recognized the man who assaulted her. BEERNTSEN said the minute she saw STEVEN AVERY'S photo, she had a fearful

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lehmannaa 04/13/2005 13:31

005500

Page 2 of 6

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

Narrative Continued

reaction.

Sometime during the night of the assault, BEERNTSEN remembers asking Sheriff Kocourek if the sheriff's department had a suspect in mind. The Sheriff responded affirmatively. BEERNTSEN told the special agent she was not sure when this conversation occurred but she assured it happened on the night of the assault. BEERNTSEN was not sure if this conversation took place before or after the composite drawing and the photo-lineup.

Sometime during BEERNTSENS hospital stay, her husband, TOM BEERNTSEN told BEERNTSEN, that a suspect had been arrested in her assault case.

BEERNTSEN was released from the hospital the following day, July 30, 1985. Approximately the second night at home, BEERNTSEN had developed a bad case of poison ivy. Because of this, BEERNTSEN stated she was sleeping on the couch. Late that night, at approximately 12:07 a.m. (August 1, 1985) the BEERNTSEN residence received a phone call. BEERNTSEN told the special agent the phone call went like this:

BEERNTSEN: "Hello"

CALLER: "This is TOM"

BEERNTSEN: "What do you want?"

CALLER: "I want you."

BEERNTSEN said she hung up the phone and called Sheriff Kocourek the first thing the following morning.

BEERNTSEN was asked if she received any other harassing phone calls. BEERNTSEN responded that after the AVERY trial, BEERNTSEN started receiving phone calls. BEERNTSEN said she received these phone calls almost as if someone was watching her. For example, BEERNTSEN would receive phone calls that were sexual in nature within 5 minutes of her coming home from work. BEERNTSEN told the special agent that she did not know who was making these harassing phone calls.

The only harassing phone call BEERNTSEN received where she could identify the caller was on March 10, 1986. This phone call came from one of AVERY's alibi witnesses. BEERNTSEN said when she answered the phone on this date the person stated, "I hope you feel good putting an innocent boy in prison."

BEERNTSEN said on August 1, 1985 she contacted the sheriff's department regarding the harassing phone call she received the night before. Sheriff Kocourek sent Deputy Dvorak to her house because the Sheriff was concerned about BEERNTSENS personal safety. Deputy Dvorak told BEERNTSEN the sheriff's department was going to put together a live lineup for BEERNTSEN to look at because the sheriff's department wanted to make sure the right suspect was in custody.

While Deputy Dvorak was at the BEERNTSEN residence, BEERNTSEN read her original statement for the first time. BEERNTSEN said this would have occurred sometime during late afternoon, August 1, 1985. This is when BEERNTSEN asked to complete a second, more accurate statement.

While Deputy Dvorak and BEERNTSEN were waiting for the sheriff's department to create the lineup, Deputy Dvorak and BEERNTSEN went to a restaurant across the street from the sheriff's department. When the lineup was ready, Deputy Dvorak and BEERNTSEN went to the sheriff's department. BEERNTSEN was given pieces of paper, numbered 1 through 8, and instructed to put an "x" next to the appropriate number of who her assailant was. BEERNTSEN was told that if she could not identify her assailant, BEERNTSEN was to fold her paper in half. BEERNTSEN said when she saw AVERY in the lineup, she started shaking. BEERNTSEN again identified AVERY as her assailant. BEERNTSEN was asked if any of the people in the lineup was asked to speak and BEERNTSEN responded negatively.

BEERNTSEN expressed some concerns about this lineup because some of the men in the lineup did not look at all like

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lehmannaz 04/13/2005 13:31

005501

Page 3 of 6

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

Narrative - Continued

her physical description. BEERNTSEN said some of the individuals were much taller than BEERNTSEN had described and others had the wrong hair color. BEERNTSEN told the Sheriff that some of the men in the lineup did not look at all like what she had described and the Sheriff had responded something to the effect of do you know how hard it is to find eight guys with a beard in this small town?

BEERNTSEN said that when she saw AVERY in the live lineup, BEERNTSEN put an "x" next to AVERY's number. BEERNTSEN stated AVERY was the only person in the live lineup who was also in the photo lineup she was shown the night of the assault.

When the live lineup was over, Sheriff Kocourek took BEERNTSEN and her husband, TOM, to the sheriff's office. While sitting in the sheriff's office, BEERNTSEN saw two of the men who were in the lineup walk down the hall. Since BEERNTSEN had never been involved in this type of situation before, BEERNTSEN was concerned as to why two of the people in the lineup were walking freely in the halls. The Sheriff told BEERNTSEN that one of the men in the lineup was a radio announcer and the second man was a mailman.

BEERNTSEN indicated that both times she identified AVERY in the separate lineups, BEERNTSEN was sure she was identifying the man who was her assailant. BEERNTSEN said after seeing AVERY in the live lineup, BEERNTSEN did not see AVERY again until his court appearances.

A few days after the assault, the sheriff's department took BEERNTSEN and her husband to the beach and had them role play the assault. The sheriff's department asked TOM BEERNTSEN to act as the assailant. PENNY BEERNTSEN demonstrated to the investigators how she was grabbed and attacked on the beach. (It did not appear as if BEERNTSEN had an issue with the sheriff's department asking her and her husband to role-play, however, this scenario was upsetting to Attorney Geske.)

Within weeks of the assault, BEERNTSEN received a telephone call from someone from the Manitowoc Police Department. The representative from the police department told BEERNTSEN that the Manitowoc Police Department had someone in mind that matches the description of BEERNTSEN'S assailant. The representative told BEERNTSEN the subject was not AVERY. The representative from the police department then asked BEERNTSEN if she ever noticed anyone watching her while she was at home, watching her at the "Y" where she worked or simply following her around. BEERNTSEN responded negatively.

After receiving this call from the Manitowoc Police Department, BEERNTSEN contacted someone at the sheriff's department. BEERNTSEN thinks she may have talked directly to Sheriff Kocourek. BEERNTSEN asked the sheriff if there was another suspect. BEERNTSEN then relayed the contents of the phone call from the Manitowoc Police Department. BEERNTSEN was told the sheriff's department would contact the police department and that BEERNTSEN should not worry about this phone call because the sheriff's department has jurisdiction over this case. BEERNTSEN said she was never re-contacted by the Manitowoc Police Department.

After the BEERNTSENS were told that DNA tests revealed AVERY was not the assailant, BEERNTSENS husband went to the Manitowoc Police Department to let them know AVERY was going to be released from prison. BEERNTSENS husband was going to ask the Manitowoc Police Department to keep an eye on their house because the BEERNTSENS were going to be out of town for a while. When TOM BEERNTSEN went to the police department he spoke with Manitowoc Police Department Deputy Chief Thomas Bergner. Deputy Chief Bergner told BEERNTSENS husband that BEERNTSENS assailant, GREGORY ALLEN, was a known sex offender and the Manitowoc Police Department had been monitoring since the mid 1980s. Deputy Chief Bergner told BEERNTSENS husband the police department actually had a code name for ALLEN and any time an officer saw ALLEN, they would use that code name on the radio, then any officer who was in the same area as ALLEN would monitor ALLEN's movements.

BEERNTSEN was then asked to describe the interaction she had with Manitowoc District Attorney Denis Vogel. BEERNTSEN said that Vogel came to her house on one occasion. At this time BEERNTSEN was still physically healing from the injuries she sustained. Vogel asked BEERNTSEN to tell her story and then he asked her how sure she was that she had identified the right person. BEERNTSEN responded she was 95% to 99% sure. Vogel told BEERNTSEN that when she was testifying on the stand she needed to say she was 100% sure. BEERNTSEN told the special agents

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lehmannaa 04/13/2005 13:31

005502

Page 4 of 6

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

Narrative Continued

that there were no doubts in her mind when she testified in court that AVERY was her assailant.

Vogel told BEERNTSEN that there was no physical evidence tying AVERY and BEERNTSEN together. As a result, BEERNTSEN needed to do the best job she could in testifying. While prepping BEERNTSEN for trial, Vogel told BEERNTSEN that he did not want her to carry on while she was testifying on the stand. Vogel said BEERNTSEN needed to be a believable witness who was in control of her emotions. Vogel did not want the jury to think that BEERNTSEN was a hysterical witness. BEERNTSEN said this put a lot of pressure on her because BEERNTSEN felt the entire case was hinging on her testimony.

During the trial, BEERNTSEN said she was sequestered so she did not hear all of the courtroom testimony. BEERNTSEN recalled on the day STEVE AVERY testified, BEERNTSEN asked Vogel how it was going. Vogel responded "not very good because AVERY was a very creditable witness".

The special agents asked BEERNTSEN if she ever saw a photo of GREGORY ALLEN during the investigation. BEERNTSEN responded she never saw ALLEN's photo and she never heard his name being mentioned. BEERNTSEN continued to say she did not know anything about ALLEN until AVERY had been released from prison and it was announced that ALLEN was in fact BEERNTSENS assailant.

After the trial BEERNTSEN had contact with the foreman of the jury who convicted AVERY. The foreman commented to BEERNTSEN that three of the people on the jury worked with cement. All three of these jurors felt that AVERY's alibi witnesses were not credible because some of these witnesses said they were working with AVERY on the day of the assault, pouring cement. These jurors all believed that if AVERY would have been pouring cement that day there would have been residue on AVERY's clothes. Because there was no residue found on AVERY's clothes, the jurors did not believe AVERY's alibi witnesses.

Several times during the interview, BEERNTSEN indicated everyone in the sheriff's department treated her very kindly and sensitively.

During the week of September 22, 2003, BEERNTSEN received a telephone call from BRENDA PETERSEN, the Victim Witness Coordinator for Manitowoc County. BEERNTSEN stated PETERSEN has always been very good to her. PETERSEN began the conversation by asking BEERNTSEN how she was doing. As the conversation went on, BEERNTSEN had the feeling PETERSEN had something else to say. PETERSEN told BEERNTSEN that some mistakes had been made during the trial but PETERSEN believed they were honest mistakes. PETERSEN also told BEERNTSEN that Jim Fitzgerald, the former Manitowoc County District Attorney, wanted to get in touch with BEERNTSEN. BEERNTSEN said Fitzgerald has not contacted her as of this time.

During the AVERY trial, Fitzgerald worked as an Assistant District Attorney for Manitowoc County. BEERNTSEN thought Fitzgerald was on paternity leave during the trial. BEERNTSEN remembers Vogel commenting that if Fitzgerald came into the office for some reason, Fitzgerald was not to get near this case because he would "fuck it up".

BEERNTSEN was asked if she has spoken with either Sheriff Kocourek or D. A. Vogel since AVERY's release. BEERNTSEN responded that she recently ran into Sheriff Kocourek at a Letterman Concert at the Capitol Civic Center. BEERNTSEN originally saw Sheriff Kocourek talking to the current Manitowoc County Sheriff, Ken Petersen. Later that evening, BEERNTSENS husband had a brief conversation with the sheriff. BEERNTSEN said she did not talk to the sheriff that evening, nor has she had any contact with Sheriff Kocourek or D. A. Vogel about this issue.

BEERNTSEN told the special agents that after AVERY had been sentenced, BEERNTSEN learned that Sheriff Kocourek went to a county budget hearing, taking the photographs of BEERNTSEN that had been used during the trial. Sheriff Kocourek showed these photos to the members of the County Board and stated these photos demonstrate the reason the sheriff's department needed more money in their budget.

BEERNTSEN was asked how she received an Affidavit from an inmate indicating AVERY confessed to committing the assault. BEERNTSEN responded that she was doing advocate work and going to the various prisons to talk about her assault. As part of BEERNTSENS presentations, she never uses AVERY's first or last name. During a lunch break at the

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Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: DCIR13280/1

Report Date:

Narrative - Continued

Green Bay Correctional Institute, an inmate approached BEERNTSEN and stated that he has heard her story in the past. The man stated he was incarcerated in the Green Bay Prison and had a cell next to AVERY's. The inmate stated that AVERY would brag about his crime.

BEERNTSEN said Attorney Bruce Kittle, a lawyer for the Restorative Justice Project at the time, got this Affidavit for BEERNTSEN. BEERNTSEN thought Kittle was currently working for the Restorative Justice Program in Iowa. Geske stated that she would e-mail Kittle's address and phone number to S/A Strauss at a later time.

As part of the interview, BEERNTSEN said most people in the community seem to think that she and the Sheriff are good friends. BEERNTSEN said that even though their daughters may socialize, she and the Sheriff do not. They know each other but they do not socialize together.

During the interview, BEERNTSEN was asked if she ever saw a photo of ALLEN since the assault. BEERNTSEN responded that since AVERY was released and ALLEN was positively identified as her assailant, BEERNTSEN has seen a 1987 photo of ALLEN. When BEERNTSEN originally saw the photo she thought AVERY and ALLEN could be brothers. BEERNTSEN stated that after seeing the photo of ALLEN, it did not strike the fear in her the memory of AVERY does.

522 Geske provided the special agents with the booking photo of AVERY on June 30, 1985^{7/30/85?} and a booking photograph of ALLEN that is believed to have been taken in March 1987. A copy of these photos can be found in the main case file.

BEERNTSEN had no additional information and the interview was at that time terminated.

dmg: 10/02/2003

13280 dci2 beerntsen interview 09262003 straussdk

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Page 8 of 6