

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PRELIMINARY EXAMINATION

5 vs. Case No. 05 CF 375 & 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.
8

9
10 **DATE:** DECEMBER 6, 2005

11 **BEFORE:** Hon. Patrick L. Willis
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
15 SPECIAL PROSECUTOR
16 On behalf of the State of Wisconsin.

17 ERIK R. LOY
18 Attorney at Law
19 On behalf of the Defendant.

20 CRAIG JOHNSON
21 Attorney at Law
22 On behalf of the Defendant.

23 STEVEN A. AVERY
24 Defendant
25 Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

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1 THE COURT: At this time the Court calls
2 Case Nos. 05 CF 375 and 05 CF 381, State of
3 Wisconsin vs. Steven A. Avery. These matters are
4 scheduled for a preliminary examination this
5 afternoon. Will the parties state their appearances
6 for the record, please.

7 ATTORNEY KRATZ: The State appears by
8 Calumet County District Attorney Ken Kratz. I'm
9 appearing as Special Prosecutor in the matter.

10 ATTORNEY LOY: Steven Avery appears
11 personally, with his attorneys, Erik Loy and Craig
12 Johnson. Your Honor, I would, at the outset, move
13 to separate witnesses.

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: We have instructed our
16 witnesses as to sequestration, Judge, that's already
17 been done.

18 THE COURT: Have they also been instructed
19 not to speak to each other until they are done
20 testifying?

21 ATTORNEY KRATZ: Until they are what?

22 THE COURT: Any witness who --

23 ATTORNEY KRATZ: Any witness who testifies
24 will not speak with the witnesses who have not been
25 in court, Judge.

1 THE COURT: Correct.

2 ATTORNEY KRATZ: Yes.

3 THE COURT: Okay. And, Counsel, I believe
4 there's agreement that, although we're dealing with
5 two case files today, the State is going to present
6 evidence at the prelim related to both files and the
7 Court, then, will make a separate finding with
8 respect to each file, following the conclusion of
9 the hearing. Mr. Kratz, is that your understanding?

10 ATTORNEY KRATZ: That's my understanding,
11 your Honor.

12 THE COURT: Mr. Loy.

13 ATTORNEY LOY: That's our understanding
14 also, your Honor.

15 THE COURT: That's acceptable to the State
16 and the defense?

17 ATTORNEY KRATZ: Yes.

18 ATTORNEY LOY: Yes.

19 THE COURT: The Court has also received a
20 motion for bail reduction and I will take that up at
21 the conclusion of the preliminary examination.
22 Anything else before we proceed, Counsel?

23 ATTORNEY KRATZ: Not from the State, your
24 Honor.

25 ATTORNEY LOY: Not from us, your Honor.

1 THE COURT: If not, Mr. Kratz, you may call
2 your first witness.

3 ATTORNEY KRATZ: State will call Pam Sturm
4 to the stand.

5 THE CLERK: Please remain standing. Raise
6 your right hand.

7 **PAMELA STURM**, called as a witness
8 herein, having been first duly sworn, was
9 examined and testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: Please be seated. Please state
12 your name, spell your last name for the record.

13 THE WITNESS: Pamela Sturm, last name,
14 S-t-u-r-m.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q. Ms Sturm, I'm going to ask you some questions
18 regarding involvement in a case in the early part
19 of November of this year. First of all, were you
20 familiar with a young woman by the name of
21 Theresa Halbach?

22 A. Yes, I was.

23 Q. You will need to speak up just a little bit for
24 us, please. Ms Sturm, can you tell us how you
25 knew Teresa Halbach.

1 A. Tom is my first cousin, so Teresa would be my
2 second cousin.

3 Q. You will need to tell us who Tom is?

4 A. Tom Halbach is Teresa's father.

5 Q. Ms Sturm, at some time about the 4th of November,
6 about Friday, the 4th of November, did you become
7 aware of a search effort that was ongoing for Ms
8 Halbach?

9 A. Yes, I did.

10 Q. And on the next morning then, on the 5th of
11 November, did you agree to participate in that
12 search effort?

13 A. Yes, I did.

14 Q. Could you tell the Court, please, what you did or
15 what you agreed to do that morning.

16 A. I went to Teresa's house and Ryan and Scott were
17 there. And most of the searchers were gone
18 already. So they had some maps on the table, so
19 I took a map. And he said, well, they are going
20 to search there and there and there. And I said,
21 well, I would like to go to, you know, where
22 Teresa was last, which was the Avery Salvage.
23 And he said, well, that's up to you. So that's
24 where we went.

25 Q. When you say we, could you tell me who you went

1 with?

2 A. My daughter was with me.

3 Q. And your daughter's name?

4 A. Nicole Sturm.

5 Q. About how old is Nicole?

6 A. 25.

7 Q. And did you and Nicole then proceed to a piece of
8 property west of Mishicot, Wisconsin, property is
9 known as Avery Auto Salvage?

10 A. Yes, we did.

11 Q. About what time did you get there, if you
12 remember?

13 A. Approximately 10 to 10 a.m.

14 Q. And at about 10 to 10 did you make contact with
15 anybody on that property?

16 A. Yes, I did.

17 Q. Who was that?

18 A. I talked to Earl Avery.

19 Q. And did Earl Avery identify himself or tell you
20 how he might be associated with that property?

21 A. I asked him if he was an Avery and he said, yes,
22 Earl. And on the side of the building, it says
23 that Earl is one of the co-owners. And he did
24 indicate that he is one of the owners of the
25 property.

1 Q. All right. So, in talking to Earl Avery, did you
2 ask him anything, specifically?

3 A. Yes, I did.

4 Q. What did you ask him?

5 A. I asked him if it would be okay if my daughter
6 and I searched the salvage yard for Teresa
7 Halbach's vehicle.

8 Q. Could you just describe the nature of that
9 conversation. And, Counsel, and, the Court, I'm
10 certainly not asking for the truth of the matter,
11 but what she may have done as a result of that
12 conversation. What did you talk about, Ms Sturm?

13 A. Well, we talked about -- Well, at first I said,
14 maybe since it's deer hunting season some of the
15 hunters may go out in the woods and maybe they
16 will find some evidence of Teresa. And Earl
17 indicated that they go deer hunting up in the
18 Crivitz area, that they have a cottage up there.

19 Q. Ms Sturm, I don't mean to interrupt, but I'm
20 going to. Why don't you tell us, at the
21 conclusion of your conversation with Earl, did
22 you ask for any permission to do anything?

23 A. Yes, we asked if we could walk around the
24 property and search for Teresa's vehicle.

25 Q. And did Earl Avery give you permission to search

1 the Avery Salvage Yard, specifically, to try to
2 find Teresa's vehicle?

3 A. Yes, he did.

4 Q. Did you and your daughter, Nicole, then begin a
5 search of the Avery Salvage property?

6 A. Yes, we did.

7 Q. Could you describe, generally, what you recall
8 about that morning and the size, if you will, of
9 the Avery property.

10 A. Well, we came into the property and there are
11 three roads leading into the property. So we
12 went on the center road and there are quite a few
13 huge buildings there. And it looks like a huge
14 quarry. And, evidently, it's 40 acres and it's
15 just a lot of vehicles.

16 Q. All right. Ms Sturm, you said that you began
17 searching the property; do you recall what
18 portion of the property you began to search?

19 A. Well, if you come in the driveway, we started the
20 sweep from left to right. So we started in the
21 southwest corner, I believe.

22 Q. And did you have a specific intent, you and your
23 daughter, regarding that search, what your plan
24 was that day?

25 A. Yes.

1 Q. What was your intent?

2 A. We were going to look in each and every vehicle
3 to make sure that Teresa wasn't in there.

4 Q. All right. Ms Sturm, before you completed, or I
5 should say, before you began your search at the
6 Avery Auto Salvage, did you have a description of
7 the vehicle that Teresa Halbach had last been
8 driving?

9 A. Yes, we did. We obtained some slips from Ryan
10 and Scott and the vehicle description was on
11 there.

12 Q. Basically, what kind of a car were you looking
13 for?

14 A. It was a Rav 4 Toyota.

15 Q. Small SUV; is that right?

16 A. It's a small SUV, yes.

17 Q. Ms Sturm, then, when your daughter, Nicole, and
18 you began searching some of the vehicles, did you
19 happen to come across a vehicle that you
20 believed, generally, fit the description of the
21 vehicle that Teresa had been driving?

22 A. Yes, I did.

23 Q. Could you tell the Court, please, how you came
24 across that vehicle and what it looked like.

25 A. Well, we had searched at least 50 vehicles and

1 RV's and trucks. And my daughter was in the row
2 on the right side of me. And I was going to
3 search my row. And up on an incline, there were
4 approximately seven or eight vehicles. And I
5 thought, well, I have to go up there and search
6 those and make sure it wasn't up there.

7 Q. What do you mean by "up on an incline"?

8 A. Well, if you can picture the quarry, it's like a
9 bowl shape and on top of the ridge they had a
10 little driveway of sorts. And on there, they had
11 like seven or eight cars.

12 Q. All right. I think that you had mentioned that
13 this was on the southern portion of the Avery
14 property?

15 A. Yes, that's correct.

16 Q. When you came across one of those cars, can you
17 tell us what you saw and what you thought.

18 A. Well, it was so unusual because there were
19 branches leaning up against this vehicle. And I
20 came closer and there was a hood of the vehicle
21 braced up against the driver's side of this
22 vehicle. So I went around to the back and it
23 says Rav 4 on it, Toyota. And I just -- I
24 thought, well, yeah, it's got to be that car, but
25 it appeared to be blue.

1 Q. Ms Sturm, let me interrupt, again. When you
2 found this vehicle, or when you saw that it was a
3 Rav 4, how was it that you determined that?

4 A. I looked at the back of the vehicle and it's
5 printed, Rav 4, on the back of the vehicle. And
6 it also says Toyota on it.

7 Q. All right. About what time was it that you came
8 across this vehicle?

9 A. About 10:20 a.m.

10 Q. So, shortly after you began your search; is that
11 right?

12 A. Yes.

13 Q. All right. What did you do then?

14 A. I looked to see if there were license plates on
15 the vehicle. And there weren't any on the front,
16 so I went to the back and there weren't any on
17 the back. And I couldn't see my daughter, so I
18 walked towards my daughter, because she has the
19 cell phone.

20 And I said, Nicole, Nicole. Come here,
21 come here. And she came running. And I said,
22 look at this vehicle. This has got to be the
23 vehicle. It's camouflaged even. She said, yeah,
24 ma, I think it is, but it looks kind of blue.

25 Q. Were you able -- Let me ask you a question first.

1 Are you familiar with identifications on
2 vehicles, which are called VIN numbers --

3 A. Yes.

4 Q. -- vehicle identification number. I will need to
5 finish asking the question first, sorry. How is
6 it that you are familiar with the VIN numbers?

7 A. Because I have 10 years experience in the
8 investigative field.

9 Q. All right. Ms Sturm, were you able to obtain, at
10 least partially, the VIN number for this vehicle?

11 A. Well, actually, my daughter read the number,
12 because I forgot my glasses.

13 Q. All right. Were you able to, and did you, in
14 fact, try to verify the VIN number, or try to
15 verify the identification of this vehicle with
16 any law enforcement authorities?

17 A. Yes, we did. We called the Calumet County
18 Sheriff's Office and attempted to speak with
19 Mr. Pagel. And they gave me voice mail. So I
20 went back to the operator and I said, no, I need
21 to speak to Mr. Pagel, in person now, I think we
22 found the vehicle.

23 So she gave me Mr. Pagel immediately.
24 And I told Mr. Pagel, I believe we found the
25 vehicle in the Avery Salvage Yard. And he said,

1 could you read the VIN number to us, but don't
2 touch anything. Don't touch anything. Try not
3 to touch anything.

4 So, my daughter read the four last
5 numbers, she could see those. And then he said,
6 well, could you read the rest of the numbers.
7 And she read those off to me, so I told Mr. Pagel
8 the VIN number.

9 Q. Were you instructed to do anything at that time?

10 A. We were instructed to step away from the vehicle.
11 Don't touch anything. And go as far away as you
12 can from the vehicle and just wait for the
13 police, they are on their way.

14 Q. All right. Did the law enforcement officer
15 indicate to you on the phone that the VIN numbers
16 had matched?

17 A. No, he would not tell me.

18 Q. Just told you, get away from the vehicle?

19 A. That's right.

20 Q. Now, Ms Sturm, when you and Nicole walked onto
21 the property, did you have any photographic
22 equipment with you?

23 A. Yes, we did. I borrowed a digital camera from
24 Scott because I forgot my camera. And Nicole
25 placed it under her clothing before we went into

1 the yard.

2 Q. After reading off the VIN numbers, did you
3 believe it was important to take a digital photo
4 of the vehicle which you had found and how you
5 found it?

6 A. Yes, we thought we should take photos
7 immediately, in case they told us to get off the
8 property. So we did take four or five pictures.

9 Q. All right. Ms Sturm, if you would be so kind as
10 to look behind you; I'm showing you what's been
11 marked for identification as Plaintiff's Exhibit
12 No. 1. Could you tell us what that is.

13 A. That is the vehicle that we found at Avery
14 Salvage Yard.

15 Q. Could you just kind of point to that exhibit as
16 best you can. This might be a little bit
17 difficult without a microphone, but point to an
18 area and tell us what it was that you found and
19 what you thought was significant.

20 A. As you can see, there's a -- there are branches
21 leaning up against the vehicle and also the front
22 of a -- I can't think of the name of it. And
23 then the VIN number is on the right-hand side of
24 the vehicle, on the drivers's side.

25 Q. Ms Sturm, importantly, Exhibit No. 1, is that the

1 same as -- as you observed the vehicle sometime
2 after 10:00 in the morning on the 5th of
3 November?

4 A. Yes, it is.

5 Q. Were you able to determine, during this whole
6 process, whether or not the vehicle was open or
7 whether or not it was locked?

8 A. My daughter tried the doors and the doors were
9 locked.

10 Q. How did she try the doors?

11 A. Well, we took the sleeves of our sweats and we
12 pulled on the door handle.

13 Q. And the -- all the doors of the vehicle were
14 locked, it was enclosed --

15 A. Yes, that's correct.

16 Q. -- is that right? Ms Sturm, after being told at
17 that point to step away from the vehicle, did you
18 wait for law enforcement officers to arrive?

19 A. Yes, we did.

20 Q. About how long did it take for law enforcement
21 officers to arrive at the scene, if you remember?

22 A. Approximately 20 minutes.

23 ATTORNEY KRATZ: All right. Your Honor, I
24 will move the admission of Exhibit 1 at this time.
25 I don't have any further questions of Ms Sturm.

1 Thank you.

2 THE COURT: Mr. Loy. First of all, does
3 defense have any objection to admission of the
4 exhibit?

5 ATTORNEY LOY: No objection for purposes of
6 today's hearing.

7 THE COURT: All right. Do you have any
8 questions for this witness?

9 ATTORNEY LOY: Yes, your Honor.

10 THE COURT: You may proceed.

11 ATTORNEY LOY: Thank you, Judge.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY LOY:

14 Q. Ms Sturm, Exhibit 1, is that a photo that you
15 took?

16 A. That is a photo that my daughter, Nicole, took.

17 Q. Okay. With the camera that the two of you had
18 with you?

19 A. Yes, that's correct.

20 Q. Okay. And the two of you had taken a few other
21 photos that day?

22 A. Four or five photos of the car.

23 Q. When you first got to the salvage yard, where did
24 you find Earl Avery?

25 A. Well, we walked into the main building to see if

1 we could find one of the Averys and we couldn't.
2 So we came back outside and there were two
3 individuals in the parking lot. And when they
4 got finished with the conversation, I said, are
5 you an Avery. And at that time, he identified
6 himself.

7 Q. One of the two individuals?

8 A. Yes.

9 Q. Did the other person identify himself?

10 A. No, he had walked away at that point.

11 Q. When you drove into the Avery property, were
12 there any gates or anything preventing you from
13 entering?

14 A. We just drove into the property, up to the
15 building. We didn't drive any further than that.
16 But there were no blockades or anything, if
17 that's what you are asking.

18 Q. And there was no one standing there watching who
19 was going in and out of the property?

20 A. No, sir.

21 Q. So, did you park by the main office building?

22 A. Yes.

23 Q. And then, that's where you went in first to try
24 to find someone?

25 A. That's correct.

1 Q. When you went down into the area where all the
2 cars are, it was kind of a pit or a quarry; is
3 that right?

4 A. Yes.

5 Q. Did you drive down there or did you walk?

6 A. We walked down there.

7 Q. Okay. And was there anything, any gates or
8 anything, preventing you from walking down into
9 that area?

10 A. No.

11 Q. Did you see any other people down there?

12 A. There were a couple people in the salvage yard,
13 yes.

14 Q. And did you find out who those people were?

15 A. No, sir.

16 Q. Was there anyone else searching the salvage yard
17 that day, besides you and your daughter?

18 A. I don't believe so.

19 Q. As far as you know, the only people there
20 searching were the two of you; is that right?

21 A. That's correct.

22 Q. When you went in the main office, you didn't see
23 anybody there?

24 A. No, we didn't.

25 Q. Did you touch anything in that office?

1 A. No, sir.

2 Q. How long did you stay in there?

3 A. Maybe about two seconds.

4 Q. Okay. All right. What did the person who was
5 talking with Earl Avery look like? Can you give
6 me a description of him?

7 A. He was approximately 5 foot 8, 170 pounds, light
8 brown hair.

9 Q. Where were these people standing?

10 A. I'm sorry?

11 Q. Where were the two of them standing, Earl and
12 this person he was talking to?

13 A. They were out in the parking lot.

14 Q. In --

15 A. Right in front of the building.

16 Q. In front of the main office area?

17 A. I believe that's the main office.

18 Q. Okay. Was the door to the main office unlocked?

19 A. Yes.

20 Q. When you saw this Rav 4 vehicle, did you -- did
21 you move any of the items that were -- that were
22 covering it or on top of it?

23 A. The only thing that we moved was the hood. And
24 if you can picture, the hood has got a real thin
25 part where you can just move it a little bit away

1 from the car. And, again, we used our sleeves to
2 pull it away from the car.

3 Q. When you say the hood, you are talking about a
4 hood off another vehicle?

5 A. Correct.

6 Q. It wasn't the hood of the Rav 4?

7 A. No.

8 Q. It was some other hood, right?

9 A. Yes.

10 Q. Okay. And you -- How far did you move it?

11 A. We just moved it off. It was leaning against it
12 and we just moved it off to see if we could, you
13 know, see anything else.

14 Q. All right. And your daughter tried to open the
15 doors of the Rav 4?

16 A. That's correct.

17 Q. And she used her sleeve?

18 A. Yes.

19 Q. Did either of you use tissues or anything like
20 that?

21 A. No.

22 Q. The vehicle was locked?

23 A. That's correct.

24 Q. Did -- Were all the doors tried?

25 A. The two, the passenger door and the driver's

1 door, were tried.

2 Q. For the front seat?

3 A. Pardon me?

4 Q. For the front seat?

5 A. There are only two doors.

6 Q. Oh, it's only a two-door vehicle?

7 A. I believe so.

8 Q. Okay. Were you aware of any plans to have anyone
9 else search the salvage yard that day?

10 A. I don't believe so. I never heard anything.

11 Q. The people who were down in the salvage yard,
12 that you saw, can you give me a description of
13 them?

14 ATTORNEY KRATZ: Judge, I understand
15 Mr. Loy may want this information for discovery
16 purposes, but it goes beyond the scope of the
17 preliminary hearing. I will interpose an objection.

18 THE COURT: Mr. Loy.

19 ATTORNEY LOY: He is right, we would like
20 to learn more about these gentlemen.

21 THE COURT: All right. I will sustain the
22 objection.

23 ATTORNEY KRATZ: Thank you.

24 Q. (By Attorney Loy) When you opened the door to the
25 office, did you grab the doorknob and pull it

1 open, or how did you get into the office?

2 A. I believe the door goes in.

3 Q. So, you pushed the door in?

4 A. No, I think I grabbed the doorknob.

5 Q. Grabbed the doorknob and turned it and pushed the
6 door in; is that how it went?

7 A. Right.

8 Q. Okay. When you first got there, you didn't see
9 anyone outside, right?

10 A. Yes, we saw two men conversing by the car.

11 Q. Okay. So you saw these two guys conversing by a
12 car, but you went in the main office door to find
13 someone, and then -- is that right?

14 A. That's correct.

15 Q. And then, when you didn't find anyone in the
16 office, you went outside and talked to the two
17 guys?

18 A. That's correct.

19 Q. And where were they standing?

20 A. They were standing to the right of my vehicle, in
21 between two other vehicles.

22 Q. And did you park your vehicle sort of in a
23 courtyard area near the door to the main office?

24 A. I parked almost directly in front of the door to
25 the office.

1 Q. When you were talking with Mr. Avery, Mr. Earl
2 Avery, about your plans to search, what did you
3 tell him about that?

4 A. I'm sorry, I don't understand the question.

5 Q. You told Mr. Earl Avery that you wanted to search
6 the salvage yard; is that right?

7 A. That's correct.

8 Q. Did you tell him where you wanted to search?

9 A. I told him that we wanted to search the whole
10 yard.

11 Q. Okay. And did he -- What did he say in reply to
12 that?

13 A. He said that, well, you really shouldn't take
14 your car because the roads are really bad down
15 there, so I would recommend that you walk.

16 Q. Okay. Did he say anything else?

17 A. No.

18 Q. What did you say as far as why you wanted to do
19 the search?

20 A. I said it would relieve Tom and Karen's minds if
21 we could determine if the car was on the property
22 or it wasn't on the property.

23 Q. Okay. When you did the search, you were looking
24 for Teresa and for her vehicle; would that be
25 fair to say?

1 A. That's correct.

2 Q. Did Earl Avery have any response when you said it
3 would relieve the parent's minds if you could
4 look for the car? Did he have any response to
5 that?

6 A. He just said, I know how it feels, because we
7 lost a nephew a year ago and I know how they
8 feel.

9 Q. Earl Avery was very cooperative with you?

10 A. Yes.

11 Q. He didn't give you any problems with searching
12 the property?

13 A. Well, at first he said he thought somebody else
14 was there already to search, but they took a
15 vehicle through the yard. And he kind of said,
16 well, you know, they searched already.

17 Q. Did he say anything about what these other
18 searchers did or found?

19 A. No, he didn't.

20 Q. Did he say it was okay, then, for you to do the
21 search?

22 A. Yes, he did.

23 Q. Did Earl Avery say anything about where to start
24 the search, or anything along those lines, give
25 you any direction?

1 A. No, sir.

2 Q. He did say you should go on foot?

3 A. Yes, he did.

4 Q. How did you and your daughter decide where you
5 were going to start searching?

6 A. We didn't, we just said we would go from left to
7 right.

8 ATTORNEY LOY: Nothing further, your Honor.

9 THE COURT: Any redirect?

10 ATTORNEY KRATZ: No, Judge.

11 THE COURT: The witness is excused.

12 ATTORNEY KRATZ: Call Tom Fassbender to the
13 stand.

14 THE CLERK: Please raise your right hand.

15 **THOMAS FASSBENDER**, called as a witness
16 herein, having been first duly sworn, was
17 examined and testified as follows:

18 THE CLERK: Please be seated. State your
19 name for the record, please.

20 THE WITNESS: Thomas Fassbender,
21 F-a-s-s-b-e-n-d-e-r.

22 **DIRECT EXAMINATION**

23 Q. Mr. Fassbender, how are you employed?

24 A. I'm a Special Agent with the Wisconsin Department
25 of Justice, Division of Criminal Investigation.

1 Q. Sometime in early November of this year, were you
2 asked to participate in a search for a missing
3 person and, thereafter, participate in a criminal
4 investigation regarding Teresa Halbach?

5 A. Yes.

6 Q. How were you asked to participate in that?

7 A. The Calumet County Sheriff's Department requested
8 DCI services.

9 Q. Agent Fassbender, is it fair to indicate that
10 you, together with Calumet County Investigator
11 Mark Wiegert, served as lead investigators in
12 this investigation?

13 A. Yes.

14 Q. Agent Fassbender, let me first have you direct
15 your attention to what's been marked as
16 Plaintiff's Exhibit No. 2, the aerial photograph
17 to your immediate right. Since other witnesses
18 are going to be using that exhibit, could you
19 tell us what that is, please.

20 A. That's an aerial photograph of the Avery Salvage
21 Yard.

22 Q. How is it that you recognize that?

23 A. Because I was at that scene for about seven days.

24 Q. About how many hours a day were you there?

25 A. Probably averaged about 16.

1 Q. All right. So it's fair that you're pretty
2 familiar with almost every inch of that property;
3 isn't that true?

4 A. Well, I'm familiar with it, I wouldn't say every
5 inch.

6 Q. All right. Agent, I'm going to hand you a laser
7 pointer, it's the yellow button that is in the
8 middle of this particular device. Why don't you
9 just kind of give us a lay of the land, how is it
10 that you come in from the highway onto the Avery
11 property and, perhaps, point out those areas that
12 are marked on Exhibit No. 2.

13 A. Okay. Avery Road would be coming in right here
14 from, I believe, the north. They kept going
15 upward there. And the highway is up there to the
16 north.

17 If you go to what would be, I believe,
18 the west, along this driveway or road here, and
19 down to the end where you see the little circle
20 here, down here you have the residence that Steve
21 Avery stayed in. His sister, Barbara Avery,
22 lived next door to him. Steve's garage would be
23 right there and Barbara's garage right there.
24 And then, down here, I believe this was Mr. and
25 Mrs. Avery's house right back in here. If you

1 take this road --

2 Q. If I could just stop you, by Mr. and Mrs. Avery,
3 you mean Steven's parents; is that right?

4 A. Yes, Steven's parents, Al, and I think it's
5 Delores.

6 Q. Go ahead. Who else lived there?

7 A. And then this road down here, to the south, would
8 take you down in to what I believe they call the
9 pit, or the salvage yard area. You go by, I
10 think this is what would be Chuck Avery's
11 residence, which is Steve Avery's brother, right
12 along there. And then these are shops. And the
13 office, I believe, is right there, the main
14 office, and then shops where they would do their
15 work -- their work -- their salvage work.

16 And then down here, there was a crusher
17 located down in the pit. I think it was down in
18 this area, right in here, to crush cars. And
19 then there's a small road that goes along the
20 south end. There's a big berm back here. On the
21 other side of that berm is what would be a gravel
22 pit or whatever. And --

23 Q. Let me just stop you. At the bottom most portion
24 of Exhibit No. 2, that would be where the Avery
25 property ends; is that correct?

1 A. That's correct.

2 Q. Now, when you were asked to assist in the
3 investigation, in fact, very early in this
4 investigation, Saturday, the 5th of November, had
5 you received, and did you assist in the execution
6 of a search warrant for the entire Avery
7 property, all vehicles on the Avery property, all
8 residences and all out buildings?

9 A. Yes.

10 Q. Agent Fassbender, I understand that on the 5th of
11 November, law enforcement took control, if you
12 will, of the Avery property. Do you know when it
13 was that law enforcement relinquished control,
14 that is, when the dozens of search warrants that
15 were eventually executed there concluded? Do you
16 recall?

17 A. It was on a Saturday and -- the 12th, I believe.

18 Q. Okay. About a week; is that right?

19 A. Yes.

20 Q. Now, throughout that week, Agent Fassbender, you
21 were aware of various items, that you believed
22 had evidentiary value, being found. And as lead
23 investigator, were you kept apprised of not only
24 when those items were found but, specifically,
25 where they were found upon this property?

1 A. Yes, most of the time.

2 Q. You mentioned that there is a residence of Steven
3 Avery; do you know the address of that residence?

4 A. 12932 Avery Road, Town of Gibson, Manitowoc
5 County, State of Wisconsin.

6 Q. Later, that is, several days into the
7 investigation, you had occasion to make personal
8 contact with Steven Avery; is that correct?

9 A. Yes.

10 Q. Is that gentleman in the courtroom this
11 afternoon?

12 A. Yes.

13 Q. Could you point him out for the record.

14 A. To your right, wearing the black and white
15 striped outfit.

16 ATTORNEY KRATZ: Your Honor, I would ask
17 that the record reflect the defendant's
18 identification.

19 THE COURT: The record will reflect that
20 the witness identified Mr. Avery.

21 Q. (By Attorney Kratz) Now, Agent Fassbender, very
22 shortly after Ms Sturm found what was believed to
23 be Teresa Halbach's vehicle, did you become
24 involved that same day, and did you proceed to
25 the Avery Salvage Yard, to assist in this

1 investigation?

2 A. Yes.

3 Q. During the course of your investigation, did you
4 have occasion to review official reports of the
5 Wisconsin Department of Transportation and were
6 you able to determine ownership of the Rav 4 that
7 was located on the Steven Avery property?

8 A. Yes.

9 Q. I've handed you what's been marked for
10 identification as Plaintiff's Exhibit No. 4. Can
11 you tell us what that is, please.

12 A. That's a Certificate of Record Copy from the
13 Wisconsin Department of Transportation,
14 pertaining to a 1990 Toyota truck,
15 registration -- registered by Wisconsin license
16 plate number SWH582 to Teresa M. Halbach and
17 vehicle identification number JT3HP10V5X7113044.

18 Q. And on the 5th of November and, in fact, on days
19 thereafter, were you able to determine whether
20 the Rav 4 found on Steven Avery's property, in
21 fact, was the same Rav 4 that was owned by Teresa
22 Halbach?

23 A. Yes.

24 Q. And does Exhibit No. 4, that is, the certified
25 Department of Transportation Record, verify that

1 fact?

2 A. Yes.

3 ATTORNEY KRATZ: Would move the admission
4 of Exhibit 4 at this time, your Honor.

5 THE COURT: Any objection?

6 ATTORNEY LOY: No objection for purposes of
7 this hearing, your Honor.

8 THE COURT: All right. Exhibit 4 is
9 admitted. Counsel, I'm going to ask you to approach
10 here, briefly.

11 (Side bar taken.)

12 ATTORNEY KRATZ: I'm sorry, Judge, did you
13 rule on it's admissibility?

14 THE COURT: The defense admitted that -- or
15 defense did not object to admission of the exhibit
16 and I did admit it.

17 And I will indicate, for the benefit of
18 everybody else, that I was handed a note
19 indicating that, as part of the broadcast of the
20 proceedings, we have been told that at times the
21 microphones are apparently sensitive enough so
22 that the people on the broadcast can hear what
23 the attorneys are saying to each other. So make
24 sure you press the mute button when you talk to
25 each other, or lean back far enough away from the

1 microphone so that won't happen.

2 ATTORNEY KRATZ: Try not to give away any
3 secrets. That's fine, Judge.

4 Q. (By Attorney Kratz) Mr. Fassbender, on the 5th of
5 November, were you also involved in the
6 processing or review of the Rav 4 that was found
7 upon that property?

8 A. Yes.

9 Q. Were you able to view where, upon that property,
10 the Rav 4 was located?

11 A. Yes.

12 Q. And using the laser pointer, again, and referring
13 to Exhibit No. 2, if you could, again, give us a
14 orientation as to where the different buildings,
15 residences may be, and where Teresa Halbach's Rav
16 4 was found?

17 A. Again, Steve Avery's residence up on the
18 northwest corner of the property; his sister,
19 Barb; his parents; brother, Chuck; the buildings
20 where they have their shops and offices; the road
21 going south into the pit; the extreme south side
22 of or edge of their property. And down towards
23 the southeast portion of the property, on a small
24 trail, I guess you would call it, her vehicle was
25 located alongside that trail.

1 Q. After the search warrant was exec -- excuse me --
2 authorized, did you participate in viewing the
3 vehicle and did you assist members of the
4 Wisconsin State Crime Lab in processing and
5 deciding how to search that vehicle?

6 A. Yes, to a certain degree.

7 Q. What was decided regarding the processing or
8 search of the Rav 4?

9 A. That the vehicle would be, essentially,
10 transported as it was found and not processed at
11 the scene, transported through Wisconsin State
12 Crime Laboratory in an enclosed trailer and
13 processed in Madison, at the Crime Laboratory in
14 Madison.

15 Q. I'm going to show you, on the picture behind you,
16 what's been marked as Plaintiff's Exhibit No. 5;
17 can you tell us what that is, please.

18 A. That's a picture of a portion of that RAV 4
19 vehicle as it was located, or found, on the Avery
20 property, I believe.

21 Q. This is a picture that's apparently taken in the
22 evening or early evening hours. Is that the same
23 or similar as it appeared to you just prior to
24 the Wisconsin State Crime Laboratory processing
25 and, in fact, loading up that vehicle to take it

1 to Madison?

2 A. Yes.

3 ATTORNEY KRATZ: I move the admission of
4 Exhibit 5, Judge.

5 THE COURT: Any objection?

6 ATTORNEY LOY: None for this hearing.

7 THE COURT: Exhibit 5 is admitted.

8 Q. (By Attorney Kratz) Agent Fassbender, could you
9 remind those in this room, who weren't at that
10 scene, what the weather became like just after,
11 perhaps, taking that picture?

12 A. It became very nasty. It rained extremely hard.
13 Shortly after that picture, obviously, it was
14 dark, it was night, visibility was pretty much
15 zero, except for the lights, the spotlights that
16 had been put up by the Sheriff's Department.

17 Q. Excuse me. The impending weather, did that play
18 into your's and the Crime Lab's decision to also
19 remove that vehicle and have it searched in a
20 more pristine area, that being at the Madison
21 Crime Lab?

22 A. Certainly that played into that decision.

23 Q. Now, when that vehicle was located, it did not
24 bear Teresa Halbach's registration plates or
25 vehicle plates; is that correct?

1 A. That's correct.

2 Q. During the course of the investigation, and in
3 the next several days after the 5th of November,
4 did you seek the assistance, and receive the
5 assistance, of literally hundreds of law
6 enforcement and other professionals to search,
7 virtually, all of the Avery property?

8 A. Yes.

9 Q. During one of those search efforts, are you
10 familiar that in a detailed search of the
11 interior of all of those vehicles at the Avery
12 property, that the license plates for Teresa's
13 Rav 4 were located?

14 A. Yes.

15 Q. Could you describe for the Court where they were
16 located, please.

17 A. Alongside the entry road going down to Steven
18 Avery's residence and Barbara Avery's residence,
19 on the south side of that road, there was a
20 salvaged vehicle, or a vehicle located right
21 there, that law enforcement personnel that were
22 doing the search located the two license plates
23 inside that vehicle. And they were crinkled up
24 or rolled up, in that type of condition.

25 Q. All right. And so that the Court is aware, is it

1 your understanding that literally every vehicle
2 on that salvage yard was searched, not once but
3 at least two times during the course of the week,
4 not only for the body of Teresa Avery, but also
5 for -- excuse me -- Teresa Halbach, but also any
6 items that may have what might be evidentiary
7 value; is that fair?

8 A. Yes.

9 Q. Agent Fassbender, I'm going to ask you to direct
10 your attention to the upper left hand corner of
11 Exhibit #2. There are items which are identified
12 as burn barrels. Could you describe what those
13 are, please.

14 A. This burn barrel, just to the north of Steven
15 Avery's garage and residence area, had been
16 identified by Mr. Avery as his burn barrel. And
17 then, there are some burn barrels that were
18 located more to the east and south, or southeast
19 of Barbara Avery's house. And then, also a burn
20 pit, or burn area, directly behind Steven Avery's
21 garage, or to the south of his garage.

22 Q. The last item, or one of the last items
23 identified on Exhibit No. 2, is something called
24 a Plymouth Voyager. Can you tell us where that
25 is and what significance that has.

1 A. The Plymouth Voyager is located right here,
2 somewhat in between Steven Avery's residence and
3 Barbara Avery's residence. That was a vehicle
4 that Steven Avery had called the *Auto Trader* and
5 asked them to have someone come out and take a
6 picture of to put in their magazine, for sale.

7 Q. We'll talk about Mr. Avery's statements later,
8 but did Mr. Avery himself admit that Teresa
9 Halbach took pictures of that Plymouth Voyager on
10 the afternoon of the 31st of October, of 2005?

11 A. Took a picture of it, yes.

12 ATTORNEY LOY: I'm going to object on
13 grounds of foundation, your Honor. We haven't heard
14 any testimony that this admission by Mr. Avery was
15 made to this gentleman or to someone else.

16 THE COURT: Sustained.

17 ATTORNEY LOY: And move to strike.

18 THE COURT: The answer is stricken from the
19 record at this point.

20 Q. (By Attorney Kratz) Did Mr. Avery make those
21 admissions in your presence?

22 A. Yes.

23 Q. Okay. Agent Fassbender, also, while in -- Well,
24 let's just jump a little forward. On the 8th of
25 November, 2005, did you have occasion to make

1 contact with Steven Avery and, in fact, execute
2 an arrest warrant for Steven Avery for a charge
3 of being a felon in possession of a firearm?

4 A. I believe it was the 9th, but I did do that
5 activity, but I thought it was on the 9th of
6 November. Was it Wednesday, the 9th?

7 Q. The -- Agent Fassbender, I'm going to hand you,
8 or show you, what's been marked for
9 identification as Plaintiff's Exhibit No. 6. Can
10 you tell us what that is, please.

11 A. That is a **Miranda** Warning Form used by law
12 enforcement to read people their **Miranda** warning
13 before questioning them. And the date on this
14 shows that it was November 8, 2005, at
15 12:50 p.m., that these rights were read to Steven
16 Avery.

17 Q. When you read Mr. Avery those rights, after
18 taking him into custody, did he tell you that he
19 understood his **Miranda** warnings?

20 A. Investigator Wiegert actually read the rights to
21 Steven Avery and, yes, he said he understood the
22 rights.

23 Q. Just so everybody is clear, were you and
24 Investigator Wiegert together in the room and did
25 you observe the, and participate in the,

1 interview with Mr. Avery?

2 A. Yes, the rights were read to him in my vehicle,
3 in my presence.

4 Q. Is that form signed?

5 A. Yes.

6 Q. Who is it signed by?

7 A. Steven Avery.

8 Q. Is it witnessed by anybody?

9 A. Myself and Investigator Wiegert.

10 Q. And upon signing Exhibit No. 6, did Mr. Avery
11 agree to answer questions for you?

12 A. Yes.

13 ATTORNEY KRATZ: Judge, I would move the
14 admission of Exhibit 6 at this time?

15 THE COURT: Any objection to Exhibit 6?

16 ATTORNEY LOY: Not for this hearing, your
17 Honor.

18 THE COURT: Exhibit 6 is admitted.

19 Q. (By Attorney Kratz) Agent Fassbender, during the
20 contact you had with Steven Avery on the day you
21 took him into custody, did you also make any
22 observations of Mr. Avery, of a physical nature,
23 whether Mr. Avery had any signs of injury upon
24 his body?

25 A. Yes.

1 Q. Any injuries noted on Mr. Avery that you believed
2 were significant?

3 A. Yes.

4 Q. Can you describe those for the Court, please.

5 A. There was what appeared to be a scabbed over cut,
6 fairly substantial cut, on his middle finger of
7 his right hand.

8 Q. During the course of your contact, also, with
9 Mr. Avery, did you obtain from him a sample of
10 his saliva on something called a buccal swab,
11 that it was later transported to the Wisconsin
12 State Crime Lab for DNA analysis?

13 A. Yes, I was present when a registered nurse at the
14 Aurora Medical Center in Two Rivers obtained
15 those samples.

16 Q. Now, you are not a DNA analyst, are you?

17 A. No.

18 Q. Is that the kind of analysis that needs to be
19 conducted by a forensic scientist, or at least
20 somebody with expertise, at a laboratory like the
21 Wisconsin State Crime Lab?

22 A. Yes.

23 Q. And, Agent Fassbender, talking about your
24 conversation with Mr. Avery, was Mr. Avery
25 specifically asked questions regarding his

1 contact with Teresa Halbach on the 31st of
2 October?

3 A. Yes.

4 Q. What did Mr. Avery tell you?

5 A. Mr. Avery told us that, sometime between 8:00 and
6 8:30 in the morning, he made a call to the *Auto*
7 *Trader* to see if he could have a picture taken of
8 that Plymouth Voyager in question, to put in the
9 *Auto Trader*.

10 Eventually, he indicated that he made
11 some other calls to *Auto Trader* and to Teresa
12 Halbach, attempting to determine whether she was
13 going to come out to take those pictures of that
14 vehicle. And that on about -- or at about 2 to
15 2:30 in the afternoon that day she, in fact, did
16 come out and took a picture of that vehicle.

17 That when she did that, he came out of
18 the house, saw that she had taken the picture and
19 was recording the serial number on that vehicle.
20 And that he went out to that location outside of
21 that van and paid her \$40 dollars in cash for
22 that. And then he said she walked over to her
23 vehicle. He accompanied her and she got in her
24 vehicle, gave her a copy -- or gave him a copy of
25 an *Auto Trader Magazine*, which he took, and he

1 returned to his house.

2 Q. Based upon Mr. Avery's admissions of talking to
3 Ms Halbach on the afternoon of the 31st, and
4 based upon your posture as lead investigator in
5 this case, have you determined whether anybody
6 saw Ms Halbach alive after that conversation?

7 A. No.

8 ATTORNEY LOY: I'm going to object, your
9 Honor, on grounds of foundation. I think it also
10 calls for an opinion on his part.

11 THE COURT: Well, he can speak to his own
12 knowledge on the issue. I think how much value it
13 has is dependent on greater foundation, but I will
14 allow him to answer the question.

15 Q. (By Attorney Kratz) Do you understand the
16 question?

17 A. Yes. To my knowledge, I had no knowledge that
18 she was seen alive after that point in time.

19 Q. Was Mr. Avery, specifically, asked about burning
20 items upon his property and, specifically, if he
21 had burned anything on the 31st of October, or
22 anytime thereafter?

23 A. Yes, he was asked.

24 Q. What did he tell you?

25 A. He was asked about the burn barrel, which he

1 identified as his burn barrel, right there to the
2 north of his residence and garage area. He said
3 that he had not burned in that burn barrel in
4 over a week, or prior to the week before, or
5 prior to the day Teresa came to his house to take
6 that picture.

7 The burn area, or burn pit behind his
8 garage, which he identified as being right where
9 his dog was, which is where the dog was, right
10 behind the garage, he, again, said he had not
11 burned there either in at least more than a week.
12 And, actually, it was the burn pit area, I'm
13 going to correct myself, the burn pit area that
14 he said that he had not burned in prior -- until
15 prior -- his last burn was prior to the day that
16 Teresa had come on the 31st.

17 The burn barrel was quite some time, or
18 quite awhile, he said. And he designated at
19 least more than a week, or prior to the week
20 before. And, again, he said that he had not
21 burned in that burn barrel on the night of the
22 31st or the day of the 31st, October 31st.

23 Q. Agent, I'm going to ask you to look at a diagram
24 to the left of Exhibit No. 2, that's been marked
25 as Plaintiff's Exhibit No. 3; do you recognize

1 that diagram?

2 A. Yes.

3 Q. Can you tell the Court what that is, please.

4 A. That's a diagram put together by Wisconsin State
5 Patrol. I think it is based off what they call a
6 total station and, basically, usually done to --
7 I can't think of the word.

8 Q. Scale?

9 A. Scale. Done to scale.

10 Q. Okay.

11 A. Of some of the Avery property, including Steven
12 Avery's house and residence area.

13 Q. And, specifically, the area depicted in Exhibit
14 No. 3, is that a larger depiction of what would
15 be the northern most part of Exhibit No. 2, and
16 do you believe it will help explain some of the
17 evidence that is to be described and some of the
18 explanations of the relationship of the evidence
19 to various property, throughout this and other
20 hearings?

21 A. Yes.

22 Q. I may have asked you, Agent, Exhibit No. 2 and
23 Exhibit No. 3, do those appear to be accurate
24 reflections and representations of the Avery
25 property and, specifically, as they looked and as

1 they were laid out between the 5th of November
2 and the 11th of November, of 2005?

3 A. Definitely.

4 Q. Finally, Agent Fassbender, when -- or were there
5 attempts made to identify what were believed to
6 be human remains found upon the Avery property
7 and compare them to standards, or exemplars, of
8 the victim in this case, Teresa Halbach?

9 A. Yes.

10 Q. During the course of that process, did you
11 participate in obtaining an exemplar, or what's
12 called an intimate sample, of Teresa Halbach to
13 transport to the Crime Lab for analysis?

14 A. Yes.

15 ATTORNEY LOY: I'm going to object, your
16 Honor, there's been no foundation for these
17 questions. There's been no testimony that any
18 samples were found at this point.

19 THE COURT: Sustained.

20 ATTORNEY KRATZ: Do you want me to recall
21 this witness, Judge, after seven or eight witnesses
22 testify. My point, Judge, is that I appreciate the
23 objection, but as to the transport of the exemplars,
24 that's the only part of the DNA part of this case
25 that this witness will testify. If the Court would

1 be so kind as to at least hear the testimony and
2 reserve ruling on the objection when that evidence
3 is presented at that time.

4 THE COURT: Well, as I understand Mr. Loy's
5 objection, if the witness is going to answer yes to
6 this, he could at least explain where they came
7 from. I don't know that -- if I understand your
8 objection correctly, Mr. Loy.

9 ATTORNEY KRATZ: He said there was no
10 testimony about any remains being found yet. There
11 will be other witnesses that will testify to that,
12 Judge. It's the analysis and matching of those
13 remains later that I'm just asking this witness if
14 he obtained what's called an intimate sample, for
15 the victim.

16 THE COURT: Okay. But there hasn't been
17 any testimony about where they came from, even from
18 where he understood they came from.

19 ATTORNEY KRATZ: All right. I can
20 certainly do that, Judge, and then we'll have other
21 witnesses testify about that.

22 Q. (By Attorney Kratz) Agent Fassbender, did you
23 become aware, as lead investigator, that human
24 remains were found upon the Avery property during
25 the execution of the search warrant between the

1 5th and 11th of November of this year?

2 A. Yes.

3 Q. And could you describe and point, for the Court,
4 the area where you not only were aware, but where
5 you were shown, human remains were found on this
6 property.

7 A. That area would be the burn area, or identified
8 as the burn area, right behind Steven Avery's
9 garage, or to the south of his garage. That was
10 that burn pit area, right there.

11 Q. And what was the nature, to the best that you
12 observed --

13 ATTORNEY LOY: Your Honor, just -- I would
14 like to interpose an objection at this point, we
15 still don't have foundation. I don't know if this
16 witness is testifying about things that he found or
17 that somebody else found. And I understand what
18 Mr. Kratz is trying to do, but I think we may be
19 trying to put the cart before the horse here in
20 terms of having this testimony.

21 THE COURT: Well, I will let this witness
22 testify at this time what he did with whatever he
23 was told. I will reserve ruling on your objection.
24 I'm obviously not going to take his answers as
25 evidence of actual transport of remains without

1 there being tied in with subsequent testimony. I
2 think that addresses your objection, which at this
3 point I view as very well taken.

4 ATTORNEY KRATZ: Just as an offer of proof,
5 Judge, there will be testimony from at least three
6 witnesses as to the actual excavation and recovery
7 of that scene. I intend to ask this witness, as a
8 result of that, did he obtain what was commonly
9 called an exemplar, from the victim, thereafter.

10 THE COURT: I think you do have to ask this
11 witness, though, and establish a foundation how he
12 got whatever it was that he sent in, for his role,
13 and then you can --

14 ATTORNEY KRATZ: I'm going to do that,
15 Judge.

16 THE COURT: All right.

17 Q. (By Attorney Kratz) Agent Fassbender, again, with
18 just what you were told and what you observed,
19 what was the nature of the human remains found in
20 what's referred on Exhibit #2 as the burn area,
21 it's also referred to the same thing on
22 Exhibit 3?

23 A. What was found -- The nature of what was found
24 was charred bones, human bones and some tissue.

25 Q. Did you understand that those remains were

1 transported, for analysis, to places including
2 the Wisconsin State Crime Laboratory, for what's
3 commonly referred to as a DNA analysis?

4 A. Yes.

5 Q. And regarding that process, were you asked to
6 identify, obtain, and, thereafter, have
7 transported to the Wisconsin Crime Laboratory,
8 again, for analysis, what's referred to as an
9 intimate sample of Teresa Halbach?

10 A. Yes.

11 Q. Were you able to identify, and were you able to
12 find, such a sample?

13 A. Yes.

14 Q. Could you tell the Judge how you did that,
15 please.

16 A. Initially, I looked into Teresa Halbach's health
17 and medical history to see if we could find some
18 such samples. And I was able to locate pap smear
19 slides that she had provided, or were taken from
20 her, at the Bellin Health up in Green Bay and
21 were being maintained at the Bellin Health Lab in
22 Green Bay. They identified three or four such
23 samples that were taken during the past five
24 years. They maintain those samples for five
25 years.

1 Q. And your role in the identification of those such
2 samples -- I should say, recognizing that role,
3 were you then also asked to retrieve, and have
4 transported, those intimate samples to,
5 specifically, Sherry Culhane, at the Crime Lab in
6 Madison, for analysis?

7 A. Yes, I obtained them from Bellin Health Lab.
8 They were packaged and sealed. I put them in
9 another envelope and sealed them and they were,
10 ultimately, transported to the Wisconsin State
11 Crime Laboratory.

12 Q. All right. Agent Fassbender, the scene itself,
13 that is, the Avery property, when the search
14 warrants were done being executed and the
15 analysis of all these areas was completed, was
16 that then turned back over to the Avery family?

17 A. Yes.

18 ATTORNEY KRATZ: All right. For this
19 hearing, Judge, that's all the questions I have of
20 Agent Fassbender. Thank you.

21 THE COURT: Mr. Loy.

22 ATTORNEY LOY: Thank you, your Honor.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY LOY:

25 Q. Officer Fassbender, were you the officer in

1 charge of this investigation?

2 A. No. Not in its entirety, no.

3 Q. Were you one of the two officers leading the
4 investigation?

5 A. Yes.

6 Q. And you were present when the search warrants
7 were executed at the Avery property?

8 A. Yes.

9 Q. Okay. Including the warrant that led to the
10 search of Mr. Avery's trailer?

11 A. Yes.

12 Q. Okay. And that trailer was searched three times;
13 is that correct, pursuant to warrants?

14 A. Two or three. One of the actual searches may
15 have been more gathering of evidence that was
16 identified on one of the searches, depends if you
17 want to call it a search or --

18 Q. And you and the other investigators first started
19 searching the Avery property on November 5th; is
20 that right?

21 A. Yes.

22 Q. You have mentioned some bones and some tissue; is
23 that correct?

24 A. Yes.

25 Q. And were you the one that found those?

1 A. No.

2 Q. Okay. Do you recall the date those were found?

3 A. I'm going to say I'm not sure, 8th or 9th,
4 November 8th or 9th.

5 Q. You indicated that there were a number of people
6 who assisted in searching the Avery property; is
7 that correct?

8 A. That's correct.

9 Q. And there were hundreds of these people?

10 A. Over the course of that week, certainly.

11 Q. At any one time, how many people would usually be
12 there searching through things?

13 A. I don't know if I can answer that right now.

14 Q. I mean, could it be that there were at least 50
15 people on the grounds of Avery Salvage,
16 searching?

17 A. Yes.

18 Q. Okay. And what were these people doing? Where
19 were they searching?

20 A. It depends what day you are talking about and
21 what time. Sometimes they were -- we had people
22 searching the vehicles in the pit area. We had
23 people searching in the office area. We had
24 teams searching in the residences.

25 Q. Was pretty much every square inch of the property

1 searched?

2 A. I can't say every square inch of property was
3 searched, but the property was searched, the
4 entirety of the property was searched.

5 Q. Searched pretty thoroughly?

6 A. I believe so.

7 Q. And who were these people, that were doing the
8 searching?

9 A. Primarily law enforcement personnel, to include
10 the State Patrol, upwards of 50 or 60 members of
11 the State Patrol, on at least two days. And
12 then, I believe, members of the fire department,
13 professional fire department, came out and
14 assisted also.

15 Q. Fire departments from where?

16 A. Most of them -- I'm not going to say. I don't
17 know for sure.

18 Q. You don't know for sure. Okay. Um, were there
19 officers in charge, monitoring what these
20 searchers were doing?

21 A. Yes.

22 Q. Was somebody from the Calumet Sheriff's
23 Department or from DCI watching every searcher?

24 A. Watching every searcher?

25 Q. Yes.

1 A. I would have to say no to that. When you have
2 got 60 troopers in the back searching cars, there
3 wasn't someone from Calumet or DCI with each of
4 those troopers, no.

5 Q. What about the searchers who were looking in
6 areas other than the cars, the residences, the
7 business areas, up, basically, where we have the
8 scaled diagram? How many people were searching
9 that area and how were they monitored?

10 A. I can't say for sure how many people were
11 searching that area, but when it came to
12 searching the residences and the buildings, there
13 was a DCI agent or a Calumet County personnel
14 with them.

15 Q. You testified that her license plates were found
16 in a vehicle, and I think there is an arrow
17 pointing to it on a diagram; is that correct?

18 A. Yes.

19 Q. Did you find those or did someone else?

20 A. Someone else.

21 Q. Okay. Do you know who found those plates?

22 A. By name, no, but I believe it was a trooper.

23 Q. Who -- It looks like you gave Mr. Avery his
24 **Miranda** warning; is that correct?

25 A. No, Investigator Wiegert read his **Miranda**

1 warnings to him.

2 Q. And you signed as a witness?

3 A. Yes.

4 Q. Where was Mr. Avery when this **Miranda** warning was
5 given?

6 A. He was in the back seat of my car, as was
7 Investigator Wiegert. I was in the front seat
8 behind the wheel. And it was at his -- in the
9 driveway of his brother's residence, Earl Avery.

10 Q. Were any other officers in the car with -- with
11 the three of you?

12 A. No.

13 Q. Was Mr. Avery under arrest at that time?

14 A. Yes.

15 Q. He had just been arrested on the gun charge?

16 A. Yes.

17 Q. And was he in handcuffs?

18 A. No.

19 Q. Did he, at that time, indicate that he wanted to
20 see an attorney?

21 A. No.

22 Q. Did he indicate that he didn't wish to speak with
23 you?

24 A. No, not at that time.

25 Q. Were you aware that Mr. Avery was represented by

1 attorneys?

2 A. I believe I was aware that he had a civil suit
3 going and he probably had attorneys on that civil
4 suit.

5 Q. Were you aware of any efforts made by those
6 attorneys to contact Mr. Avery or to contact you?

7 A. No.

8 Q. Why wasn't Mr. Avery cuffed after his arrest?

9 A. We spoke with him and Investigator Wiegert asked
10 him if he would continue to cooperate in the
11 sense that he wouldn't get physical or anything
12 and, if so, he would not be handcuffed. And he
13 agreed to do that.

14 Q. Now, at the time of his arrest, was he only
15 arrested for the gun charge?

16 A. Yes.

17 Q. He wasn't arrested at that time for anything
18 related to a homicide or anything related to
19 Teresa Halbach; is that correct?

20 A. Correct.

21 Q. And he was in the backseat of the squad?

22 A. My vehicle, it is a state owned vehicle, but it's
23 not a marked squad or anything. There's no
24 barriers or anything between the front and the
25 back seats.

1 Q. And Officer Wiegert was in the back seat with
2 Mr. Avery?
3 A. Yes.
4 Q. And you were driving?
5 A. Yes.
6 Q. You observed a scabbed over cut on the middle
7 finger of Mr. Avery's right hand; is that right?
8 A. Yes.
9 Q. And Mr. Avery told you how he got that cut,
10 didn't he?
11 A. If he said it, when he said it, I wasn't present,
12 no. He didn't tell me.
13 Q. Nothing that you heard?
14 A. No.
15 Q. Was Mr. Avery cooperative with you and Officer
16 Wiegert?
17 A. Yes.
18 Q. He answered your questions?
19 A. Yes.
20 Q. And he told you that Ms Halbach had been there
21 and had taken a picture?
22 A. Yes.
23 Q. And then she had driven away?
24 A. Yes, he said about less than five minutes she was
25 there.

1 Q. When did you first arrive on the Avery property?

2 A. Saturday, November 5, mid-afternoon. I'm
3 thinking it was around 3, 2:30, 3 p.m.

4 Q. And what did you do when you first arrived?

5 A. Met with the investigators, the sheriff of
6 Calumet County, in a command post at the Avery
7 property and became -- got briefed on what was
8 happening up to that point.

9 Q. And you were told that the Rav 4 had been found?

10 A. Yes.

11 Q. Okay. At that point, there hadn't been any other
12 evidence found, other than the Rav 4?

13 A. I believe that's correct.

14 Q. Okay. And this command post, was it inside one
15 of the Avery buildings?

16 A. No.

17 Q. Where was it?

18 A. They had a trailer out there, command post
19 trailer from the Sheriff's Department.

20 Q. From the Calumet Sheriff's Department?

21 A. They had one from each. I don't know if
22 Calumet's was there yet. But they had one from
23 Manitowoc County and Calumet County brought one
24 also.

25 Q. So, after you got briefed, what did you do next?

1 A. I believe -- I'm not sure, but I believe the
2 search warrant was being obtained for the
3 property at around that time, that the search
4 warrant was obtained and executed.

5 I went down by where the Rav 4 was
6 located, along with an investigator from Calumet
7 County, and observed its location and the state
8 it was in. After making those observations, I
9 believe we walked -- Some time after that, I
10 don't know exactly how long after that, we walked
11 that berm, on the other side of that berm, with
12 one of the cadaver dogs that had arrived at the
13 scene.

14 Q. When you went down by the Rav 4, was anyone else
15 there?

16 A. Yes.

17 Q. Who was there?

18 A. There were deputies from Calumet County that were
19 standing in the vicinity, securing that location,
20 securing that vehicle.

21 Q. About how many?

22 A. I know one, for sure, that was near that vehicle.

23 Q. Anybody else, other than Calumet County deputies?

24 A. Around that vehicle, not that I know of.

25 Q. Were other people down in the pit area besides

1 the deputies who were securing the vehicle?

2 A. When I went down there?

3 Q. Yes.

4 A. There was another vehicle near the crusher, one
5 or two vehicles. And there were deputies there,
6 staged there also. I just can't remember who
7 else went down with me, if they did. The sheriff
8 may have come down with me also.

9 Q. Now, you have testified that you were involved in
10 processing the Rav 4; is that correct?

11 A. Making the decisions on the processing of the Rav
12 4.

13 Q. You didn't actually do any of the actual
14 processing yourself?

15 A. That's correct.

16 Q. Okay. And you were part of the decision that was
17 made to take the entire vehicle to the crime lab;
18 is that right?

19 A. Correct.

20 Q. Did you supervise that processing?

21 A. I was -- I took the tow truck that went down
22 there. I escorted them down there, along with
23 the vehicle and the trailer that the Rav 4 was
24 transported in. I then maintained a position
25 near the crusher, in the pit area.

1 The Crime Lab personnel then accompanied
2 the tow truck to the Rav 4 and oversaw that as
3 they removed it from its location, back to my
4 location, where it was backed into the trailer.

5 Q. Where was the tow truck from?

6 A. I do not know.

7 Q. So, the Rav 4 was towed from the location it was
8 found, to the location where the -- where the
9 trailer was. Maybe you could show us that on the
10 map.

11 A. Okay. The Rav 4 is down here, the southeast
12 area. The tow truck, along with the truck
13 pulling the trailer, and myself, came down here
14 into this pit area. And then the crusher is
15 somewhere in this location here. And we staged
16 right in this area right here.

17 The tow truck had to go back in there
18 with the Crime Lab personnel, picked up the
19 vehicle, brought it back out to this area where I
20 was again. They backed that Rav 4 into that
21 enclosed trailer.

22 Now, the trailer and the truck pulling
23 the trailer and the driver were from Calumet
24 County. I'm not sure about the tow truck
25 operator. I had the name of the tow truck and I

1 just can't remember it right now.

2 Q. Were you present when the Rav 4 was hooked up to
3 the tow truck?

4 A. No, I was staged here. Crime lab personnel were
5 with the vehicle.

6 Q. When you first saw the Rav 4, did it still have
7 branches and other things covering it?

8 A. When I first saw it?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. So, I take it that once the vehicle was
12 towed to your location, although it was no longer
13 covered with any branches or anything, right?

14 A. Yes, that's correct. The Crime Lab personnel
15 told me that they inspected and processed those
16 items. Some of them were transported with the
17 vehicle, the others were left at the scene after
18 being inspected.

19 Q. And you supervised loading the Rav 4 into the
20 trailer?

21 A. Crime Lab personnel and myself, I was present.

22 Q. And how was that done?

23 A. That was backed into the trailer by the tow truck
24 operator.

25 Q. Okay. So, just pushed into the trailer?

1 A. Yes, with a big -- a rather large enclosed
2 trailer with a ramp. And the tow truck operator
3 backed it right up that ramp into the enclosed
4 trailer.

5 ATTORNEY LOY: No further questions, your
6 Honor.

7 THE COURT: Any redirect?

8 ATTORNEY KRATZ: No, Judge. I am, however,
9 with his testimony of the Exhibits 2 and 3 being
10 accurate depictions of, one, a photograph and, one,
11 a diagram of the Avery property, I will move their
12 admission into evidence. I believe I have already
13 with Exhibit 4; is that correct?

14 THE CLERK: Yes.

15 ATTORNEY KRATZ: Or 6, I'm sorry.

16 THE CLERK: Four you did and six.

17 ATTORNEY KRATZ: I have with 6 as well?

18 THE CLERK: Yes.

19 ATTORNEY KRATZ: All right. And 2 and 3,
20 I'm moving their admission, Judge.

21 THE COURT: Any objection to Exhibits 2 and
22 3?

23 ATTORNEY LOY: No objection for purposes of
24 this hearing, your Honor.

25 THE COURT: Exhibits 2 and 3 are admitted.

1 The witness is excused. The State may call it's
2 next witness.

3 ATTORNEY KRATZ: The State would call Dan
4 Kucharski to the stand.

5 THE CLERK: Raise your right hand.

6 **DEPUTY DAN KUCHARSKI**, called as a
7 witness herein, having been first duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Please be seated. Please state
10 your name and spell your last name for the record.

11 THE WITNESS: Daniel J. Kucharski,
12 K-u-c-h-a-r-s-k-i.

13 **DIRECT EXAMINATION**

14 BY ATTORNEY KRATZ:

15 Q. Mr. Kucharski, how are you employed?

16 A. I'm employed with the Calumet County Sheriff's
17 Office as a patrol deputy.

18 Q. What are your duties as a patrol deputy?

19 A. Routine patrol and I'm also an evidence tech for
20 the department.

21 Q. Just briefly, tell us what a evidence tech is,
22 please.

23 A. Search for, identify, and collect evidence at
24 crime scenes.

25 Q. Deputy Kucharski, between the 5th of November,

1 2005, and the 11th of November, 2005, were you
2 asked to serve in that capacity, as an evidence
3 tech, and did you, in fact, search residences,
4 out buildings, and other areas of the Avery
5 property?

6 A. Yes, I did.

7 Q. I'm going to, specifically, ask you about the
8 residence of Steven Avery. Let's refer to
9 Exhibit No. 3. It's a little bit bigger. It's a
10 diagram which has a depiction of something called
11 Steven Avery's residence; do you recognize that?

12 A. Yes, I do.

13 Q. And if you can take that device that's in front
14 of you, the yellow button in the middle of it
15 would be the laser pointer part of it. Could you
16 tell us if you have had occasion, during that
17 relevant time frame, to search the interior of
18 what's identified on that diagram as the Steven
19 Avery residence?

20 A. Yes, on two separate occasions I was inside the
21 Steven Avery evidence (sic), searching and
22 collecting evidence.

23 Q. You said on two separate occasions, are you aware
24 that Mr. Avery's residence and, in fact, many of
25 the residences, out buildings, office, and the

1 like, were searched on more than one occasion?

2 A. Yes.

3 Q. Perhaps you can explain, for the Court, the
4 nature of those searches and why more than one
5 search was done, specifically, of Steven Avery's
6 residence.

7 A. On the 6th, that would have been Sunday, myself
8 and my search team were given the task to collect
9 two weapons, some bedding, and a vacuum from the
10 Avery residence.

11 Q. All right. Let's talk about that for a minute.
12 This residence, can you describe what kind of a
13 residence it is.

14 A. It was a trailer home, the address was 12932
15 Avery Road, it was red in color.

16 Q. The interior of this residence, did it include
17 rooms that normal residences would have, that is,
18 bedrooms, bathrooms, kitchen, things like that?

19 A. Yes, it did.

20 Q. Was one of the rooms an area that you believe to
21 be that of Steven Avery's bedroom?

22 A. Yes.

23 Q. Can you tell the Court why you believe that to be
24 Mr. Avery's bedroom.

25 A. We did find what we called identifiers inside the

1 bedroom: Papers, pictures, things with Steven
2 Avery's name on it, photos of Steven Avery.

3 Q. All right. In that room, that included these
4 personal identifiers and pictures of Mr. Avery,
5 did you find any firearms?

6 A. Yes, we did. We located and collected two rifles
7 that were on the wall above the bed in that room.

8 Q. Describe those rifles for me, please.

9 A. One was a Glenfield Model 60, .22 caliber,
10 semi-automatic rifle. The other was a
11 Connecticut Valley Arms, .50 caliber,
12 muzzleloading black powder rifle.

13 Q. Were you the officer who actually seized and
14 collected those items?

15 A. Yes.

16 Q. Now, Officer Kucharski, before we go any further,
17 I'm going to show you what's been marked for
18 identification as Plaintiff's Exhibits 7, 8, and
19 9, ask if you can identify those exhibits and
20 tell us what they are, please.

21 A. These are State of Wisconsin court records,
22 Judgments of Convictions against Steven Avery.

23 Q. Specifically, Exhibit No. 7, is that a record,
24 certified record, regarding a Manitowoc County
25 case, No. 80 CR 773?

1 A. Yes, it is.

2 Q. And does it list a conviction dated March 23 --

3 THE COURT: Just a second.

4 ATTORNEY KRATZ: I'm sorry, Judge.

5 THE COURT: Mr. Loy, does the defense
6 require details on these exhibits?

7 ATTORNEY LOY: Your Honor, I think the
8 Court could take judicial notice, based on the
9 certified convictions, that Mr. Avery does have at
10 least one felony conviction.

11 THE COURT: All right. Is the State
12 offering Exhibits 7,8, and 9?

13 ATTORNEY KRATZ: I am, Judge. And if there
14 is a stipulation, I will be happy to accept that, as
15 Mr. Avery having prior convictions that remain, of
16 record, unreversed.

17 THE COURT: For purposes of this hearing,
18 any objection from the defense?

19 ATTORNEY LOY: No objection, your Honor.

20 THE COURT: All right. Seven, eight and
21 nine are admitted.

22 Q. (By Attorney Kratz) Deputy Kucharski, in a
23 further search of Mr. Avery's property, did you
24 have occasion to search what's identified on
25 Diagram 3, at least, with a gray box and a

1 similar representation on the photograph, Exhibit
2 No. 2, Mr. Avery's garage?

3 A. Yes, I did. That was also on the 6th of
4 November. Myself and my search team were asked
5 to search and collect any evidence that we found
6 inside that garage.

7 Q. And did you do that?

8 A. Yes, I did.

9 Q. And upon searching the garage, did you find any
10 evidence which may be relevant to firearms?

11 A. Yes, we did. We found empty .22 caliber, long
12 rifle casings.

13 Q. What are referred to as spent shell casings?

14 A. That's correct.

15 Q. How many of those did you find in that garage?

16 A. Ten of them.

17 Q. Now, Deputy Kucharski, you talked about
18 different, or additional searches of Mr. Avery's
19 residence, or his property, did that occur by
20 you?

21 A. Yes, on the 8th, we were given the task -- myself
22 and my team were given the task to collect a few
23 specific pieces of evidence at the Steven Avery
24 residence and then conduct a thorough search of
25 the residence.

1 Q. When we're talking about a thorough search of the
2 residence, could you describe for the Court why
3 that search may have been different than previous
4 searches that you had performed of Avery's
5 residence?

6 A. The first time we were sent into the residence,
7 we were specifically told just to collect the
8 three separate items: The weapons, the bedding,
9 and the vacuum, from the middle bedroom. We did
10 not search it at all.

11 Q. So the Court is clear, at least on that first
12 day, you didn't do what you would call, at least,
13 a thorough search of Mr. Avery's residence; is
14 that right?

15 A. That's correct.

16 Q. What day did you do that?

17 A. That was on Tuesday, the 8th.

18 Q. And during the search of Mr. Avery's residence,
19 including his bedroom, what, if anything, did you
20 find of interest?

21 A. We collected pornographic material. We collected
22 ammunition that we found in the bedroom. And
23 then, at one point, we found a key that appeared
24 to be from a Toyota vehicle, collected that.

25 Q. Could you tell me within the residence, or within

1 the bedroom, where that Toyota key was found?

2 A. Toyota key would have been found about 2 feet
3 away from the door entering into the residence,
4 next to the bed. It was on the floor when we
5 found it, next to a cabinet that my team had been
6 searching.

7 Q. Did you have occasion to collect that key?

8 A. Yes, I did.

9 Q. And did anybody, to your knowledge, other than
10 you, with the use of latex gloves or some other
11 protective device, anybody ever touch that key,
12 other than you?

13 A. Not while it was in my possession.

14 Q. After processing the key, after collecting it and
15 placing it into an evidence bag and sealing it,
16 did you have that key sent to the Wisconsin State
17 Crime Laboratory for further analysis?

18 A. Yes, I did.

19 ATTORNEY KRATZ: That's all the questions I
20 have of Deputy Kucharski, Judge. Thank you.

21 THE COURT: Mr. Loy.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY LOY:

24 Q. Officer Kucharski, did you review any reports of
25 any prior searches before you did your search on

1 the 8th?

2 A. No, I did not.

3 Q. Did you talk with any officer who had done any
4 previous searches?

5 A. Not about the search of the residence, no.

6 Q. Who else was searching with you?

7 A. At which time?

8 Q. On the 8th, when you testified you found a key.

9 A. That would be Lieutenant Lenk and Sergeant
10 Colburn?

11 Q. And were the three of you in the bedroom at the
12 same time?

13 A. Yes, we were.

14 Q. And how were you conducting this search? What
15 were the three of you doing?

16 A. Generally, start top to bottom. You work your
17 way methodically through the room, open
18 everything, look under everything, look through
19 everything.

20 Q. Would that include, for instance, sorting through
21 everything that you found in a drawer?

22 A. Yes.

23 Q. Okay. And taking each item out of the drawer and
24 looking at it and then putting it back; is that
25 how you do it?

1 A. To a certain point.

2 Q. Okay. During this search, were you and the other
3 officers wearing gloves?

4 A. Yes, we were.

5 Q. And did you wear the same gloves throughout the
6 search?

7 A. No.

8 Q. How often would the three of you change gloves?

9 A. I can only testify as to what I did there. As I
10 would be writing or photographing, it was tough
11 to do with the gloves on so I would take them off
12 periodically and take fresh gloves then.

13 Q. So, how often did you change your gloves, do you
14 think?

15 A. In a day, or just a time period?

16 Q. Well, I'm talking, specifically, about the search
17 on November 8th?

18 A. Okay. I did several searches on that day. The
19 search of the Avery residence, Steven Avery's
20 residence, I probably changed my gloves
21 approximately two or three times.

22 Q. All right. When did you change those gloves?

23 A. Like I said, usually it was to -- if I had to
24 write something, or if I was photographing.

25 Q. Do you remember the specific times when you

1 changed the gloves?

2 A. No.

3 Q. Do you remember changing gloves around the time
4 that the key was found?

5 A. Yes, I did.

6 Q. And what would you -- what could you tell us
7 about that?

8 A. We were finishing up the search in the room. I
9 had finished up the section that I was searching,
10 the night stand. I took off my gloves.
11 Lieutenant Lenk was making a phone call. That
12 was why I took off my gloves. We had finished up
13 the search of that room, were finishing up the
14 search of that room.

15 Q. Were you and the other searchers watching each
16 other during this search?

17 A. During this specific time that we were in Steven
18 Avery's bedroom, we were, at maximum, three or
19 four feet away from each other. It's a small
20 bedroom. We were always in each other's
21 peripheral vision.

22 Q. But you weren't watching each other, were you?

23 A. We were searching, correct.

24 Q. You were looking at what you were searching; is
25 that right?

1 A. Yes.

2 Q. Okay. Now, this key, you are saying, was found
3 on the floor?

4 A. Yes.

5 Q. Was it underneath anything?

6 A. Not when we saw it, no.

7 Q. Okay. You had been in the room for how long
8 before the key was noticed?

9 A. I'm not sure. It was less than an hour.

10 Q. Okay. It was just -- When you saw it there, it
11 was sitting out there in plain view, right on the
12 floor; is that right?

13 A. Yes.

14 Q. Okay. And no one had seen it for at least an
15 hour?

16 A. Correct.

17 Q. And when you had been at the residence before, on
18 November 6th, no one had seen the key then
19 either, right?

20 A. I didn't see the key then. I can't testify to
21 anybody else.

22 Q. No one mentioned seeing it?

23 ATTORNEY KRATZ: Judge, I'm going to
24 interpose an objection. I think this officer said
25 he didn't search on the 6th. I think that is his

1 testimony.

2 THE COURT: Well, he was in the bedroom to
3 pick up some items. He didn't thoroughly search it,
4 I think that was his testimony.

5 Q. (By Attorney Loy) Just to clarify, on the 6th of
6 November, you did go in the bedroom; is that
7 right?

8 A. Yes. I walked into the bedroom. I looked at the
9 weapons on the wall, then I walked out into the
10 living room.

11 Q. Okay. And you went in there with Lieutenant
12 Lenk, Detective Remiker, and Sergeant Colburn; is
13 that right?

14 A. On the 6th, that's correct.

15 Q. On the 6th. And Lieutenant Lenk and Officer
16 Colburn are officers of Calumet County?

17 A. No, Manitowoc County.

18 Q. And Officer Remiker is also from Manitowoc
19 County?

20 A. Also, yes.

21 Q. Okay. And to your knowledge, no one saw this key
22 sitting on the floor at that time?

23 A. Not that I know of.

24 Q. When you finally did see the key, was it pretty
25 obvious?

1 A. Yes, it was laying out in the open.

2 Q. Okay. And do you have any explanation for --

3 Strike that. Now, there was also a search done

4 on November 5th; is that right?

5 A. Search of?

6 Q. Of Mr. Avery's residence, Steve Avery's

7 residence?

8 A. I don't know for sure.

9 Q. Is that the day when -- Let me just find it here.

10 Is that the day when you took the vacuum cleaner?

11 A. No.

12 Q. That was the day when Steve Avery's residence was

13 searched pursuant to a warrant; is that right?

14 A. I'm not aware on the 5th; I was searching the

15 junk yard with cadaver dogs.

16 Q. So, you weren't present for the search on the

17 5th?

18 A. If there was one, correct, I was not at the

19 Steven Avery residence on the 5th.

20 Q. Okay. And so you don't know if a thorough search

21 was done on that day or not?

22 A. Correct.

23 Q. What's a thorough search? Could you describe

24 that.

25 A. Again, starting top to bottom, open everything,

1 look under everything.

2 Q. Had you talked with any officers about -- about
3 the search on the 5th?

4 A. Again, not about the search on the 5th, no.

5 Q. Were you aware there had been a search done on
6 the 5th?

7 A. I don't remember at what point I heard about any
8 searches.

9 Q. Were you aware that there was also a search done,
10 with Mr. Avery's consent, on November 4th?

11 A. No.

12 Q. But as far as you know, no one saw this key until
13 November 8th; is that right?

14 A. Correct.

15 Q. Now, when you saw the key, what did you do next?

16 A. It was actually Lieutenant Lenk that saw the key
17 first.

18 Q. Okay.

19 A. He pointed to the floor and said, there's a key
20 there. We all kind of looked at the key. I
21 said, stop, everybody stop their searching. I
22 took the camera, photographed the key, put on a
23 pair of gloves and took the key into custody.

24 Q. Okay. And how do you do that?

25 A. I put it inside a paper bag that I brought into

1 the residence from my evidence kit. It was a new
2 paper bag.

3 Q. Okay. This evidence kit, what was in your
4 evidence kit?

5 A. Evidence collection materials.

6 Q. What kinds of things?

7 A. I have a tackle box full of equipment,
8 fingerprint equipment. And then, in the back
9 seat of the squad, I also put plastic bags, paper
10 bags, boxes, that type of thing.

11 Q. Was there any other evidence in this kit?

12 A. No.

13 Q. Okay. And were the bags in the kit?

14 A. The bags were inside a plastic bag, sealed in a
15 plastic bag like you get from a store. I opened
16 up the plastic bag when I started taking things
17 into evidence.

18 Q. What kind of bag did you put the key in?

19 A. Just a paper, kind of like a lunch bag.

20 Q. Okay.

21 A. Brown paper.

22 Q. Can you describe the process you went through in
23 collecting the key. What did you do?

24 ATTORNEY KRATZ: Your Honor, I'm going to
25 interpose an objection. I haven't until this point,

1 but this is well beyond probable cause
2 determination. This is all discovery.

3 THE COURT: Mr. Loy.

4 ATTORNEY LOY: Well, your Honor, I think
5 this is a pretty crucial piece of evidence. I think
6 it's important in determining plausibility, to
7 determine how this piece of evidence was found and
8 what was done with it. That's what I'm trying to
9 determine here.

10 THE COURT: Well, the question here at a
11 prelim is plausibility rather than credibility. I
12 think questions on both sides have probably gone
13 beyond what's normally involved in the scope of a
14 prelim. I'm going to sustain the objection. I
15 understand that eventually this may be crucial for
16 the defense, but for purposes of prelim, I'm going
17 to sustain the objection.

18 ATTORNEY LOY: Okay.

19 Q. (By Attorney Loy) How long were you in
20 Mr. Avery's residence on the 8th?

21 A. I would have to look at my report to see the
22 exact time. It was several hours.

23 Q. At least a couple hours?

24 A. Yes.

25 Q. And the other officers were also in there at the

1 same time --

2 A. Yes.

3 Q. -- with you? Okay. Those were two other
4 officers?

5 A. On the 8th, correct, the other people in my
6 search team.

7 Q. That was Officer Colburn and Officer Lenk?

8 A. Sergeant Colburn, Lieutenant Lenk, yes.

9 Q. Would you be willing to just draw us a diagram of
10 exactly where this key was found?

11 ATTORNEY KRATZ: Judge, same objection.
12 This is just what the Court, I think, had hoped
13 wouldn't happen, goes well beyond the preliminary
14 hearing scope.

15 ATTORNEY LOY: I think it goes to
16 plausibility, your Honor. It seems that this key
17 was within obvious sight and I guess it's surprising
18 and somewhat disturbing that the key hadn't been
19 noticed before. So I'm just trying to develop more
20 information about the location of the key.

21 THE COURT: Well, the witness has already
22 testified that the key was out in the open. I
23 clearly understand your point on credibility. But
24 on plausibility, there's nothing to prevent it. I
25 mean -- so I'm going to sustain the objection.

1 ATTORNEY LOY: Thank you, your Honor.

2 Q. (By Attorney Loy) The key was near some bedroom

3 slippers?

4 A. Yes.

5 Q. How close to the bedroom slippers was it?

6 A. A couple inches away.

7 Q. And there's a desk, there's a cabinet right next

8 to the desk; is that right?

9 A. Yes.

10 Q. And then, next to that, was some bedroom

11 slippers?

12 A. Next to the cabinet was the key and then the

13 bedroom slippers.

14 Q. All right. Were the bedroom slippers moved

15 during the search?

16 A. Yes.

17 Q. And that's something that you ordinarily would

18 do, right?

19 A. Yes.

20 Q. Okay. And do you remember, did you move the

21 bedroom slippers, or did someone else?

22 A. One of the other search team members moved the

23 slippers.

24 Q. And those slippers were moved before the key was

25 seen?

1 A. Yes.

2 Q. And the first time they were moved, nobody saw
3 the key?

4 A. The key wasn't there the first time they were
5 moved.

6 Q. Do you have any idea how the key got there?

7 A. Yes, we were searching the cabinet. Lieutenant
8 Lenk and Sergeant Colburn were searching the
9 cabinet next to the desk. They were pulling
10 books in and out of the cabinet, photographs in
11 and out of the cabinet.

12 They were moving the cabinet, eventually
13 putting the books and photographs and things back
14 into the cabinet, banging things around, moving
15 it. We believe it either fell out of the cabinet
16 or from some place hidden inside the cabinet or
17 underneath the cabinet, or in back of the
18 cabinet.

19 Q. You didn't actually see this happen, though?

20 A. No.

21 Q. You didn't hear anything fall to the ground?

22 A. It was carpeted. No, we didn't hear anything.

23 Q. Okay. And did you go back and look in the
24 cabinet again to try to figure out where the key
25 might have come from?

1 A. No.

2 Q. Okay. So, your testimony today about where the
3 key might have come from, that's -- that's an
4 educated guess on your part; would that be fair
5 to say?

6 A. Yes.

7 ATTORNEY LOY: Nothing further.

8 THE COURT: Any redirect?

9 ATTORNEY KRATZ: Not for this hearing,
10 Judge.

11 THE COURT: All right. The witness is
12 excused. We'll take our afternoon break at this
13 time.

14 ATTORNEY KRATZ: How long, Judge?

15 THE COURT: After 10 minutes, I would like
16 counsel to see me in chambers.

17 (Recess taken.)

18 THE COURT: Mr. Kratz, you may call your
19 next witness.

20 ATTORNEY KRATZ: Thank you, Judge. State
21 would call Tom Sturdivant to the stand.

22 THE CLERK: Please stand.

23 **SPECIAL AGENT THOMAS ALLEN STURDIVANT,**
24 called as a witness herein, having been first
25 duly sworn, was examined and testified as

1 follows:

2 THE CLERK: Please be seated. Please state
3 your name, spell your last name for the record.

4 THE WITNESS: Special Agent Thomas Allen
5 Sturdivant, S-t-u-r-d-i-v-a-n-t.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Mr. Sturdivant, how are you employed?

9 A. Employed as a Special Agent with the Wisconsin
10 Department of Justice, Division of Criminal
11 Investigation.

12 Q. In that capacity, did you assist other law
13 enforcement officers in the property known as
14 Avery Auto Salvage, sometime between the 5th of
15 November and the 11th of November?

16 A. I did.

17 Q. During that relevant time period, did you notice,
18 and did you thereafter observe, an area which is
19 now being known as the burn area?

20 A. I did.

21 Q. On Exhibits No. 3, which is the scaled diagram,
22 and on the photo, which is Exhibit No. 2, which
23 both have been received into evidence, do you see
24 that area on those exhibits?

25 A. I do.

1 Q. Could you describe for the Court, please, what,
2 if any, observations you made of that burn area.

3 A. I was out looking at various locations that were
4 discovered, pointed out by the search teams. I
5 eventually made my way over to Mr. Avery's
6 property.

7 And behind the detached garage was a
8 mound of dirt, which was new to the landscape,
9 not necessarily recently, but was a pile or mound
10 of dirt which consisted of probably rock and sand
11 and other materials. Behind his garage, at the
12 end of that mound of dirt, on the south side, was
13 a area that had been scraped out and contained
14 charred matter.

15 Q. During -- By the way, what day was it that you
16 observed or closer -- or in a closer manner
17 inspected that area?

18 A. That was on November 8th.

19 Q. After inspecting that charred matter, did you
20 request the assistance of any members of the
21 Wisconsin State Crime Laboratory, Field Response
22 Unit, to further look at that area?

23 A. I did.

24 Q. And tell us what happened, please.

25 A. Myself and three members of the Wisconsin State

1 Laboratory team, and another officer from
2 Manitowoc County, looked at that debris. And my
3 initial observation was that it appeared to be
4 bone matter, so I had summoned the assistance of
5 the Crime Lab.

6 As I looked closer, it appeared to me
7 that there was more bone matter within the
8 charred material. So I asked their assistance,
9 realizing that they had sifting equipment. We
10 decided at that point it would be easier to sift
11 through that matter and pick out any bone matter,
12 to include teeth, that we had identified.

13 Q. The sifting of that particular burn area, did
14 that result in the recovery of what you believed
15 to be -- to be human remains, including bone,
16 teeth and tissue?

17 A. Yes.

18 Q. After the recovery of that material, did you,
19 with the assistance of the Field Response Unit of
20 the Wisconsin Crime Lab, package up those
21 materials and send them, not only to the Crime
22 Lab but also to a forensic anthropologist, for
23 further analysis?

24 A. Yes, we did.

25 Q. Agent Sturdivant, I understand that the recovery

1 process took at least a couple of days; is that
2 correct?

3 A. It did. We sifted the charred debris on the 8th.
4 The stuff that we had recovered, we packaged up
5 and put into a secured trailer. Then, on
6 Thursday, we sifted through that debris again
7 locating additional bone fragments and teeth.
8 And Thursday afternoon there were other members
9 from the Division of Criminal Investigation that
10 also processed the so called pit, if you will.

11 Q. Just so the Court is aware, the recovery of some
12 of the soil and some of the other ash and other
13 materials, that remains to be further analyzed in
14 Madison; is that correct?

15 A. That's correct.

16 ATTORNEY KRATZ: For this hearing, Judge,
17 that's all the questions I have of Agent Sturdivant.

18 THE COURT: All right. Mr. Loy.

19 ATTORNEY JOHNSON: Actually, Judge, I'm
20 going to be.

21 THE COURT: Excuse me. Mr. Johnson.

22 ATTORNEY JOHNSON: Thank you.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY JOHNSON:

25 Q. Agent Sturdivant, you are a special agent with

1 DCI; is that right?

2 A. That is correct.

3 Q. And when were you assigned to go up to this

4 scene?

5 A. That was on Thursday, November 8th. I'm sorry,

6 Tuesday, November 8th.

7 Q. What time of day?

8 A. I had gone over there probably 8:00 in the

9 morning.

10 Q. You work out of Madison?

11 A. No, I work out of Wausau.

12 Q. And Agent -- the other agent who was there,

13 Fassbender, does he work with you out of that

14 same office?

15 A. Tom Fassbender is out of the Appleton office. I

16 used to work out of the Appleton office, but now

17 I'm out of Wausau.

18 Q. So, agents from both Appleton and Wausau were

19 called to the scene?

20 A. As well as other agents from other offices

21 throughout the State.

22 Q. You got there, then, on the 8th. Do you remember

23 what time of day?

24 A. I'm thinking it was roughly 8 a.m.

25 Q. Okay. And you went first to the -- was there

1 like a trailer set up as the headquarters or
2 crime scene headquarters?

3 A. We referred to it as a command post, yes.

4 Q. Okay. Where was that?

5 A. That was towards the entrance to the Avery
6 Salvage Yard.

7 Q. Towards the entrance, do you have an exact
8 location where that was? I mean, when you say
9 towards the entrance, what do you mean?

10 A. I can point it out on the map, if you would
11 prefer.

12 Q. Thank you.

13 THE COURT: There's a pointer right in
14 front of you.

15 ATTORNEY KRATZ: The yellow button right in
16 the middle is the laser part of the pointer. Might
17 be upside down. The other way, Tom, point it the
18 other way. I think it's pointing towards you.

19 A. I believe the command post was set up in this
20 area.

21 Q. Is that a DCI command post, or Calumet County, or
22 what is that?

23 A. I guess I would consider it a joint command post.
24 There were a number of different vehicles there
25 from Manitowoc, Calumet, but DCI does not have a

1 command post vehicle.

2 Q. So, there's a Manitowoc County Sheriff's vehicle?

3 A. I believe there were several vehicles there. But
4 I think the primary -- the primary command post,
5 I believe it was a Calumet County trailer that
6 they had positioned at the entrance.

7 Q. Okay. And at what time of day were you -- did
8 you go over to the area you referred to as the
9 burn area?

10 A. Well, it was approximately 1:30. The search
11 teams had located a variety of items of interest,
12 if you will. And myself and two other agents
13 were assigned to go out and take a look at those
14 things, whether they be earthen piles, disturbed
15 ground, what have you. We went out to assess
16 those things to see if there was anything of
17 evidentiary value.

18 Q. You're talking about now 1:30 you did that?

19 A. Yes.

20 Q. What had you been doing between 8 a.m. and 1:30?

21 A. Between 8 a.m. and 1:30, my first responsibility
22 was to execute a search warrant at the office.

23 Q. And you did that?

24 A. I did that, yes.

25 Q. And who was there doing that with you?

1 A. I was there, it was myself, Special Agent Deb
2 Straus and Special Agent Joe Kapitany arrived at
3 the latter part of the search.

4 Q. How long did that take?

5 A. That took -- I think I was completed with that
6 sometime around noontime.

7 Q. Okay. And then, at 1:30 is when you were called
8 out to the burn area?

9 A. That is correct, approximately 1:30.

10 Q. And when you got there, who was there at that
11 burn area?

12 A. Again, I made my way across -- across the salvage
13 yard. And when I arrived, there was a deputy
14 from Manitowoc County by the name of Jason Jost.

15 Q. Okay. Anybody else?

16 A. There was another female officer from, I forget
17 what department, but there was another female
18 officer that was monitoring the emptying of the
19 septic system.

20 Q. Okay.

21 A. And Special Agent Deb Strauss was also there.

22 Q. So, those three people. Anybody else?

23 ATTORNEY KRATZ: Objection, discovery.

24 A. There were a lot of people throughout the area.

25 ATTORNEY KRATZ: I interposed an objection.

1 This is discovery.

2 THE COURT: Sustained.

3 ATTORNEY KRATZ: Thank you.

4 Q. (By Attorney Johnson) Who was actually doing the
5 sifting, or the examination of that burn area?

6 A. Well, the sifting was conducted by the three
7 members of the Wisconsin Crime Lab, myself, and
8 Deputy Jason Jost.

9 Q. Okay. When you first got there, you indicate
10 that you saw a mound of dirt and you described it
11 as new to the landscape. What do you mean by
12 that?

13 A. The first thing I saw was a piece of bone that
14 Jason Jost had pointed out to me, that was away
15 from the debris pile. What I mean by the mound
16 of dirt, it is not natural to the landscape. You
17 have got the grass and it appears as though
18 several yards of dirt had been dumped on top of
19 the existing landscape, that being the grass, and
20 built up behind the garage. There was probably,
21 I think I estimated it to be 20 feet by 20 feet,
22 or 30 feet by 30 feet, but it was as wide as the
23 garage, the two-car garages.

24 Q. Okay. And you say that this deputy pointed out
25 something to you; is that right?

1 A. That's correct. It was a red flag. And I don't
2 know who actually discovered that piece of
3 material, but there was a red flag there and
4 Deputy Jost pointed that out to me.

5 Q. And Deputy Jost, again, he was from Manitowoc
6 County?

7 A. I believe so.

8 Q. And he -- How did he point that out to you? He
9 said, look? Can you describe that.

10 A. Well, as I made my way over to some of these
11 areas that had been identified, or marked, he had
12 pointed out there was a red flag there. And I
13 think he made the same observation I did, that it
14 looked like a piece of bone.

15 Q. And where was that in relation to this -- the
16 mound that you described?

17 A. I estimated that to be about 8 feet south of that
18 mound.

19 Q. Okay. Um, now, there's sort of a -- there's sort
20 of a lip there, where it goes down into the pit
21 of the -- where all the cars are, right?

22 A. Well, that pit is a substantial distance away
23 from the back side of the house.

24 Q. Okay. So that was my next question. Where is it
25 in relation to the sort of -- the edge of the

1 pit?

2 A. I'm not certain I'm following your question.

3 Q. Well, um, if you refer to exhibit, um, Exhibit 2,
4 um, which is the area photograph, the burn area
5 is marked on there, correct?

6 A. Yes.

7 Q. And, then, I guess my question is, where was this
8 first red flagged piece of bone or --

9 A. Okay.

10 Q. Where was that, I guess, on that diagram?

11 A. If this is the edge of that mound of dirt, that
12 piece of bone was approximately 8 feet south of
13 that.

14 Q. Okay.

15 A. And directly south of that so called burn pit.

16 Q. Okay. So -- And you are not sure who had first
17 discovered that?

18 A. I am not.

19 Q. Okay. How was this deputy dressed?

20 A. He was dressed in a -- I think a jumpsuit.

21 Q. Okay. What else?

22 ATTORNEY KRATZ: Objection, discovery, your
23 Honor.

24 THE COURT: Sustained.

25 ATTORNEY KRATZ: Thank you.

1 Q. (By Attorney Johnson) Okay. So, then there's --
2 the Crime Lab people are already there at that
3 burn pit, or burn area; is that right?

4 A. Well, they eventually arrived, after I requested
5 their assistance.

6 Q. Okay. So when you first get there, the Crime Lab
7 people are not there?

8 A. That's correct.

9 Q. Okay. Um, and so after discovering this bone,
10 and seeing this mound of dirt, or dug up area
11 that you describe as being new to the landscape,
12 then -- so at that point you call in the Crime
13 Lab people?

14 A. No. What happened is, that after discovering
15 that bone, I looked to the north, where I
16 observed other bone fragments. And I have sifted
17 through bone fragments in the past. So, I made
18 the observation that it appeared to me that there
19 were additional bone fragments within that
20 debris. And I did call the Crime Lab; however,
21 they were busy recovering debris from other burn
22 barrels, so they weren't there immediately.

23 Q. When you say you made the observation, was that
24 looking into this burn area from the outside, or
25 did you physically walk through the burn area, or

1 what did you do?

2 A. From the 8 feet south of that burn pit, I could
3 clearly see that there was some bone matter
4 located around the debris pile. Then I walked
5 over and took a closer look at the charred debris
6 and realized that there was quite a bit of bone
7 matter within the debris, as well as intertwined
8 within the steel belts of burned tires, and so
9 forth.

10 Q. Okay. Can you describe more specifically what
11 you saw when you say bone matter. What exactly
12 does it look like?

13 A. Well, in this case, it just looked like different
14 lengths and different sizes of bone fragments.
15 Could I determine at that point what they were,
16 what type of bone? I could not. But I could
17 determine that it was bone matter.

18 Q. And you say you have sifted through this kind of
19 thing before; is that right?

20 A. That's correct.

21 Q. And approximately how many times?

22 A. Twice.

23 Q. Two times?

24 A. Yes.

25 Q. Okay. And when were those two times?

1 A. They were both fire scenes. One was in
2 Winnebago, the other one was up in Brown County.

3 Q. When was that?

4 ATTORNEY KRATZ: Objection, discovery,
5 Judge.

6 THE COURT: The objection is sustained.

7 Q. (By Attorney Johnson) How wide of an area were
8 these fragments spread over?

9 A. I would estimate that the size of that burn pit
10 was probably 6 feet by 6 feet, roughly. Again,
11 that's an estimate.

12 Q. And they were throughout that 6 feet by 6 feet
13 area?

14 A. They were concentrated in the middle. In the
15 middle was a pile of charred debris. So the
16 debris was probably more centered in that 6 by 6
17 foot area that had been dug out from the earth
18 and berm.

19 Q. How were you dressed?

20 A. I was dressed -- I believe I had a jumpsuit on as
21 well.

22 Q. Does that cover your feet?

23 A. I'm sorry?

24 Q. Does that cover your feet?

25 A. No.

1 Q. Okay. Um, what's your understanding, or what's
2 your knowledge of, if that area had been searched
3 before? I mean, are you aware of any search, or
4 any other times people had looked in that area?

5 A. I was not aware of what had been accomplished
6 prior to my arrival.

7 Q. What was the weather like that day?

8 A. It was a beautiful day. It was clear. It was
9 sunny, might have been a little cool, but it was
10 a beautiful day.

11 Q. Any idea of the temperature?

12 A. I don't, but I know that it was getting cold as
13 the sun was going down.

14 Q. Um, it's your impression that these -- this area,
15 this burn area, I guess, for lack of a better
16 word, you described that as new to the landscape;
17 you don't know when that was done?

18 A. That's correct.

19 Q. I mean, did it seem freshly dug, like within the
20 last day or so?

21 A. I couldn't tell you.

22 Q. When you say -- When you use the term, new to the
23 landscape, what do you have in mind when you use
24 that term?

25 A. It was added to the existing landscape. Again,

1 you have got a lawn, and at some point somebody
2 had to dump gravel or aggregate, if you will, up
3 behind the garage. Looks as though it was spread
4 out, but it was raised up about 2 feet from the
5 natural landscape or the yard, if you will.

6 Q. Now, is there like black sort of charred matter
7 all over that, I mean, like you would see it like
8 where more a campfire was, or something like
9 that?

10 A. Throughout the mound of dirt?

11 Q. Right.

12 A. No.

13 Q. Where was that? I mean, what part of the burn
14 area was filled with sort of --

15 A. May I point to it.

16 Q. Sure.

17 A. Right there is -- that is -- that is here where
18 the burn matter was. And, again, if I can make
19 this a bit clearer, you have a mound of dirt that
20 has been added to the landscape.

21 At the south end of that, it looks like
22 somebody came in with a 6 foot shovel, 6 foot
23 wide, 6 foot deep, and lifted out or removed that
24 dirt, so you had kind of a concave area at the
25 edge of that mound. And that's where the debris

1 pile was located.

2 Q. Okay. So, I mean, so it looked like someone had
3 sort of made a clearing there by adding dirt to
4 this lawn area; is that a fair statement?

5 A. Yes.

6 Q. And, then, in the southern part of that, they had
7 scooped out an area where there were fires, or
8 there was burn material there?

9 A. That's correct, yes.

10 Q. And you also saw the remains of tires and things
11 there; is that right?

12 A. Yes.

13 Q. What exactly did you see?

14 A. Well, I saw a variety of things. I saw the steel
15 belt, the wire, the remnants of a steel belt, and
16 there was bone matter intertwined with that steel
17 belt wire. There was a hack saw blade in the
18 debris. There was a hammer. There was, I
19 believe, a shovel. I can't recall if it was a
20 spade or a flathead.

21 There was another tire that had not been
22 burned. Also, there was a car seat that had been
23 consumed down to the metal. And I think I found
24 there was a piece of a zipper, some other metal
25 grommets, other things within the debris.

1 Q. You say a car seat, like a seat from a car?
2 You're not talking about a baby car seat, you're
3 talking about an actual seat from a car?

4 A. Would be a bench seat.

5 Q. Bench seat. Okay. And there were other pieces
6 of material. Could you tell -- I mean, was there
7 a way for you to tell if all that stuff had been
8 recently burned, or if some of it was older; for
9 instance, did the car seat have any rust on it,
10 or anything like that?

11 A. The car seat, it did have some rust on it, but it
12 probably oxidized due to the weather. But my
13 opinion is that the burn site, and it looked
14 fairly -- that site didn't look like it was used
15 that often, looked like it was fairly new.

16 Q. Okay. Were you there when the crime scene people
17 came to process that scene, I mean the Crime Lab
18 people?

19 A. At what point? I was there when they initially
20 sifted the material.

21 Q. Okay. Did they dig down?

22 A. We did not.

23 Q. So, you didn't -- you couldn't tell how deep,
24 like the charred dirt, or charred materials,
25 would go down into the ground?

1 A. Well, we scraped it. My opinion was, it was a
2 hard surface, compacted. Didn't look as though
3 that it had been worked over in the past. So, my
4 opinion was that it wasn't something that had
5 been used that often.

6 Q. Okay. So, then at what point did the Crime Lab
7 people get there?

8 A. The Crime Lab people might have arrived around 3
9 p.m., approximately.

10 Q. Okay. And then what did they do? What did you
11 observe them do?

12 A. We assisted the Crime Lab. We set up a sifting
13 apparatus. We took the debris from the pile,
14 sifted it in three different types of sifting
15 screens, sorted or picked through it and removed
16 what we felt were bones, as well as teeth, and a
17 zipper and some metal grommets. And stuff that
18 fell through the sifter, we collected on a tarp.

19 Q. Okay. Where did the tarp come from?

20 A. The tarp came from the Crime Lab.

21 Q. Okay. Did they have like a van or something
22 there?

23 A. They did, yes.

24 Q. And you did that throughout the afternoon of the
25 8th; is that right?

1 A. That's correct.

2 Q. Okay. And so, I assume for a couple hours, until
3 it got dark, from 3 to 5, 5:30 type of thing?

4 A. Yes.

5 Q. And what happened to the stuff that was on the
6 tarp?

7 A. The stuff on the tarp was collected, double
8 bagged in a black bag and then placed into a
9 secure trailer that was in control of the Calumet
10 County Sheriff's Department.

11 Q. Okay. What kind of bags were used?

12 A. Large, black, plastic garbage bags.

13 Q. So you put it in large, plastic garbage bags?

14 A. It all fit in one bag. We just double bagged it.

15 Q. Okay. And you say you used like three -- three
16 different strainers; is that right?

17 A. Yes.

18 Q. Sort of sift through the dirt, get all the dirt
19 out?

20 A. What you do is, there are different sifters. You
21 want some of the material to fall through and you
22 want to capture other material.

23 Q. So, how wide are we talking about?

24 ATTORNEY KRATZ: Objection, discovery.

25 THE COURT: The objection is sustained.

1 Q. (By Attorney Johnson) Were you there when the
2 stuff was taken off the tarp and bagged up?

3 A. Yes.

4 Q. Okay. Were you there that whole time, throughout
5 the afternoon?

6 A. Yes.

7 Q. Okay. So then, that stuff is taken off the tarp,
8 it is put in these plastic -- this one plastic
9 bag, double bagged, sealed; is that right?

10 A. It's not sealed, per se. It's tied and then it's
11 placed in the Calumet County van that was in
12 control of the Calumet County Sheriff's
13 Department. And Rick Reimer was the person that
14 secured it.

15 Q. Okay. And then did it, that particular burn area
16 scene, did that continue to get processed the
17 next day?

18 A. I don't believe it was actually processed until
19 Thursday.

20 Q. Okay. So, what about Wednesday, what happened
21 there?

22 A. Wednesday, I had to appear in court in Monroe
23 County, so, I wasn't available. And then I came
24 back on Thursday and assisted Special Agent
25 Rodney Pevytoe with sifting debris.

1 Q. To your knowledge, nobody did anything with that
2 particular part of this site on Wednesday?

3 A. Not to the best of my knowledge.

4 Q. Okay. Then you came back on Thursday. Did you
5 spend the whole day doing the sifting on that
6 date?

7 A. The first thing we did was, Thursday morning we
8 set up at the Calumet County Sheriff's Department
9 and sifted, again, through the debris that we had
10 collected on the tarp on Tuesday. And after
11 completing that, we then went back to the crime
12 scene and began to process that thoroughly.

13 Q. You say you went back, you mean back to that burn
14 area; is that what you are talking about?

15 A. Yes.

16 Q. Okay. And, basically, same process as on Tuesday
17 or?

18 A. Well, I was -- I wasn't intimately involved with
19 any of the processing of the scene. We had a
20 number of other agents that arrived from the
21 Arson Bureau that then processed the scene.

22 Q. Okay. Are you an arson investigator?

23 A. I was at once upon a time.

24 Q. And when was that?

25 A. That was approximately two years ago.

1 Q. For how long?

2 THE COURT: I'm going to interpose my own
3 objection.

4 ATTORNEY KRATZ: Thank you, Judge.

5 Q. (By Attorney Johnson) How long have you been with
6 DCI?

7 A. Since 1998.

8 Q. And before that?

9 ATTORNEY KRATZ: Objection, discovery, your
10 Honor.

11 THE COURT: Sustained.

12 ATTORNEY JOHNSON: That's all the questions
13 I have. Thank you.

14 THE COURT: Any redirect?

15 ATTORNEY KRATZ: Absolutely not. Thank
16 you, Judge.

17 THE COURT: Witness is excused.

18 THE WITNESS: Thank you.

19 ATTORNEY KRATZ: State will call Leslie
20 Eisenberg to the stand.

21 THE CLERK: Please raise your right hand.

22 **LESLIE EISENBERG**, called as a witness
23 herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name, spell your last name for the record.

2 THE WITNESS: My name is Leslie Eisenberg,
3 E-i-s-e-n-b-e-r-g.

4 **DIRECT EXAMINATION**

5 BY ATTORNEY KRATZ:

6 Q. How are you employed, ma'am?

7 A. I'm sorry?

8 Q. How are you employed?

9 A. I am currently employed by the Wisconsin
10 Historical Society in Madison and as program
11 coordinator for the State's Burial Site
12 Preservation Program.

13 Q. Do you enjoy any titles at this time?

14 A. Yes, I have a doctorate in anthropology and am
15 also board certified in forensic anthropology.

16 Q. In front of you, Dr. Eisenberg, is an exhibit.
17 It's actually a 16 page exhibit, which is
18 referred to as a curriculum vitae, or what most
19 people would call a resume, a 16 page resume. Do
20 you see that?

21 A. Yes, I do.

22 Q. Does that resume include your educational
23 background, your training and your experience,
24 including writings that you have personally and
25 collaboratively been involved in that allow you

1 to speak as an expert witness in matters of
2 anthropology?

3 A. It does, sir.

4 ATTORNEY KRATZ: Ask for a stipulation as
5 to her qualifications. Move the admission of
6 Exhibit 10, Judge.

7 THE COURT: Any objection?

8 ATTORNEY LOY: No objection.

9 THE COURT: Court will accept her as an
10 expert and admit Exhibit 10.

11 Q. (By Attorney Kratz) Dr. Eisenberg, were you asked
12 to review some material that was found at what's
13 now been referred to as the Avery Salvage Yard
14 and did you, in fact, agree to review that
15 material?

16 A. Yes, I did.

17 Q. Could you answer, please, how it was that you
18 were asked and, specifically, what it was that
19 you did with that material?

20 A. I was initially contacted on Wednesday,
21 November 9th, through a telephone message by a
22 Special Agent from the Division of Criminal
23 Investigation, State of Wisconsin, Department of
24 Justice, who indicated that she would be bringing
25 to me a box of items that were recovered from the

1 Avery property, for my examination.

2 I took possession of those remains on
3 November 10th and transferred them to the Dane
4 County Coroner's Office in Madison, the Morgue
5 Facility, where I examined those remains and
6 sorted them into and identified them as human
7 remains, and other items, which were bagged
8 separately.

9 Q. All right. Did you then separate the human
10 remains from what you believed to be non-human
11 remains?

12 A. I did.

13 Q. And regarding the human remains, could you
14 describe in a little more detail what it was that
15 you observed?

16 A. Yes. When I opened the box containing all the
17 material I first examined on November 10th, there
18 were many fragments of human bones, some as small
19 or smaller than the size of a nickel, other
20 fragments perhaps as long as 4 or 5 inches.

21 None -- None of those fragments represented an
22 entire bone, but they did represent almost every
23 segment of the human skeleton, at least in part.

24 Q. Do you know how many bone fragments, just
25 roughly, it is that you have examined?

1 A. I have not made a count at this time. And the
2 reason I have not done that is because I am in
3 the process of trying to refit those fragments
4 together, to look for any other evidence, other
5 than the burning, on the fragments that I have
6 observed.

7 Q. You indicated that there were fragments, both
8 small and larger, but none, at least to your
9 independent recollection, longer than 4 or 5
10 inches; is that right?

11 A. That's correct.

12 Q. Did it appear to you that these fragments, either
13 intentionally or otherwise, had somehow degraded
14 or been changed from their original skeletal
15 state?

16 A. Yes, sir, they have. Because of the breakage and
17 the coloration, it was obvious to me when I
18 opened the box that the human remains, the bone
19 fragments, had undergone considerable heat and
20 burning.

21 Q. And so we're clear, from what is commonly
22 referred to as mutilation, the question that I
23 have of you is, did these bones appear to have
24 been altered in some way, again, rather -- either
25 by human or other forces, so that they took a

1 shape other than what a corpse may look like that
2 was not altered? Do you understand the question?

3 A. I do. And in response, I would say that the
4 normal skeleton that I would expect to find was
5 so altered by a burning episode as to render that
6 skeleton into fragments.

7 Q. All right. Dr. Eisenberg, were you able and are
8 you able, based upon your training, experience,
9 education, and to a reasonable degree of
10 scientific certainty, identify those remains as
11 being either male or female?

12 A. Yes, I have been able to make a determination of
13 sex.

14 Q. And what, first of all, is that determination?

15 A. That determination is that the fragmentary human
16 remains presented to me for examination are those
17 of an adult female.

18 Q. And by an adult female, are you able to
19 approximate the age of those remains; in other
20 words, the age of the individual from which those
21 remains come?

22 A. At this juncture, I would like to reserve comment
23 on that until I have completed my examination.

24 Q. All right. So the Court is clear, that
25 examination, um, continues your analysis, not

1 only for the -- for this particular case but for
2 the Division of Criminal Investigation, you have
3 asked to remain involved; is that right?

4 A. That is correct.

5 ATTORNEY KRATZ: For this hearing, Judge,
6 that's all the questions I have of Dr. Eisenberg.
7 Thank you.

8 THE COURT: All right. Mr. Johnson.

9 ATTORNEY JOHNSON: Thank you.

10 CROSS-EXAMINATION

11 BY ATTORNEY JOHNSON:

12 Q. Dr. Eisenberg, are there -- is there scientific
13 literature that you reviewed in conjunction with
14 the examination that you made in this case?

15 A. Well, as I mentioned, I have not completed my
16 examination, but, yes, there is research that I
17 have referred to and research that I already know
18 of, based on my years in the field.

19 Q. And in conjunction with this examination, what
20 literature did you refer to, what scientific
21 literature?

22 A. Literature involving signatures of possible
23 antemortem bone trauma in burned remains.

24 Q. Do you have the name of those articles or those
25 treatises?

1 ATTORNEY KRATZ: Objection, discovery,
2 Judge.

3 THE COURT: Sustained.

4 Q. (By Attorney Johnson) Um, the examination that
5 you did -- First of all, you received these items
6 from a DCI agent; is that right?

7 A. That is correct.

8 Q. And who was that?

9 A. The name of the Special Agent was Duranda
10 Freymler, F-r-e-y-m-i-l-l-e-r.

11 Q. And you had received a phone call prior to
12 receiving these, I take it?

13 A. That is correct.

14 Q. And who was the phone call from?

15 A. It was a voice mail message left for me on my
16 work answering machine, from Special Agent
17 Freymler.

18 Q. And you returned that call?

19 A. I did not return that call because when -- I was
20 out of town when the call came in. And I picked
21 up that message in transit back to Madison.

22 Q. Okay.

23 A. After hours.

24 Q. Okay. And then, when did you actually receive
25 the items?

1 A. On Thursday morning, November 10th.

2 Q. Okay. And this agent came to your workplace?

3 A. The remains were left for me at my workplace,
4 signed for by a coworker, and left in my locked
5 office, awaiting my arrival.

6 Q. Okay. And they were in a box; is that what you
7 said?

8 A. At the time, I did not know it was in a box, but,
9 yes, I did receive a white flat rectangular box
10 identified with labels and other information on
11 that box. And the box was in a brown grocery
12 type bag, presumably to transmit the box.

13 Q. Okay. And then you take that box, then, to the
14 morgue, the Dane County Morgue; is that right?

15 A. That is correct.

16 Q. And that's where you opened it?

17 A. That is correct.

18 Q. And, um, inside that box, are the items packaged
19 inside that box, separately?

20 A. Within the box there was one plastic bag into
21 which several bone fragments had been placed by
22 another forensic anthropologist, Dr. Kenneth
23 Bennett, to whom the box was initially brought,
24 for a brief examination, to determine whether the
25 fragments in the box were of human origin.

1 Q. Okay. And the color of that plastic bag was?
2 A. Was clear.
3 Q. Okay. Was that plastic bag sealed?
4 A. In what way?
5 Q. Sealed, I mean taped shut, there was some sort of
6 a seal on it, anything like that?
7 A. There was not a seal on that bag, but the bag was
8 within the sealed box that was brought to me.
9 And the box was sealed with evidence tape and
10 had -- was intact upon my receipt of the box.
11 Q. Okay. And how many items were there in the
12 plastic bag?
13 A. I did not count them. I simply laid them out
14 during the sorting procedure I followed.
15 Q. Okay. But 10, more than 10, more than 20? Do
16 you have an estimate?
17 A. I don't recall. I'm sorry.
18 Q. Okay. How do you do an examination like this?
19 Can you just sort of take me through the steps.
20 A. The first thing that I do is, wearing appropriate
21 gloves and mask and gown and so on, remove piece
22 by piece from the box and sort them into piles
23 representing human bone fragments and items of
24 non-biological origin, like metal, plant material
25 and so on.

1 Q. And how many items of non-biological origin were
2 there here?

3 A. I did not count them. I simply, with the initial
4 sorting, segregated them into separate piles that
5 then were put into separate bags that were
6 labeled.

7 Q. Okay. And then what do you do next?

8 A. Well, this is -- it's a fairly slow process.
9 There were many fragments in the box. And what I
10 did was, at the end of the evening, grouped all
11 of the human bone fragments together, was able to
12 sort out dental structures, which may have
13 represented fragments of jawbone and/or tooth
14 structures, and bagged those separately.

15 At the end of the evening I had several
16 bags, one representing human bone and bone from
17 different areas of the body, in addition to other
18 non-biological types of items.

19 Q. Okay. And you put each group of items in a
20 separate bag?

21 A. A separate labeled bag, that's correct.

22 Q. And then, did you continue this examination the
23 next day, I assume?

24 A. I did.

25 Q. Okay. And what's the next stage in it?

1 A. If I may, Judge, may I refer to my timeline?

2 Q. Is there something that would refresh your
3 recollection?

4 ATTORNEY KRATZ: Judge, perhaps I'll just
5 interpose the objection that this goes well beyond
6 the direct examination and the purpose for which
7 it's being offered at the preliminary hearing.

8 ATTORNEY JOHNSON: Judge, if there's expert
9 testimony that's been offered, I think on
10 cross-examination I'm entitled to go into the data
11 on which that expert testimony is being offered,
12 under 907.05.

13 THE COURT: If there's a document that
14 she's used to refresh her memory to testify today, I
15 believe the defense is entitled to see that. Is it
16 here?

17 ATTORNEY KRATZ: Has he asked that
18 question?

19 ATTORNEY JOHNSON: Well, I guess, let me --

20 ATTORNEY KRATZ: She asked if she could
21 look at it.

22 ATTORNEY JOHNSON: Let me see if I can
23 clarify this.

24 Q. (By Attorney Johnson) Would it refresh your
25 recollection to refer to the timeline that you

1 prepared in conjunction with this examination?

2 A. It would, but certainly I can speak through the
3 timeline. From the initial receipt of the
4 remains on November 10th, the remains actually
5 coming into my possession, on successive days,
6 after the 10th, I spent several to many hours
7 continuing with my examination, not only of the
8 remains that were initially brought to me on
9 November 9th, but additional remains that had
10 been collected by the Division of Criminal
11 Investigation on the same property, from which
12 the original box of fragments came.

13 Q. Okay.

14 A. So, the examination continued using the same
15 basic sorting procedure.

16 Q. Okay. The question that I had asked was: The
17 next day, what did you do? And I guess that's --
18 that's my question at this point. The next day,
19 how did you continue that process?

20 A. The next day I continued to sort. This is a very
21 slow process. It's a very detailed and
22 meticulous process and not something that's
23 easily completed in just several hours.

24 Q. Okay. And are you consulting anything as you are
25 doing this sorting, or any treatises, any

1 material, any reference material?

2 A. No, sir.

3 Q. Okay. How long would you say this process of
4 sorting took you? Do you have an estimate at
5 all?

6 A. Well, I am still in the process of sorting.

7 Q. Okay. Is this a situation where you, basically,
8 are sorting these fragments and you can offer an
9 opinion as to their origin purely by a -- a
10 visual examination?

11 A. That is correct.

12 Q. Okay. There's no -- Is there any other type of
13 testing that you would do to confirm that visual
14 examination?

15 A. None that I believe is necessary, given my
16 experience in analyzing human remains not only
17 from a forensic context but from some of the
18 disaster context with which I have been involved
19 in this country.

20 Q. Okay. And I'm sorry if I have -- this has been
21 answered before, how long have you been doing
22 this? How many years?

23 A. I began consulting in forensic anthropology in
24 1986 for the office of Chief Medical Examiner in
25 New York.

1 Q. Okay. Now, you are able to offer an opinion that
2 these remains, you believe, come from an adult
3 female; is that right?

4 A. That is correct, sir.

5 Q. And how do you come to that conclusion? What is
6 it about them?

7 ATTORNEY KRATZ: Judge, I'm going to --
8 well --

9 THE COURT: I'm going to allow this
10 question. She can explain how she came to her
11 conclusion.

12 ATTORNEY KRATZ: That's fine.

13 A. There are, as forensic anthropologists, certain
14 landmarks and certain shapes, what we call
15 morphology, that differ between male and female
16 skeletons. And there are certain landmarks that
17 I find -- even though they are fragmentary -- in
18 the human remains, that I have been able to
19 identify as being of the shape and form and size
20 that I believe to come from a female.

21 Q. And what landmarks, specifically, are you
22 referring to?

23 A. Two in particular, although, because my analysis
24 is not completed, there may yet be others. But
25 there are fragments from what we call the brow

1 ridge, above the eye socket, on both sides of the
2 skull, above both orbits, as well as an elbow
3 joint at the top end of one of the lower arm
4 bones, the radius.

5 Q. And what would be -- what would be the
6 difference? I mean, how would that lead you to
7 the conclusion it was a female?

8 A. In female skulls, the shape of the upper rim of
9 the eye socket is not very robust, or very heavy
10 looking. It's actually fairly gracile, very
11 small and has a sharp margin. And I see that
12 sharp margin on both fragments of the skull, of
13 the upper eye area.

14 And the head of the radius, or the part
15 of the lower -- one of the lower arm bones that
16 forms part of the elbow joint, is also of a very
17 small size.

18 Q. Now, is there a particular standard by which you
19 would judge this to be a female? I mean, a
20 certain -- below a certain size it has got to be
21 a female, above a certain size you would offer
22 the opinion it's a male? I'm talking about the
23 radius.

24 A. That's correct, that would apply to the radial
25 head, the radius head. And there has -- there

1 has been a study done that addresses just that
2 issue.

3 Q. And what is that size?

4 A. At the present time, I don't have that number in
5 my head to report to you.

6 Q. Okay. And would that -- That study you referred
7 to, do you know the name of that study?

8 A. I don't know the name of the article. I do know
9 the name of the author. I'm not quite sure if I
10 know how to pronounce the last name. First name
11 is Emily. The last name is something like
12 Barasbieta (phonetic). It's an article that was
13 published, I believe, in the *Journal of Forensic*
14 *Science*.

15 Q. And is that dealing with averages or -- I mean,
16 is there sort of like a cut off? Do you
17 understand my question?

18 A. Yes, I do.

19 ATTORNEY KRATZ: Judge, excuse me. My
20 objection is, this goes more to weight than to
21 admissibility.

22 THE COURT: At this point, the Court will
23 sustain the objection.

24 ATTORNEY KRATZ: Thank you, Judge.

25 Q. (By Attorney Johnson) What about with regard to

1 the orbital bone, is there a similar type of
2 standard there, as to what you described, that
3 would lead you to believe it's a female?

4 A. It's not a metric or measurable kind of standard.
5 It's an observational kind of standard that we
6 all base our work on.

7 Q. So, it's a subjective call on your part?

8 A. I do not believe it's a subjective call simply
9 because it cannot be measured.

10 Q. Okay. What are you looking for in that
11 particular bone, the thickness, the length from
12 side to side?

13 A. To which bone are you referring, sir?

14 Q. The orbital, I'm sorry.

15 A. It's -- It's the sharp edge, the fact that
16 there's not a heavy and protruding brow ridge on
17 top of it.

18 Q. Okay. And so that would be true, generally, of
19 females?

20 A. That is correct.

21 Q. Okay. And is that same article that you referred
22 to before the basis for -- for your opinion on
23 that bone as well, or is --

24 A. The article previously mentioned about the radius
25 head does not at all address using the orbital

1 bone to determine sex.

2 Q. Okay. Is there another learned treatise or piece
3 of scientific literature that you would have
4 reviewed relative to the orbital bone?

5 ATTORNEY KRATZ: Objection, discovery.

6 THE COURT: The objection is sustained.

7 ATTORNEY KRATZ: Thank you.

8 Q. (By Attorney Johnson) Now, are there other tests
9 that you have performed on these -- these items,
10 other like chemical tests, or anything like --

11 A. No, sir.

12 Q. All just been a visual examination?

13 A. That's correct.

14 Q. Okay.

15 A. May I qualify that? I have also had an
16 opportunity to have the fragments of the skull
17 that were presented for analysis, x-rayed.

18 Q. Okay. And where did that take place?

19 A. That took place on November 17th, at the
20 Middleton Memorial Veteran's Hospital in Madison.

21 Q. Okay. And what did you find out as a result of
22 those x-rays?

23 A. As a result of those x-rays, several of the
24 cranial fragments, at least seven of them, showed
25 evidence for areas with a greater density than

1 the bone itself. In other words, they were small
2 tiny areas, almost flecks, that appeared whiter
3 in the x-ray than the surrounding bone.

4 (Court reporter asked for clarification.)

5 A. Whiter.

6 Q. You examined these x-rays yourself; is that
7 right?

8 A. That's correct, but I was not the only one in the
9 room at the time.

10 Q. Okay. Was there a radiologist or someone who was
11 helping you interpret those?

12 A. There was a radiology technician. There was also
13 a forensic pathologist in the room at the same
14 time.

15 Q. Okay. Who was that?

16 A. His name is Dr. Michael Stier, S-t-i-e-r.

17 Q. Is he -- He is with Dane county?

18 A. He is with --

19 THE COURT: The Court is going to impose
20 it's own objection.

21 ATTORNEY JOHNSON: Okay.

22 THE COURT: It's discovery.

23 Q. (By Attorney Johnson) And what do those findings
24 tell you, if anything?

25 A. At the moment, I have -- I am not at a point

1 where I can comment on what those mean. At this
2 point, there are -- there are areas in those
3 bones that are more dense than the bone itself.
4 It's unknown at this time what those densities
5 represent.

6 Q. Okay. And do you know what part of the skull
7 those came from?

8 THE COURT: Again, just a minute, the Court
9 is going to interpose its own objection. The
10 witness has testified that, at least at this point,
11 the significance of it is unknown, so it adds
12 nothing to this hearing.

13 ATTORNEY JOHNSON: Okay.

14 Q. (By Attorney Johnson) Do you recall what the
15 substance of the voice mail message was that was
16 left for you by the Special Agent?

17 ATTORNEY KRATZ: Objection, discovery, your
18 Honor.

19 THE COURT: What's the purpose of the
20 question?

21 ATTORNEY JOHNSON: Well, I'm trying to
22 figure out if there was something that was told to
23 her about the items that she was going to be asked
24 to look at. Was it told to her that these were
25 human remains? Remains of unknown origin? What

1 exactly was told to her.

2 ATTORNEY KRATZ: If I may, Judge, and if
3 they were, that would go to weight, not
4 admissibility.

5 THE COURT: The Court agrees, the objection
6 is sustained.

7 Q. (By Attorney Johnson) Were these items that you
8 examined, were they -- you indicate that they
9 were all badly burned; is that right?

10 A. That is correct.

11 Q. And that's -- you can see that through a visual
12 examination?

13 A. That is correct. Most all of the bone was
14 blackened from burning.

15 Q. Okay. Is there any kind of chemical analysis you
16 did to confirm that?

17 A. No, and that is really outside of the range of my
18 expertise.

19 Q. Okay. So, this is, again, just -- it's a visual
20 examination that tells you, through your training
21 and experience, that this is from burns?

22 A. That is correct.

23 Q. And you have had experience in examining human
24 remains before, from burn victims?

25 A. Yes, I have had a number of forensic cases as

1 well as some of the federal disaster work I have
2 done involving a train crash in Illinois, the
3 aftermath of the World Trade Center disaster.
4 And so I have had occasion to look at many types
5 of burned and fragmentary human remains.

6 Q. Would you have an estimate as to how many times?

7 A. I do not have an exact number for you.

8 ATTORNEY JOHNSON: Thank you. That's all
9 the questions I have. Thank you.

10 THE COURT: Any redirect?

11 ATTORNEY KRATZ: No, Judge, thank you.

12 THE COURT: The witness is excused.

13 THE WITNESS: Thank you.

14 ATTORNEY KRATZ: State will call Sherry
15 Culhane to the stand. May we approach, Judge, just
16 briefly.

17 THE COURT: Yes.

18 THE CLERK: If you would raise your right
19 hand.

20 **SHERRY CULHANE**, called as a witness
21 herein, having been first duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please be seated. Please state
24 your name, spell your last name for the record.

25 THE WITNESS: Sherry Culhane,

1 C-u-l-h-a-n-e.

2 DIRECT EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q. Ms Culhane, how are you employed?

5 A. I work for the Wisconsin State Crime Laboratory
6 as a DNA analyst in the DNA Section.

7 Q. In front of you is a document which is marked as
8 Plaintiff's Exhibit No. 11, would you tell us
9 what that is.

10 A. Yes, it is a copy of my curriculum vitae.

11 Q. Does that curriculum vitae include your current
12 position, the duties with the Crime Lab, your
13 prior education, training, experience, that
14 entitles you to hold the position of DNA analyst?

15 A. Yes.

16 ATTORNEY KRATZ: Move admission of Exhibit
17 11 and ask she be considered an expert, at least in
18 that particular field.

19 THE COURT: Any objection from the defense?

20 ATTORNEY JOHNSON: No.

21 THE COURT: The exhibit is admitted. The
22 Court will accept the witness as an expert.

23 Q. (By Attorney Kratz) Ms Culhane, you have been
24 asked to participate in the investigation
25 regarding DNA analysis of samples regarding the

1 case involving Mr. Avery and Ms Halbach; is that
2 correct?

3 A. Yes, it is.

4 Q. As part of that investigative process, did you
5 have occasion to individually search and recover
6 items from a 1999 Rav 4 SUV, in Madison?

7 A. Yes, I did.

8 Q. In searching the back of that vehicle, were you
9 able to observe and did you collect various
10 material, various stains, that you believed
11 included human blood?

12 A. Yes, I did.

13 Q. I'm going to show you what's been marked for
14 identification as Plaintiff's Exhibit No. 12.
15 Excuse me. Could you tell us what that is,
16 please.

17 A. This is the back cargo area of that vehicle. And
18 I recovered a portion of a large reddish brown
19 stain that was where that yellow area is.

20 Q. All right. That stain recovery, is that
21 something that you do as a member of the Crime
22 Lab, as a DNA analyst?

23 A. Yes, it is.

24 Q. Were you also asked to examine, and did you
25 recover, a reddish stain that was located near

1 the ignition portion of the front of that same
2 SUV?

3 A. Yes, I did.

4 Q. And could you look at what's been marked as
5 Exhibit No. 13 and tell us what, if anything,
6 that depicts?

7 A. This is a photograph of the inside of the Rav 4.
8 And that squiggly --

9 THE COURT: Excuse me, there's a laser
10 pointer floating around.

11 ATTORNEY KRATZ: I have got it. The yellow
12 button.

13 A. Thank you. This area right here is where I
14 recovered a portion of this reddish brown stain.

15 Q. Ms Culhane, did you also receive in evidence and
16 were you asked to process and identify whether
17 any DNA material was located on a vehicle key,
18 which has been referred to as a Toyota key?

19 A. Yes, I was.

20 Q. By the way, once receiving that key at the Crime
21 Lab, did you do anything with the key and test it
22 as it might relate to this particular '99 Rav 4?

23 A. Yes, I did.

24 Q. What did you do?

25 A. I placed it in the ignition and turned it. The

1 key turned the ignition and I also tested it on
2 the locked front driver's side door, and it did
3 open the door.

4 Q. And so the Court is aware what key we are talking
5 about, is this the same key at least identified,
6 and identified in the evidence package, as having
7 been collected from the bedroom of Steven Avery?

8 A. Correct.

9 Q. Ms Culhane, the key itself, did you process that
10 for the recovery of possible DNA material?

11 A. Yes, I did.

12 Q. Can you tell us what that entails, please.

13 A. I, basically, took a sterile cotton swab and
14 swabbed the black rubberized portion of the key
15 that you would use to crank the key. I swabbed
16 all the surfaces and I did my analysis from that
17 cotton swab.

18 Q. Ms Culhane, the analysis of this vehicle, where
19 did that take place at?

20 A. At the Wisconsin State Crime Lab in Madison.

21 Q. All right. We're going to be showing you what's
22 been marked for identification as Exhibits No. 14
23 and 15. And as you testify about your analysis,
24 I would invite you to refer to those exhibits and
25 tell us if -- if you need to read from them.

1 But let me ask you if you were able to
2 develop what's commonly referred to as a DNA
3 profile from the bloodstain that was obtained
4 from the back of the Rav 4 SUV?

5 A. Yes, I was.

6 Q. Were you able to identify and develop a profile
7 of any DNA material that was found on the Toyota
8 key that we have heard about?

9 A. Yes, I did.

10 Q. Ms Culhane, have you received from law
11 enforcement officials what are commonly referred
12 to as exemplars, or sometimes intimate samples
13 that are referred to, from both Mr. Avery and
14 that of Teresa Halbach?

15 A. Yes, I have.

16 Q. And were you able, specifically, from a buccal
17 swab saliva sample of Mr. Avery, to develop a DNA
18 profile?

19 A. Yes, I was.

20 Q. And, specifically, from a slide, a pap smear of
21 the victim in this case, Teresa Halbach, were you
22 able to develop a DNA profile?

23 A. Yes, I was.

24 Q. Did you also, Ms Culhane, receive from the Crime
25 Lab various bone and tissue material which was

1 represented to you as having been collected from
2 a burn area on the Avery property?

3 A. Yes, I was.

4 Q. Did you attempt to develop a DNA profile from
5 those charred remains of bone and tissue?

6 A. Yes.

7 Q. Referring then, first, to Exhibit No. 14 --

8 THE COURT: Just a minute, did she say she
9 tried? What was the --

10 ATTORNEY KRATZ: She said she did, Judge,
11 I'm sorry.

12 THE COURT: You were able to read the DNA
13 from the charred remains; is that what you said?

14 THE WITNESS: Yes.

15 Q. (By Attorney Kratz) Ms Culhane, then, regarding
16 the profiling, or regarding the analysis that you
17 performed, were you able to compare the DNA
18 profile from the key found in Mr. Avery's
19 bedroom, from the blood found near the ignition
20 inside of Ms Halbach's vehicle, and compare that
21 with Mr. Avery's DNA exemplar?

22 A. Yes, I was.

23 Q. What were the results of that analysis?

24 A. The profile developed from the buccal swabs that
25 were taken from Steven Avery was consistent with

1 the DNA profile that I developed from both the
2 Toyota key and the apparent blood stains that
3 were taken from the ignition.

4 Q. Were you able to develop and compare the DNA
5 profiles from the blood found in the back of the
6 Rav 4 and compare that with the DNA profile, the
7 pap smear from Teresa Halbach?

8 A. Yes, I was.

9 Q. What were those results?

10 A. The profile from the pap smear was also
11 consistent with the stain from the back cargo
12 area of the Rav 4.

13 Q. And so the Court is clear, there was also a soda
14 can that was found in the front of Teresa's
15 vehicle, that you developed a DNA profile from;
16 is that right?

17 A. Yes.

18 Q. And what, if anything, did that match, or what
19 was that consistent with?

20 A. That was also consistent with the profile
21 developed from the pap smear of Teresa Halbach.

22 Q. And, finally, Ms Culhane, were you able to
23 compare the DNA profile from the pap smear of
24 Teresa Halbach and compare those to the charred
25 tissue and charred remains found on the Avery

1 property?

2 A. Yes, I was.

3 Q. Could you describe the results for us, please.

4 A. The profile -- The DNA profile from the charred
5 remains was a partial profile and, mainly,
6 because that was a very degraded sample of DNA.
7 That partial profile was consistent with the
8 profile developed from the pap smear of Teresa
9 Halbach.

10 Q. Were you able, Ms Culhane, to speak as to
11 statistics, or a frequency of occurrence, that
12 is, between the partial profile and the known or
13 exemplar sample of Ms Halbach?

14 A. Yes, I am.

15 Q. Could you describe how that analysis occurs and
16 what, if any, statistical data you can provide in
17 that regard?

18 A. When we do this type of DNA analysis, we're
19 looking at several different locations on the DNA
20 molecule. The more locations, the more areas of
21 the DNA we test, the more discriminating and the
22 more specific that profile becomes.

23 Because the profile from the charred
24 remains was a partial profile, it was only -- it
25 matched the pap smear sample at seven different

1 locations. Statistically, if we look at how rare
2 this profile occurs in the population, we can
3 statistically look at all those different areas,
4 and combining those, we come up with a composite
5 statistic that characterizes this sample and how
6 rare it is in the population.

7 In the case of the partial profile from
8 the charred remains, it occurs one person in one
9 billion in the Caucasian population -- I have to
10 refer to the exact numbers -- one person in two
11 billion in the African/American and southeastern
12 Hispanic populations and one person in three
13 billion in the southwestern Hispanic population.

14 Q. And at least for our purposes, regarding whether
15 or not those charred remains are in fact those of
16 Teresa Halbach, is it a fair statement, then,
17 with the analysis that you have provided, to
18 indicate that the chances, if you will, that it
19 is not Teresa Halbach would be one in one
20 billion? Is that roughly a restatement of what
21 you are telling us?

22 A. Basically, it just means that this profile occurs
23 in the general Caucasian population one person
24 out of a billion and it is consistent with
25 Teresa.

1 Q. So, the seven out of seven loci, in other words,
2 the DNA analysis, at least to the frequency of
3 one in one billion, matched between that of
4 Teresa Halbach and that of the charred remains;
5 is that correct?

6 A. That's correct.

7 ATTORNEY KRATZ: That's all I have of this
8 witness, Judge. Thank you.

9 THE COURT: Mr. Johnson.

10 ATTORNEY JOHNSON: Thank you.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY JOHNSON:

13 Q. When did this car arrive at the Crime Lab?

14 A. I got involved in it on November 7th --

15 Q. Do you know --

16 A. -- 2005.

17 Q. I'm sorry, 2005, is that what you said?

18 A. Yup.

19 Q. Okay. When did it arrive, to your knowledge?

20 A. I believe it arrived the day before, on a Sunday.

21 Q. Okay. And then you didn't have anything to do
22 with it until that day?

23 A. Correct.

24 Q. And where was it when you first saw it?

25 A. It was in the garage of our laboratory.

1 Q. Okay. And it was parked there? Was it in a van?
2 How was it?

3 A. No, it was parked in the garage and it was being
4 photographed by the photographer in the
5 laboratory.

6 Q. Okay. Who else was there?

7 A. Myself, Mike Riddle, who is another analyst in
8 the lab, Nick Stahlke and Ron Groffy.

9 Q. And those are other Crime Lab personnel?

10 A. Yes.

11 Q. Okay. Were any of those people people who had
12 been on the scene when the car was recovered?

13 A. I don't recall if they were there or not.

14 Q. Okay. And was the car -- were the doors open and
15 the hatch open?

16 A. Yes, I believe so.

17 Q. Okay. And they were taking photographs; is that
18 right?

19 A. Yes.

20 Q. And were they processing the vehicle otherwise?
21 Were they looking like for fingerprints, doing
22 things like that?

23 A. Usually when we process a vehicle like this, as a
24 DNA analyst, I look at it first for any
25 biological material. In this case, I was

1 interested in any blood stains, apparent blood
2 stains, that I might find. So, I was involved in
3 the beginning.

4 The car is photographed, first. Then I
5 was involved in looking for blood stains,
6 apparent blood stains. And after I was completed
7 with my portion of it, then it would have been
8 processed for fingerprints.

9 Q. Okay. So the car is there, there are a number of
10 people around it. Are the doors open and things
11 like that?

12 A. Yes.

13 Q. Okay. And so someone had done that prior to your
14 arrival?

15 A. As far as I recall, yes.

16 Q. Okay. And so you get there. And what do you
17 have with you?

18 A. Pardon me?

19 Q. What do you have with you? I mean, what
20 materials do you have?

21 A. I have the supplies that I use to process the
22 car: Cotton swabs, chemicals that I use to look
23 for presumptive test for blood, my notes, that
24 sort of thing. And I begin -- flashlight -- by
25 actually visually looking at the car to see if

1 there is any blood stains.

2 Q. Okay. And how are you dressed?

3 A. I have a lab coat on.

4 Q. Okay.

5 A. I don't remember what else.

6 Q. Okay. And you have --

7 A. Gloves, lab coat, gloves, yup.

8 Q. Okay. Anything covering your mouth, or anything
9 like that?

10 A. Not my mouth, but I had safety goggles, glasses.

11 Q. Okay. And so what's the first thing you do --

12 (Court reporter asked to have the question repeated)

13 Q. I'm sorry. What's the first thing you do in
14 relation to this car?

15 THE COURT: Just a second. Mr. Kratz, can
16 you turn off the photo machine, it will make life
17 easier for the reporter.

18 A. The first thing I do is begin to take notes. I
19 verify that the car that's in the garage is the
20 car that I'm actually supposed to be looking at.
21 I write down the VIN number, what type of car it
22 is, and then I begin, basically, by -- with a
23 flashlight, looking on the inside of the car.

24 As I come across stains that appear to
25 be consistent with blood stains, I diagram and

1 note where those stains are. I collect those
2 stains by using a sterile cotton swab that's
3 in -- dipped in sterile water and I swab the
4 area. In some cases those are photographed. Not
5 all stains from every car is photographed. And
6 I, basically, write my notes as I go along.

7 Q. Okay. Now, do you speak to anybody before you
8 start this process?

9 A. I'm usually -- I have usually been told what case
10 it is, some of the background on the case. In
11 this particular case, I was told by one of the
12 supervisors what kind of case this was, where
13 this car was found, and what we were interested
14 in looking at.

15 Q. Okay. So you knew -- you knew some background
16 about the case, where the car was found, you knew
17 it was the victim's car?

18 A. Correct.

19 Q. And you knew that -- that -- that it was,
20 potentially, you would expect to find blood
21 stains there?

22 A. Correct.

23 Q. And other potential DNA material?

24 A. Correct.

25 Q. And that's all before you go out and start

1 processing the car?

2 A. Yes.

3 Q. Okay. So, then, does anybody point out, like
4 different possibilities about what stains you
5 might want to look at, or do you just do that
6 yourself?

7 A. Actually, in this case, Nick Stahlke, who is
8 another analyst, he is a blood spatter analyst as
9 well as a document analyst, we were sort of doing
10 it in conjunction, and we were kind of looking at
11 the stains together.

12 Q. Okay. And so you -- you -- do you recall which
13 stain you looked at first?

14 A. Yes, the first one was the one in the back cargo
15 area, because it was the largest and the most
16 obvious.

17 Q. How big an area was that stain?

18 A. I didn't measure it exactly. That was the
19 photograph you were shown earlier. I would guess
20 about that big.

21 Q. And you are holding your hands --

22 A. -- about six inches across.

23 Q. About six inches. Would you say --

24 A. Approximately.

25 Q. Would you say six inches around, I mean, like

1 sort of a circular type of stain?

2 A. Yes.

3 Q. And what do you do to process that stain?

4 A. We do a test that is a presumptive test for
5 blood. It is not specific for human blood, but
6 we use it as a screening tool. It's a --

7 Q. What test is that?

8 A. It's phenolphthalein.

9 Q. Okay.

10 A. It is a color test. If you -- If it's probably
11 blood, you get a bright pink color.

12 Q. Okay.

13 A. So, I did that on the stain. It appeared to be
14 that it was consistent with a possible
15 bloodstain, so I collected that one.

16 Q. Okay. And, then, to collect it, what do you do?

17 A. I took a sterile cotton swab, wet it with sterile
18 water and just, basically, wiped it over the
19 surface until I had enough on the cotton swab
20 that I felt I could get a DNA profile from.

21 Q. Okay. And is that cotton swab, the tip of it,
22 like saturated then, or just a small amount of
23 the bright pink on it, or?

24 A. I use a different swab. I use the swab -- a swab
25 for the phenolphthalein to test that. Then I

1 throw that away. Then I take a another swab to
2 actually take my sample for DNA extraction.

3 Q. Okay. You throw that away, where do you throw
4 that away?

5 A. Into a biohazard box.

6 Q. And then what do you do? Then you take a
7 different cotton swab and you swab the stain?

8 A. Correct.

9 Q. Then what do you do with that swab?

10 A. I allow it to air dry and then I put it into a
11 paper coin envelope and I mark on the outside the
12 item designation, the laboratory number. Any
13 evidence or any case that's opened into the
14 laboratory has a unique number and we use that
15 number to identify everything associated with
16 that case.

17 So I put the lab number on it. It was
18 Item A, and it was the first stain that I
19 collected so it was A1.

20 Q. Okay. And you allow it to air dry; how long does
21 that take?

22 A. It wasn't very wet. I probably -- What I have is
23 a rack and this -- the cotton swabs, as I collect
24 the stains, are put into this rack and they are
25 left there until I'm completed. Then I put them

1 all into a envelope.

2 Q. And how big is this rack, a foot long?

3 A. No, not that long.

4 Q. Six inches?

5 A. Yeah.

6 Q. Okay. So, like square, six by six?

7 A. Yeah.

8 Q. How many different cotton swabs can fit in there?

9 A. I usually put about three, then I use another
10 one.

11 Q. And then you put those, where? Is there like a
12 table or something there you put them on?

13 A. Yes, it's an area that I designated as my work
14 surface. It has paper down and it has all the
15 tools, the forceps and everything that I use for
16 examination.

17 Q. Okay. And that little holder stand sits on that
18 table?

19 A. Correct.

20 Q. And, um -- So you take the cotton swab, put it in
21 the stand, you go on to the next stain, then, at
22 that point?

23 A. Correct.

24 Q. What do you do with that stain, the next stain,
25 same process?

1 A. Same process, correct.

2 Q. Okay.

3 A. Yes.

4 Q. Okay. Is it the same thing with the blood test
5 first, the presumptive blood test first?

6 A. Yes. And then that's discarded into a biohazard
7 box and then I take my actual sample.

8 Q. Where is that biohazard box; is that also on that
9 little table, the work table?

10 A. It's in a -- It's a box on the floor, it's a big
11 biohazard box right by where I am.

12 Q. Is it like covered, or?

13 A. What do you mean by cov -- No, it's open.

14 Q. It's just an open box?

15 A. An open box, yeah.

16 Q. Okay. You're sort of pitching stuff into?

17 A. Correct.

18 Q. Okay. Do you remember which stain you went to
19 next?

20 A. Yes, I do. I did not -- I believe there were a
21 total of 10 stains that were -- I actually
22 swabbed and collected. I only did DNA on four of
23 them. The next stain was on the cargo area, the
24 back cargo area of the car. There's a little
25 plastic strip that you get into the car. I don't

1 know exactly what it's called, but that was the
2 second stain that I took.

3 Q. That's sort of like the -- the rear of the car,
4 where the sort of carpeting ends and there's sort
5 of a little plastic area there?

6 A. That's correct.

7 Q. Right where the hatch back opens?

8 A. Correct.

9 Q. Okay. And that's -- that's the stain you did
10 next?

11 A. Yes.

12 Q. Okay. How do you get access to the stain in the
13 interior of the cargo portion? Did you go
14 through the door, or how did you get to that?

15 A. No, I just leaned over.

16 Q. You leaned over. Okay. How big of a lean is
17 that?

18 A. I don't recall, maybe a few feet.

19 Q. Okay.

20 A. Just a reach. I could comfortably reach it.

21 Q. Are you touching anything else when you are doing
22 that?

23 A. No.

24 Q. Okay. So, then this strip, you do that one next.
25 How big is that stain?

1 A. I don't recall. I would have to look at my notes
2 to see exactly.

3 Q. Okay. You would refresh your recollection by
4 looking at your notes?

5 A. Yes.

6 Q. Okay.

7 THE COURT: I'm going to interpose my own
8 objection here. Is this one of the ones you
9 analyzed?

10 THE WITNESS: No.

11 THE COURT: For purposes of this hearing, I
12 don't believe it's relevant.

13 Q. (By Attorney Johnson) Okay. So, this is not one
14 of the stains you analyzed for DNA?

15 A. That is correct.

16 Q. Okay. Why don't we go to the next stain you
17 analyzed for DNA?

18 A. Okay.

19 Q. Where was that?

20 A. There was a stain on the driver's seat. It was
21 actually in the fabric of the seat. I cut that
22 out.

23 Q. Okay. Using what?

24 A. A pair of scissors.

25 Q. Okay. Where did the scissors come from?

1 A. In the laboratory, my work scissors.

2 Q. Are they from that same work area?

3 A. Yes. Yes, all the tools that I use for my
4 processing and examination are all in the same
5 area.

6 Q. Okay. That's that little table where the little
7 stand for the swabs is sitting?

8 A. Correct.

9 Q. And how big is that table, again?

10 A. I don't recall exactly, probably maybe 3 feet by
11 2 feet.

12 Q. Okay.

13 A. It's a laboratory counter.

14 Q. Okay. All right. So -- So you get the pair of
15 scissors and your, um, and, um, you cut out
16 that -- that stain out of that driver's, uh,
17 seat; is that right?

18 A. Yes.

19 Q. Okay. And how big is that stain?

20 A. It's probably the size of my thumbnail.

21 Q. Okay. Which is half an inch? I mean, an inch?

22 A. Quarter of an inch.

23 Q. Quarter of an inch. Okay. You cut that out;
24 what do you do with it?

25 A. I put that in a coin envelope and also label it

1 with a case number, the date, and my initials,
2 and the item designation that I give it, which in
3 this case I believe it was a six.

4 Q. Okay.

5 A. It was the sixth thing I took.

6 Q. So that -- now would that stain -- You don't take
7 a swab of that stain right there?

8 A. No.

9 Q. When do you -- So what do you do with that
10 envelope?

11 A. That's put on my work surface.

12 Q. Okay.

13 A. It's folded over and sealed and put on my work
14 surface.

15 Q. Okay. In the meantime, you collected, I assume,
16 four other stains?

17 A. Correct.

18 Q. And those are all with Q-tips?

19 A. Yes, they are.

20 Q. Okay. And those Q-tips are stored in that same
21 little --

22 A. Yes.

23 Q. Okay. That's the same little stand, Q-tip drying
24 stand or something?

25 A. Yes.

1 Q. Okay. Um, and, um, and then what's the next --
2 next thing you do?

3 A. The next stain that I process?

4 Q. Yes.

5 A. The next stain that I collected, that I actually
6 did DNA on, was the stain that was right to the
7 right of the ignition.

8 Q. Okay. And how do you get that stain?

9 A. Again, I collected that on a cotton swab.

10 Q. Okay. Is that after you have done the
11 presumptive test?

12 A. Yes, same process with each one of these. Each
13 one of these stains I do a presumptive test first
14 and then I do the actual collection of the
15 sample.

16 Q. Okay. And how do you decide which ones you
17 are -- I mean are you taking swabs that you
18 intend to do DNA analysis --

19 A. Yes.

20 Q. -- on from each one of these stains?

21 A. All of the stains that are on a hard surface,
22 like the dashboard or a metal part of a car, we
23 can't actually cut that metal out, so the way to
24 remove those stains is to use a cotton swab and
25 actually take the stain off.

1 If it's a stain on a piece of fabric --
2 We don't -- it's much more efficient and we get
3 more sample out of it when we cut the stain. So
4 all the stains that were collected from like
5 cloth seats, the stain was actually cut. If it
6 was a stain that was on a hard surface, it was
7 collected with a cotton swab.

8 Q. Okay. And -- But did you not analyze some of
9 these stains later, for DNA, or did you analyze
10 all of them?

11 A. No, I didn't. I only chose four to analyze.

12 Q. Okay. And how did you decide which four?

13 A. Um, it was -- I basically just took a random
14 sampling of some of the stains -- as I said, Nick
15 Stahlke, one of the other analysts in the
16 laboratory, is proficient in blood spatter --
17 under his direction. He said that some of the
18 stains appeared to be possible drips. Those
19 stains I collected for sure. And that's how I
20 decided which ones to actually look at.

21 Q. Okay. So, he -- he basically told you which ones
22 he thought looked like blood?

23 A. Right.

24 Q. Okay.

25 A. Not looked like blood, but looked like they were

1 drips of blood. The stain -- I collected -- All
2 the stains I collected gave me a positive
3 phenolphthalein for blood and were consistent
4 with the appearance of blood.

5 Q. Okay.

6 A. I chose to do DNA on certain stains, the ones
7 that appeared to be drip marks or that appeared
8 to be isolated stains, not with the larger
9 bloodstain. I only did one of those.

10 Q. Okay. And the reason for that was because they
11 appeared to have dripped from the other stains?
12 I guess I'm --

13 A. Well, I mean they could have appeared to have
14 dripped from anything, from someone that was
15 injured, from an object, from a weapon, from
16 anything. They just appeared to be different.

17 A lot of times when we process cars, or
18 any kind of evidence, that's part of the process,
19 is to decide which stains maybe look different,
20 which stains are separated from other stains,
21 which stains might be -- give a little more
22 probative evidence than the --

23 For instance, in this case, the large
24 stain in the back, I took that stain, but there
25 were other smaller stains associated with that.

1 I took that stain, but I didn't take, you know,
2 four or five samples from that stain, I just took
3 one sample from that stain.

4 The other samples, perhaps they were
5 from another source of the blood. So that's why
6 we choose certain samples to take and certain
7 ones not to examine.

8 Q. Okay. So the -- And how long does this process
9 take?

10 A. To process a car?

11 Q. Right.

12 A. My portion of it, it took me most of the day.

13 Q. Okay.

14 A. And then someone else had to process it for
15 fingerprints. You know, it depends on the
16 vehicle. Sometimes they take a day, sometimes it
17 may be two or three days. It just depends.

18 Q. And so there is a total of 10 stains that you get
19 presumptive positive blood tests from?

20 A. Correct.

21 Q. And I think you said four of those you also
22 swabbed for -- with a swab, a cotton like, for
23 DNA?

24 A. All of them -- All of those 10 I collected.

25 Q. For DNA?

1 A. Right --

2 Q. Okay.

3 A. -- with a swab --

4 Q. Okay.

5 A. -- but I only chose to examine four of them --

6 Q. Four. Okay.

7 A. -- for DNA.

8 Q. All right. And you go through the same process

9 in each one?

10 A. Yes.

11 Q. And how many of them are drying -- drying at the

12 same time?

13 A. Well, I don't recall exactly, but as they are

14 dry, I take them out and put them into the

15 envelope as I, you know, as I go along.

16 Q. Okay. And how can you tell if they are dry; do

17 you like feel them?

18 A. Actually, I put them in the envelope and then I

19 reopen them. I reopened them at my desk and let

20 them air dry.

21 Q. Okay. So they are not quite dry, you put them in

22 the envelope --

23 A. They weren't -- I mean, they were put in the

24 envelope, then I took them up to my desk and I

25 opened -- the end of them was opened so the air

1 could circulate. But they were never taken out
2 of the envelope again.

3 Q. Okay. When you do that, how are you carrying
4 them up to your office?

5 ATTORNEY KRATZ: Objection, discovery,
6 Judge. This is well beyond the preliminary hearing.

7 THE COURT: Sustained.

8 Q. (By Attorney Johnson) Um, okay. So then, um, you
9 are finished processing the car and, um, you are
10 going to do the, uh, the analysis of these
11 stains; is that right?

12 A. Yes.

13 Q. Um, and how do you do that?

14 A. Um, these stains that I recovered?

15 Q. Right.

16 A. I take each of the stains. I cut a small portion
17 of the stain. I put it in a tube and I do a
18 procedure that basically extracts the DNA from
19 the cells. Um, I go through a process where I
20 clean it up. And in the end, I end up with a
21 vial with about 45, 50 microliters of liquid that
22 has nothing but DNA in it.

23 Q. Okay.

24 A. I take that DNA. I quantitate it, which means I
25 try and find out how much DNA, what the

1 concentration is of the DNA. Some samples have a
2 lot of DNA. Some samples don't have very much.
3 So I have to quantitate it to find out how much
4 is in there. I then set up these samples to be
5 amplified for DNA.

6 In this type of DNA analysis, we're
7 looking for specific fragments of DNA. These
8 fragments have to be amplified, which I set them
9 up for that process in the laboratory. Then I
10 run them on an instrument that detects those
11 fragments of DNA that we're looking for. When
12 the data comes off of the instrument, what I get
13 is a composite profile of DNA fragments that
14 characterizes that particular stain.

15 Q. Okay. So with the amplification, that's the PCR;
16 is that right?

17 A. Yes.

18 Q. Okay. And then you do, um, the -- the process by
19 which you look for the -- the -- the repeats, is
20 that right, the short tandem repeats?

21 A. Yes. It's a PCR based system. And STRs are the
22 fragments we're looking for. We use a
23 commercially prepared kit that tags those
24 fragments with a fluorescent dye and then our
25 instrumentation detects that dye and that's how

1 we get the actual size that comes out of the
2 fragments.

3 Q. Okay. And then, um, that ultimately ends up,
4 you -- you look for, is it 13 different
5 locations?

6 A. There are 13 core loci. In our laboratory we use
7 a kit that is produced by Promega, which has,
8 actually, two extra ones. There are no
9 statistics associated with those extra ones, but
10 we do the 13 core loci that the FBI requires, in
11 addition to two extra ones.

12 Q. Okay. So, basically, when you talk about core
13 loci, what you are talking about is 15 different
14 points, 15 different locations, right?

15 A. Yes.

16 Q. Okay. And then you are looking for what's at
17 those particular locations?

18 A. You are looking at fragments of different sizes.
19 For instance, at a particular locus, say D5, I
20 might be a 14/15, someone else is a 15/16. So
21 they have one fragment that's a little bit
22 bigger. Those fragments are determined -- The
23 difference in those fragments is determined by
24 the size of them.

25 Q. And this is all done by a computer, right, a

1 machine?

2 A. It's done by a 310 capillary electrophoresis
3 instrument?

4 (Court reporter asks her to repeat her answer.)

5 A. 310 capillary electrophoresis instrument. And
6 that detects the fragments as it goes through the
7 instrument with the dyes attached to it and that
8 tells us what the size of those fragments are.

9 Q. Do you get like a printout then --

10 A. Yes.

11 Q. -- with some peaks on it?

12 A. With peaks on it, yes.

13 Q. Okay.

14 A. And those peaks represent the fragments.

15 Q. Right. So, like if you -- you get sort of a
16 chart and one particular area there's -- which
17 represents a particular location on the DNA loci,
18 or locus, basically, I guess, if you are talking
19 about one, then you look for two peaks, if there
20 is two, or one if there's one and you -- and
21 that's the 14, or the 15, or the 16, or whatever?

22 A. Correct.

23 Q. Okay. And for each of these 13 loci, you will
24 get a reading of however many peaks there are in
25 that particular DNA sample?

1 A. Correct.

2 Q. At that -- at that locus?

3 A. Correct.

4 Q. And do you do the -- the reading of that graph,
5 that -- that chart with the peaks?

6 A. Yes, I do.

7 Q. Okay. So -- So, you are the one who -- who looks
8 and says that -- the computer tells you --

9 A. Well, we actually have a computer program, but I
10 actually analyze -- I mean, each analyst is
11 responsible for looking at their own data and
12 making those interpretations.

13 Q. Okay. So, that's your call as to whether a
14 particular peak actually represents the presence
15 of an allele there versus some background noise
16 and things like that that sometimes gets printed
17 out as well?

18 A. Correct.

19 Q. Okay. Um, and you go through this process for
20 each of these 13 core loci that the FBI tells you
21 to look at, right?

22 A. Correct.

23 Q. And plus, this particular commercially
24 manufactured thing, this is the PowerPlex 16; is
25 that right?

1 A. Yes.

2 Q. It gives you two more, that's like penta E and
3 penta D, or something like that; is that right?

4 A. Correct.

5 Q. Okay. And then -- So you look for those
6 additional loci as well?

7 A. Correct.

8 Q. Okay. And then, um, and then do you also look to
9 see if there's a, um, a genetic marker for sex?

10 A. Yes.

11 Q. Okay. And you did that with the samples that you
12 got, four of them; is that right?

13 A. Yes, from that item of evidence.

14 Q. Okay. And do you remember which four?

15 A. I believe it was A6, A8, A9 and A12. Um, A6 was
16 a stain from the driver's side front seat. A8
17 was a stain near the ignition. A9 was on the
18 front seat in the passenger side. And A12 was a
19 stain that was, um, it was between -- it was on
20 the passenger side, between the front and back
21 door, that metal panel. Um, I don't know what
22 you call it. It was on the passenger side, the
23 metal piece that -- that -- where the door
24 closes.

25 Q. Okay. Like the frame?

1 A. Yeah.

2 Q. Okay.

3 A. On the side of the frame.

4 Q. Okay. And that was on the side of the frame on
5 the passenger --

6 A. Yes.

7 Q. -- side in the rear?

8 A. Right.

9 Q. Is this a four-door or two-door?

10 A. Four-door.

11 Q. Four-door. Do you ever do any other test with
12 regard to whether or not it is blood?

13 A. No, we do not.

14 Q. Now, you generate a DNA profile based on the --
15 the presence of different alleles at these
16 different loci, correct?

17 A. Yes.

18 Q. Okay. And, then, did you compare that to, um,
19 the DNA Data Bank, Wisconsin DNA Data Bank?

20 A. Originally, yes.

21 Q. So that was the first thing you did?

22 A. Um, after I generated the profile, I requested a
23 keyboard search, um, through the Milwaukee Data
24 Bank.

25 Q. Okay. Why did you do that?

1 A. Because I was asked to do that.

2 Q. By who?

3 A. The police department. Um, there was -- My
4 initial testing indicated that it was a male
5 individual. Um, I did not have any samples from
6 anyone, um, so we thought someone may be in there
7 that matched, so we did a keyboard search. Um, I
8 think between myself and the DCI agents -- and I
9 don't remember who -- we had a discussion and it
10 was decided that we would do it.

11 Q. Okay. How -- How broad a keyboard search did you
12 do?

13 A. I did not actually do it. Dan Haase did it, who
14 is the -- in charge of the data bank over in
15 Milwaukee. I sent him the profile that I
16 developed from these stains. Um, and he searched
17 all the state -- the convicted offender -- State
18 Convicted Offender Data Base.

19 Q. Okay. But did you do, um, a search -- I mean, do
20 you know if he did a keyboard search just based
21 on those specific alleles at each one of those
22 different loci, or did he do a broader search
23 whereby he would put in more than those two
24 alleles for each loci? Do you know what I'm
25 asking you?

1 A. No, you would just --

2 ATTORNEY KRATZ: Judge, I'm going to
3 object. Whatever he's asking is well beyond a
4 preliminary hearing.

5 THE COURT: The objection is sustained;
6 it's discovery.

7 Q. (By Attorney Johnson) Now, with regard to the
8 key, when did you get the key?

9 A. I believe it was the 8th. Let me check my notes
10 to make sure.

11 Q. You are using your notes there to refresh your
12 recollection; is that correct?

13 A. Yes, I am.

14 Q. Can I just -- Can we approach?

15 THE COURT: Yes.

16 (Side bar taken.)

17 Q. (By Attorney Johnson) Does that refresh your
18 recollection as to when you got the key?

19 A. Yes.

20 Q. Okay. When did you get it?

21 A. November 8th.

22 Q. Okay. And how did it come to you?

23 A. It came into the laboratory from a DCI agent,
24 Matthew Joy.

25 Q. How was it packaged?

1 A. In a brown paper bag.

2 Q. Okay.

3 A. With evidence tape. I opened it up and then --

4 Q. I'm sorry, where was this taking place, in your
5 office?

6 A. No, in the garage.

7 Q. In the garage?

8 A. Yes.

9 Q. Same garage?

10 A. Yes.

11 Q. Okay. And is there like a table or something
12 that's set up to do this kind of thing?

13 A. No, I believe it was taken in by an evidence
14 specialist and then it was brought down to me,
15 because they wanted it swabbed before it could be
16 tested on the car to see if it -- it would turn
17 the ignition.

18 Q. Okay.

19 A. So they gave it to me. I had gloves on. I
20 opened the package. I swabbed the area, the
21 black part of the key that does the crank, with a
22 cotton swab. There was no visible staining on
23 it. That's when I took the key and put it in the
24 ignition and tested the lock on the door.

25 Q. Okay. So you, um, you swabbed the black part; is

1 that the only part you swabbed?

2 A. Yes.

3 Q. Okay. And then what do you do with that swab?

4 A. That was also laid out in my work space to air
5 dry.

6 Q. Okay. I assume there's -- that's the one swab
7 there at this time?

8 A. Yes, this was the next day.

9 Q. Okay. Um, what is the procedure? Is this the
10 same work space that you used down in this garage
11 all the time or was this sort of a temporary set
12 up?

13 A. It was a temporary set up. It's not my work
14 space that I use all the time. It's just set up,
15 an area set up for processing cars.

16 Q. Okay. And -- And it was brought to you there
17 because the car was still there and you expected
18 to -- to eventually try the key on the car; is
19 that the idea?

20 A. Yes.

21 Q. Okay. And this was -- Um, what's the procedure
22 for dealing with that work space in between the
23 time you examined the car and the time you
24 examined this key?

25 A. Well, it's used by multiple people, I mean,

1 whoever needs the space to work on the car.

2 Before I start working on it, I clean it down
3 with bleach and put down white paper.

4 Q. Okay. And what about the little Q-tip holder?

5 A. That's also cleaned down with bleach, at my desk.

6 Q. You do that personally?

7 A. Yes.

8 Q. Okay. And so you -- you -- you do that everyday
9 at the end of the day, or how do you do that?

10 A. We do it several times a day, depending on what
11 kind of evidence we have out, what we're working
12 on. We clean our pipettes. We clean our work
13 bench. We clean our forceps, our -- everything,
14 numerous times.

15 Q. Okay. Do you know how many times this was
16 cleaned?

17 A. No, I don't.

18 Q. In between the car and the key, you don't know?

19 A. No, I don't know how many times. It was cleaned,
20 because I always clean it every time I use it.

21 Q. Okay. You clean it right at the beginning of
22 processing any piece of evidence?

23 A. Yes, I do.

24 Q. Okay. And so then you swab this, this air dries,
25 and then what do you do with the key?

1 A. Then I put it back into the paper container and I
2 believe I retained custody of it.

3 Q. Were you the person that tried it in the ignition
4 then, too?

5 A. Yes.

6 Q. Okay. And you did that right after you swabbed
7 it?

8 A. Yes.

9 Q. Right. Immediately --

10 A. I -- As soon as I was done swabbing it, I tried
11 it in the car.

12 Q. Okay. And you tried it in the ignition and you
13 said, also, in the door; is that right?

14 A. Yes. I locked the door and it opened the lock.

15 Q. Okay. And then you turned the ignition and it
16 turned over?

17 A. Actually, it didn't turn over because, I
18 believe -- It didn't crank. I believe the
19 battery was disconnected?

20 Q. Oh.

21 A. But it -- I mean it turned completely over. It
22 just didn't crank the engine.

23 Q. Okay. Um, and then, um, when do you get the, um,
24 the samples from -- Mr. Kratz referred to them as
25 the intimate samples -- when do you get those

1 things?

2 A. Um, the buccal swabs?

3 Q. Right.

4 A. The standard samples?

5 Q. Right.

6 A. I will have to check my notes and evidence.

7 Q. Go ahead.

8 A. There were three buccal swabs that were

9 submitted, and they were all three submitted on

10 the 11th of November.

11 Q. Okay. And who were those from?

12 A. Allan Avery, Bryan Dassey, and Steven Avery.

13 Q. Okay. Those are the three that you got?

14 A. Buccal swabs, yes.

15 Q. Okay. And those -- And you generated profiles

16 off of those three?

17 A. Yes, I did.

18 Q. Okay. And that's the same process that you did

19 with generating the profile from the -- from the

20 stains in the car?

21 A. Yes.

22 Q. And how did those -- those swabs come to you?

23 A. How are they packaged?

24 Q. Right. How did you get them?

25 A. They came into the laboratory --

1 THE COURT: I'm going to impose my own
2 objection here, again. This goes to discovery.

3 ATTORNEY JOHNSON: Okay.

4 Q. (By Attorney Johnson) Now, the partial profile
5 that you received from the, um, the charred
6 materials, when did you receive those?

7 A. The 11th as well.

8 Q. Okay. And, um, you generated a partial profile,
9 that's because you could only -- there was only
10 enough DNA material to -- to find seven out of
11 the 13 loci; is that the idea there?

12 A. No, I suspect in this case it was because the DNA
13 was degraded.

14 Q. Okay.

15 A. It was not a very, um, good sample for DNA.

16 Q. Okay. And so what does that do to it?

17 A. Um, when you look at a DNA profile, as you are,
18 um, the larger -- when a DNA sample -- when DNA
19 begins to degrade, the larger fragments will
20 begin to break up and we don't detect them.

21 So, when you look at a sample where the
22 smaller fragments are detected, which was the
23 case in this particular instance, if it's a
24 degraded sample, you usually see the larger
25 fragments drop out. So, I only got fragments at

1 seven loci instead of 13.

2 Q. Okay. And -- and, um, so those -- those --
3 those, um, fragments that you got on the seven
4 loci would have been larger fragments?

5 A. Smaller fragments.

6 Q. Smaller fragments. The larger ones would drop
7 out?

8 A. Yes.

9 Q. Okay. The loci would be present, you just
10 wouldn't see any peaks in those particular
11 places; do I have that right?

12 A. Well, the loci basically just refers to a
13 location.

14 Q. Right.

15 A. The peaks are the actual fragments that are
16 there, but any time a biological sample starts
17 to -- such as DNA -- starts to degrade and break
18 up, it basically just breaks apart. And so the
19 DNA at those places are beginning to break apart.

20 Q. So you don't -- So what, are there no peaks at --

21 A. Nothing.

22 Q. -- those loci?

23 A. Right. There's nothing.

24 Q. Nothing --

25 A. Nothing.

1 Q. -- on the printout, there's just nothing there?

2 A. Correct.

3 Q. Okay. Using those -- At those seven different
4 loci, did you get two alleles at each one; do you
5 know?

6 ATTORNEY KRATZ: Objection, discovery,
7 Judge.

8 THE COURT: Sustained.

9 Q. (By Attorney Johnson) How do you come up with the
10 calculation of one in a billion in the Caucasian
11 population?

12 A. We use the FBI's Data Bank and, basically, each
13 one of these fragments are inherited
14 independently of each other. So, we can multiple
15 the frequencies of each one of these fragments,
16 how frequent -- how common or how rare that
17 particular fragment is in the population.

18 So, by combining those numbers, by
19 multiplying the frequencies of the fragments of
20 the alleles that I did get, and comparing that to
21 the FBI's data base, the frequency is one in a
22 billion in the Caucasian and the other numbers
23 that I stated.

24 Q. At any particular loci, you will get two alleles,
25 correct?

1 A. If that person is a heterozygote, yes.

2 Q. Okay. What does that mean?

3 A. It means they inherit -- You always inherit half
4 of your DNA from your mother and half from your
5 father. If you are heterozygote, you inherit a
6 different fragment of DNA from your mother and a
7 different from your mother -- from your father.

8 If you are homozygote, then you inherit
9 the same one from each parent.

10 Q. So, then you would have two 14's at the same
11 locus?

12 A. You would only have one peak.

13 Q. Okay.

14 A. And it would be 14.

15 Q. Okay.

16 A. So that person is homozygote.

17 Q. Okay. Um, if the DNA is not degraded, it doesn't
18 take much to get a profile; is that right?

19 A. Correct.

20 Q. How much?

21 A. When we amplify the DNA, we usually shoot for
22 around one nanogram.

23 Q. And how much is that?

24 A. I don't recall exactly.

25 Q. Okay. I'm sorry, I think I may have asked this,

1 I'm not sure. When you process the vehicle, you
2 wear a lab coat; is that right?

3 A. Yes.

4 Q. Gloves?

5 A. Yes.

6 Q. And safety glasses?

7 A. Yes.

8 Q. And -- And do you wear a face mask?

9 A. No, I didn't.

10 Q. Other people there wearing face masks?

11 A. No.

12 Q. Okay. Other people there wearing gloves?

13 A. Yes, everybody wears gloves.

14 Q. Okay. And -- And any other protective clothing?

15 A. I don't recall what the other people were
16 wearing.

17 Q. Okay. But you, yourself, no other protective
18 clothing, nothing like on your feet, anything
19 like that?

20 A. No, I didn't have anything like that on.

21 Q. Okay. And you wear gloves throughout the entire
22 process?

23 A. Yes.

24 ATTORNEY JOHNSON: That's all the questions
25 I have. Thank you.

1 THE COURT: Any redirect?

2 ATTORNEY KRATZ: No, Judge.

3 THE COURT: All right. The witness is
4 excused.

5 ATTORNEY KRATZ: We will move the admission
6 of Exhibits 12, 13, 14, and 15 at this time.

7 THE COURT: Are there -- Is there any
8 objection to 12, 13, 14 and 15? I believe 12 and 13
9 are photos and 14 and 15 are lab results.

10 ATTORNEY LOY: No objection for purposes of
11 this hearing.

12 THE COURT: All right. Those exhibits are
13 admitted.

14 ATTORNEY KRATZ: Your Honor, the last piece
15 of evidence that's being offered, and is by
16 stipulation, is Exhibit No. 16, which is a certified
17 copy of a death certificate -- death certificate for
18 that of Teresa M. Halbach, having date of birth,
19 March 22nd, 1980.

20 That death certificate was filed by
21 Michael Klaeser, Calumet County Medical Examiner.
22 It was filed in the Manitowoc County Register of
23 Deeds Office today. And the designation of cause
24 of death is that of a homicide. I will provide
25 the Court with Plaintiff's Exhibit 16 at this

1 time.

2 THE COURT: Any objection to Exhibit 16?

3 ATTORNEY LOY: Not for purposes of this
4 hearing.

5 THE COURT: All right. Exhibit 16 is
6 received. Is there anything further from the State?

7 ATTORNEY KRATZ: State rests, your Honor.

8 THE COURT: Is there any evidence to be
9 offered from the defense?

10 ATTORNEY LOY: No, your Honor.

11 THE COURT: Do the parties -- either party
12 wish to make argument with respect to either of
13 these cases?

14 ATTORNEY KRATZ: I do not, Judge. I'm
15 going to move the Court for bindover, asking the
16 Court, with the evidence and the reasonable
17 inferences, to find probable cause that a felony has
18 been committed, that the defendant probably
19 committed that felony, and bind him over for trial.

20 THE COURT: Mr. Loy, or Mr. Johnson?

21 ATTORNEY LOY: Your Honor, we'll simply
22 move to dismiss, for the record.

23 THE COURT: All right. Based on the
24 evidence presented, the Court is going to determine
25 that there's probable cause to believe that a felony

1 has been committed in each of these cases, that is,
2 05 CF 375 and 05 CF 381. The Court will schedule
3 these matters for an arraignment. I will ask the
4 clerk to get me my calendar.

5 Counsel, I know there is a bail
6 reduction motion as well. We have run out of
7 time to hear it today. I can hear it at the same
8 time as the arraignment, if the parties wish.

9 ATTORNEY KRATZ: That's fine, Judge.

10 THE COURT: Mr. Loy.

11 ATTORNEY LOY: Your Honor, I could try to
12 be very brief with my bail motion.

13 THE COURT: I'm not -- I said 5:00 was the
14 deadline today. We stretched that a bit already.

15 ATTORNEY LOY: I appreciate that, your
16 Honor. That's fine.

17 ATTORNEY KRATZ: If I may, Judge, and I
18 understand that the Court had anticipated this, the
19 State is going to file with the Court at this time a
20 three count Criminal Information in case No. 05 CF
21 381. We are merging the three counts from the two
22 different Complaints into one Information. It was
23 contemplated that Mr. Loy would ask for a separate
24 arraignment date and we obviously have no objection
25 to that.

1 ATTORNEY LOY: We have been served with a
2 copy of the Information, your Honor. We would ask
3 for an arraignment at a later date.

4 THE COURT: All right. Well, the choices
5 are as follows: Next week I have some civil trials
6 scheduled. I do not know the status. There's also
7 some criminal trials, actually. The calendar is
8 thinning out a bit, but I have no days that are open
9 at this time. So, if you want to take a contingent
10 date next week, I can look at that, otherwise we're
11 looking into January. I can give you -- How about
12 3:00 on Monday, January 9th.

13 ATTORNEY KRATZ: I'm actually in a jury
14 trial that afternoon. Did the Court have
15 something -- did you say next week Tuesday or
16 Wednesday?

17 THE COURT: Well, what I said is, at this
18 time I have got trials scheduled next week. I have
19 got two trials scheduled for Tuesday and one for
20 Wednesday.

21 ATTORNEY LOY: Your Honor, actually, we
22 would prefer a January date because there are some
23 things we need to do.

24 THE COURT: All right. How about 3:00 on
25 Thursday, the 12th.

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ATTORNEY KRATZ: I'm sorry, Judge, I'm unavailable then, as well. The entire next week I am available, as well as the week of the 23rd.

THE COURT: All right. How about 9:00 on the 17th?

ATTORNEY KRATZ: That would be fine.

ATTORNEY LOY: That's fine with us.

THE COURT: Works fine with both parties, very well, that would be for the arraignment and bail reduction hearing.

ATTORNEY KRATZ: Just so the parties -- should we anticipate bringing our calendars to schedule future matters at that time as well, your Honor?

THE COURT: That would probably be advisable.

ATTORNEY KRATZ: Thank you, Judge.

ATTORNEY LOY: Thank you, your Honor.

THE COURT: January 17th. We are adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 20th day of January, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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