

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

STEVEN A. AVERY,

Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

SEP 14 2006

CLERK OF CIRCUIT COURT

Case No. 05-CF-381

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS
FRUITS OF THE NOVEMBER 5 SEARCH WARRANT
BASED ON A "MULTIPLE EXECUTIONS" ARGUMENT

INTRODUCTION

Defendant Avery seeks an order excluding all physical evidence seized from his trailer and garage after the first entry pursuant to a search warrant which was endorsed at 3:10 p.m. on Saturday, November 5.¹ Execution of the warrant began at 3:25 p.m. and the first entry to the defendant's trailer occurred at 3:48 p.m.² The defendant asserts that the subsequent re-entries to his residence totaling eight, and to his garage totaling three between November 5 and November 9, 2005, without obtaining a new warrant for each entry justifies suppression. Defendant relies on the "one warrant—one search principle." Should the court grant his request, the defendant asks for the exclusion of all derivative evidence including, but not limited to, statements taken from the defendant and evidence seized as a result of additional search warrants issued on November 7, November 9, December 9, and March 1 which he claims were all derived

¹ Exhibit No. 15 (07/19/06).

² Exhibit No. 15.

from a defective warrant.³ It is unclear from his pleadings and initial oral argument whether he is challenging every entry to the trailer after the initial entry at 3:48 p.m. or entries after 10:05 p.m. Saturday night. Similarly, with the garage it is unclear. The state is assuming for purposes of this argument that since the first two entries to the trailer and the first one to the garage on Saturday afternoon were very brief “sweeps” looking for a live or dead body, it is the re-entries after Saturday night to the trailer and after Sunday morning to the garage that are at issue.

This response is further confined to the defendant’s challenge to the November 5 search warrant. It is important to note that defendant’s challenge is better framed as a challenge to the manner in which the search warrant was executed and not that the warrant itself was defective or that the police lacked probable cause to conduct the searches at issue. After all, the defense characterizes the challenge in its motion and brief as a “multiple executions” argument.

Additionally, the state will defer argument as to whether any derivative evidence should be suppressed until the court actually determines that suppression is appropriate based on the defendant’s challenge. The court would be unable based on the status of the record and the evidence presented to apply the requisite legal principles and decide whether any of the derivative evidence should be suppressed.

Finally, the state argues in essence that the principle “one warrant—one search” was not violated. The state executed one search warrant and conducted one continuing search that took seven days to complete. Although unnecessary, the state renewed that warrant on November 9, 2005, before it expired.

³ Defendant’s motion, pps. 2-3; defendant’s brief, pps. 12-16.

APPLICABLE LEGAL PRINCIPLES

This is a case of first impression in Wisconsin. Although there is persuasive authority from other states and from the federal courts, an argument can be made that this is a case of first impression on a national basis because of the unique facts in this case.

To begin, the Fourth Amendment⁴ does not specify that search warrants contain expiration dates. While the Amendment requires an “oath or affirmation” particularly describing the place to be searched and the person or things to be seized, it contains no requirements about when the search or seizure is to occur or the duration of that search or seizure.

Additionally, Wis. Stat. § 968.12(1)(c) reads in pertinent part: “*Issuance.* The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. . . .” Subsection (f) of the same statute provides: “*Entry of time of execution.* The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.” Section 968.15(1) requires that the warrant be executed within five days of its issuance. These are the only time constraints placed upon the execution of a search warrant under Wisconsin law. None of these provisions were violated by the state. In this case, under the facts presented, the standard by which the execution of this warrant is judged is that of reasonableness.

As noted above, the Fourth Amendment to the Constitution of the United States, by its terms, prohibits unreasonable searches and seizures. *United States v. Gerber*, 994 F.2d 1556, 1558 (11th Cir. 1993), *citing New York v. Class*, 475 U.S. 106, 116 (1986). “The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the

⁴ “[A]nd no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

seizure under all the circumstances. The test of reasonableness cannot be fixed by *per se* rules; each case must be decided on its own facts.” *Gerber, Id., citing Coolidge v. New Hampshire*, 403 U.S. 443, 509-10 (1971) (Black, J. concurring and dissenting).

In *United States v. Gerber*, FBI agents impounded Gerber’s car because they intended to search it under a search warrant because they believed the car was evidence of a bank robbery based on an eye-witness identification. They searched the interior of the car on Friday September 13, 1991. However, the agents could not open the hood of the car and did not wish to damage the car. They returned on Monday, September 16, 1991, and resumed their search of Gerber’s car with the aide of a mechanic. The agents were unaware that the search warrant had expired the previous Friday evening. The second search resulted in the discovery of inculpatory evidence. The Court held that the opening of the hood on the following Monday was simply a continuation of the search for which the agents had a valid warrant on the preceding Friday. *Gerber*, 994 F.2d at 1559. The Court determined that the agents did not delay the search deliberately or in bad faith. The Court found they did not wish to damage the car by forcing the hood open, and they were unaware that the warrant had expired. The Court was unpersuaded by the argument the defense is likely to make in this case, *i.e.*, the agents could have obtained a second or additional warrant based on enhanced probable cause. The Court said, “It is no answer to say that the police could have obtained a search warrant, for ‘[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.’” *Gerber*, 994 F.2d at 1559, citing *Cooper v. California*, 386 U.S. 58, 62 (1967) (quoting *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950)). The court also pointed out that the case was not one in which the exclusionary rule could appropriately be applied. The court noted that, “[t]he prime purpose of the exclusionary rule ‘is to deter future unlawful police conduct.’” *Gerber*, 994 F.2d

at 1561, citing *United State v. Calandra*, 414 U.S. 338, 347 (1974). The Court observed that, “the rule is a judicially created remedy designed to safeguard Fourth Amendment rights through its deterrent effect, rather than a personal constitutional right of the party aggrieved,” and as such “the rule must be applied in light of its deterrent purpose, and courts should restrict the application of the rule ‘to those areas where its remedial objectives are thought most efficaciously served.’” *Gerber*, 994 F.2d at 1561, citing *United States v. Calandra*, 414 U.S. 338, 347 (1974). Thus, the *Gerber* decision recognizes two principles of law that are applicable in the instant case; the continuing search principle and the restricted use of the exclusionary rule, especially when a search warrant has been obtained and its terms complied with.

In reaching its decision, the *Gerber* court cited to *United States v. Huslage*, 480 F. Supp. 870 (W.D. Pa. 1979), another automobile search case as justification for its reasoning. In *Huslage*, Pennsylvania State Troopers obtained a warrant authorizing them to make a night time search of an automobile and a defendant’s motel room. The state trooper searched the vehicle within nine hours after the magistrate had issued the warrant and within twelve hours after the police had arrested the defendants and seized the car in question. Under Pennsylvania law, a search warrant must be executed within a specific period of time not to exceed two days from the time of issuance. *Huslage*, 480 F. Supp. at 875. In this case, the officers executed their first search at 4:10 a.m. and then conducted a second search at 10:00 a.m. on the same day. The court held that although the police made two entries into the vehicle pursuant to a single search warrant, it does not require a finding that the police violated the Fourth Amendment rights of the defendants. The court held that the second search was merely a continuation of the initial intrusion. *Huslage*, 480 F. Supp. at 875.

Although *Gerber* and *Huslage* were automobile search cases, they were not the first to acknowledge the reasonable continuation rule, nor has the rule been limited in its application to automobile searches. *United State v. Bowling*, 351 F.2d 236 (6th Cir. 1965), *cert den.* 383 U.S. 908 (1966).

In *Bowling* the police suspected defendant Bowling of operating as a fence for stolen business machines. The police went to the courts and obtained three different search warrants in order to search more or less simultaneously the three logical storage places which they knew defendant to possess. In the defendant's home they discovered a basement full of stolen property, including the business machines which were the subject of the warrant. The officers went in to search his premises at 6:15 p.m. However, none of the machines were seized that night. The officers left after seizing other evidence. The serial numbers were checked overnight and when it was determined that several of the machines were stolen, the officers returned the next morning and seized the business machines as evidence. The defendant challenged the appropriateness of the second search on the theory that the warrant had already been executed and returned. While the court was concerned with the somewhat hypertechnical challenge to the concept of the "return," the court did hold the subsequent entry valid, even though the warrant had already been executed and the officers had cleared the scene.

Similarly, in *United States v. Carter*, 854 F.2d 1102 (8th Cir. 1988), another federal court had occasion to deal with a subsequent entry on one warrant. In *Carter*, narcotics officers executed a search warrant for a motel room based on evidence obtained in part as a result of a consent search, and exigent circumstances which resulted in the plain view observations of narcotics activities. However, the officers returned for a second search without a fresh warrant and recovered money several hours after the initial search. The court held that the authority of

the warrant had not expired and that the return search was not beyond the scope of the Fourth Amendment.

Also, the Ninth Circuit in *United States v. Kaplan*, 895 F.2d 618 (9th Cir. 1989), has acknowledged the continuing search doctrine. In this case, law enforcement officers were investigating Kaplan, a physician, for mail fraud and defrauding insurance companies as well as prescribing controlled substances for reasons other than legitimate medical purposes. During the course of the investigation, the officers executed a search warrant of his office. However, when they discovered that they did not obtain all of the files requested in their search warrant, they returned two hours later and obtained two of the missing files. The court held that the entry and search two hours later for files listed on the search warrant renders the second entry a continuation of the first. *Kaplan*, 895 F.2d at 623. In making this determination, the Ninth Circuit relied on the decisions in *United States v. Carter* and *United States v. Bowling*.

In addition to the federal authority cited, at least two states have acknowledged the reasonable continuation rule. See, *State v. Bolin*, 114 Nev. 503, 960 P.2d 784 (1998), and *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).

In *State v. Bolin*, Bolin was suspected of kidnapping, sexual assault, and murder. During the course of the investigation, the police sought a search warrant to obtain samples of Bolin's blood, saliva, and pubic hair. Nevada's statutes required that such a warrant be executed and returned within ten days of its issuance. A warrant was issued on July 15, 1995. On July 16, detectives served and executed the search warrant on Bolin. However, the officers mistakenly used a DUI (driving under the influence) kit instead of the proper serological kit. After a representative of the district attorney's office informed the police that the original warrant was still valid, the detectives returned with the appropriate serology kit on July 18 and seized

additional samples of Bolin's blood and saliva, along with his head and pubic hair. Bolin argued the state failed to properly obtain a second warrant for the July 18 search and seizure. The court ruled the second search was valid and relied primarily on Nevada statutes authorizing the execution of the search anytime within the ten-day period.

In *State v. Swain*, the defendant was suspected of murdering his mother and during the course of the investigation, the police applied for and were issued a search warrant to search the Swain residence for a number of items including, but not limited to, "any blood stained items to include clothing." Pursuant to the warrant, the police searched the residence for three days. A benzidine⁵ test was used to detect the presence of blood in various places in and around the house. During the search, virtually all parts of the house were tested by means of the benzidine test. The defendant challenged the two succeeding days of searching pursuant to the single warrant. The defendant argued that the searches that occurred on days two and three were not authorized by the warrant and thus illegal. Defendant Swain, much like defendant Avery, cited several cases which hold that consent given to search a home on a day does not itself authorize additional searches one or more days later. *Swain*, 269 N.W.2d at 718.⁶ The state argued it was all one continuing search and relied in part on *United States v. Bowling* 351 F.2d 236 (6th Cir. 1965), *cert den.* 383 U.S. 908 (1966). The court held that because the police found blood stains

⁵ A benzidine test is a preliminary or a field test which can indicate the presence of blood. When a suspected blood stain is treated with a benzidine solution and hydrogen peroxide, the hemoglobin in the blood causes an immediate bright blue color reaction. The age of the blood is irrelevant; the test cannot distinguish human or animal blood, and further laboratory tests are necessary for this. *Swain*, 269 N.W.2d at 711.

⁶ See defendant's first brief, p. 17, citing to *State v. Douglas*, 123 Wis. 2d 13, 365 N.W.2d 580 (1985); and *Kelly v. State*, 75 Wis. 2d 303, 308-309, 249 N.W.2d 800 (1977); both of which were scope of consent cases that are inapplicable to the case at hand. A search warrant must be considered superior authority to one of its exceptions.

on the first and second day, three days was not an unreasonable time in which to effectively complete the search by means of chemical tests. *Id.* at 718-19. The court did add, however, that the concept of “continuing probable cause was to be strictly construed against the state and that the present case must be clearly distinguished from consent and other warrantless search cases. As in the case at bar, the officers were consistently finding and collecting suspected blood samples over the course of the entries.

The cases with the best discussion of the issue presented in this case are *United State v. Keszthelyi*, 308 F.3d 557 (6th Cir. 2002), and *United States v. Squillacote*, 221 F.3d 542 (4th Cir. 2000). Both cases acknowledge the continuing search rule and each supports the state’s position in the case at bar.

In *Keszthelyi*, the defendant was suspected of dealing in narcotics and as a result numerous “controlled buys” of cocaine occurred during the summer of 1999. On October 8, 1999, law enforcement officers obtained a warrant to search his home. The warrant instructed the officers to search the home on or before October 18, 1999. Keszthelyi was arrested on October 8, 1999, at 3:00 p.m. Shortly thereafter, a search of his home occurred. The agents found a substantial amount of evidence supporting their belief in his narcotics distribution activities. The agents concluded their search and left his property at 5:00 p.m. One of the agents “felt very strongly that there was something there that had not been located” during the initial search. The decision was made to reenter the residence and continue the search without obtaining a second warrant. During the second search, one ounce of cocaine was discovered. It is important to note that the home was not under continued control of law enforcement officers. On October 11 the agents obtained a new warrant and searched the defendant’s property again. Keszthelyi challenged the second entry on October 9.

To start, the court acknowledged that most federal courts of appeal to have considered the question, including the Sixth Circuit, hold that a single search warrant may authorize more than one entry into the premises identified in the warrant as long as the second entry is a reasonable continuation of the original search. *Keszthelyi*, 308 F.3d at 568, citing *Bowling*, *Squillacote*, *Gerber*, *Kaplin*, and *Carter*.

The court discussed the *reasonable continuation rule* at length. First, the court determined that the subsequent entry or entries must indeed be a continuation of the original search and not a new and separate search. Second, the decision to conduct a second or subsequent entry to continue the search must be reasonable under the totality of the circumstances. *Keszthelyi*, 308 F.3d at 569. In discussing the *reasonable continuation rule*, the court observed that *Gerber* was an excellent illustration of the kind of situation in which a second entry is properly characterized as a continuation of the earlier search. *Keszthelyi*, 308 F.3d at 570. This is because the officers in *Gerber* knew before postponing the initial search that they wanted to look under the vehicle's hood and had probable cause to believe that evidence would be found there. *Id.* at 570. Although the court concluded that the October 9 search was a separate search requiring its own warrant, the court acknowledged the principle which is at play in the case at bar "that a search conducted pursuant to a lawful warrant may last as long, and be as thorough, as reasonably necessary to fully execute the warrant. *United States v. Jackson*, 120 F.3d 1226, 1228-29 (11th Cir. 1997). Thus, law enforcement agents generally may continue to search the premises described in the warrant until they are satisfied that all available evidence has been located. *United States v. Menon*, 24 F.3d 550, 560 (3rd Cir. 1994) ("any reasonable agent looking for evidence in a clearly circumscribed area would continue the search until she was certain that no more evidence existed which could not happen until the

entire [area] was searched.”) Once the execution of a warrant is complete, however, the authority conferred by the warrant terminates. *Bills v. Aseltine*, 958 F.2d 697, 702 (6th Cir. 1992).

In the case at bar, Special Agent Fassbender (SA Fassbender), Lt. Lenk and Detective Remiker testified that they were not done searching on Saturday evening; Fassbender “knew” they were not done searching the defendant’s trailer at the conclusion of the search on Saturday evening, November 5, and that there was more evidence to obtain (Tr. 84),⁷ (08/09/06 Tr. 206-10). The officers had probable cause to believe that additional evidence would be found in the trailer. In *Kesthelyi* the officers did not maintain control of the scene and at best had only a hunch there was more evidence to be had. A further discussion of the reasonableness of the efforts and belief that more evidence was to be collected is set forth in the next section of this brief.

Of all the cases discussed and reviewed by the *Keszthelyi* court, *United States v. Squillacote*, 221 F.3d 542 (4th Cir. 2000), is most instructive and closest on point with the case at bar. In this case, Squillacote and her husband Stan were suspected of espionage. They were subjected to 550 days of consecutive surveillance under the Foreign Intelligence Surveillance Act (FISA). During the course of the investigation, a search warrant was obtained authorizing a search of the defendants’ home. The warrant authorized the government to search the residence on or before October 10, 1997, and that the execution of the warrant was to occur in the daytime hours, that is between 6:00 a.m. and 10:00 p.m. *Squillacote*, 221 F.3d at 554. However, the

⁷ Transcript references are to the transcript of August 10, 2006, unless otherwise indicated.

search actually extended over six days, with two FBI agents remaining in the house each night. The defendants challenged the presence of the FBI agents in the home after 10:00 p.m. and complained that it constituted a search and a violation of the provisions of the warrant. The court found no actual “searching” occurred between the hours of 10:00 p.m. and 6:00 a.m. The court held that the search did not exceed the scope of the warrant and, even if it did, a blanket suppression of all evidence was not required. *Id.* at 555. The court reasoned that:

Where a search is authorized by a warrant, we believe it unnecessary and improper to isolate certain conduct occurring during the execution of the warrant and treat that conduct as a separate and discreet search. Instead, the government’s actions while executing a warrant must be considered in context, and the question that must be answered is whether the government exceeded the scope of the warrant.

Id. at 555, citation omitted. The court further reasoned that even though the FBI agent entered the home on six consecutive days to search for evidence without obtaining a fresh warrant for each entry, the number and type of items that could be evidence of espionage-related activities, the search was necessarily going to be extensive and exhaustive. *Id.* at 557. The court cited to *United State v. Wuagneux*, 683 F.2d 1343, 1352 (11th Cir. 1982), wherein the court held:

[T]he magnitude of a search is insufficient by itself, to establish a constitutional violation; rather the relevant inquiry is whether the search and seizures were reasonable under all the circumstances. . . . [G]iven the complexity of the crimes under investigation and the fact that they would be detected primarily if not exclusively through analysis and synthesis of a large number of documents, a rather extensive search could reasonably be expected.

Squillacote, 221 F.3d 557. The Court further observed that, “notwithstanding the large number of agents involved in the search, it is apparent that the search could not have been completed in a single day. Under these circumstances, the subsequent entries were not separate searches requiring separate warrants, but instead were simply reasonable continuations of the original search. The government, therefore, was not required to obtain additional warrants for each day

that the search continued.” *Squillacote*, 221 F.3d 557. In making this pronouncement, the court cited to *United States v. Kaplan*, 895 F.2d 623; *United States v. Carter*, 854 F.2d 1107; *United States v. Bowling*, 351 F.2d 241; and *United States v. Gerber*, 994 F.2d 1558-60.

Finally, the court reasoned that the length of the search was a function only of the nature of the evidence sought and the condition of the home. To require the government to obtain a new search warrant for each continued day of searching would impose an undue burden on the government’s efforts to investigate complex crimes, a burden that would be unjustifiable under the circumstances of this case. *See, United States v. Sakyi*, 160 F.3d 164, 165-67 (4th Cir. 1998) (“The touchstone of our analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.). Reasonableness is determined by weighing the public interest against the individual’s right to personal security free from arbitrary interference by law officers.” *Squillacote*, 221 F.3d 558.

In sum, the focus of the court’s analysis is on the reasonableness of the state’s activities in executing the warrant under the totality of the circumstances. The cases likewise reveal that the concepts of reasonableness and the reasonable continuation rule go hand in hand and must be evaluated together. The application of these principles to the facts of the case at hand require that the motion to suppress be denied. The state turns now to the particular facts of the case at hand.

ARGUMENT

There was one warrant and there was only one search; one search that took seven days and thirty minutes to complete. The state executed the one search warrant in a reasonable manner and the subsequent entries to defendant’s trailer and garage are nothing more than a reflection of the *reasonable continuation rule*. The defendant’s view is myopic. The defendant

seeks to compartmentalize into several disjointed pieces the efforts of the state to execute a search warrant on the Avery property. The defense argument in effect wishes the court to accept the proposition that each entry to the defendant's trailer and/or garage was a separate search. This argument ignores the plain facts of the case and is flawed in several respects. First, Exhibit 15 by its very terms specifically authorizes the search of a single family trailer, red in color, belonging to the defendant, Steven Avery, as well as his detached garage (Exhibit 15, ¶ 1). The warrant also authorized a search of the single family trailer and detached garage belonging to the defendant's sister, Barbara Janda (Exhibit 15, ¶ 2). The warrant also authorized the search of residences and garages located within the property of the Avery Auto Salvage Business. The salvage yard is approximately 40 acres in size (Exhibit 15, ¶ 3). The warrant authorized the search of the 40 acres, along with their numerous out buildings and vehicles. The warrant also authorized a search for particular items: 1) a 1999 Toyota RAV 4; 2) women's clothing; 3) Teresa Marie Halbach (victim); 4) property belonging to Teresa Halbach, including but not limited to cameras, film, and photography equipment and the electronic storage devices; 5) forensic evidence including but limited to fiber evidence, blood, hair, saliva, and semen, and fingerprints; and 6) instrumentalities capable of taking a human life, including but not limited to weapons, firearms, ammunition, knives, cutting instruments, ropes, and ligatures (Exhibit 15, ¶ 3, p. 2).

In their attempts to execute this search warrant, the officers were confronted with the following facts: the area to be searched encompassed a 40-acre crime scene (Tr. 60-61). There were 37 acres that contained approximately 3,600 to 3,800 junked cars (Tr. 61). In addition, there were fifteen buildings, including the residences of Steven Avery, Barb Janda, Delores and Alan Avery (defendant's parents), and Charles Avery (Tr. 61). Simultaneous to the execution of

the warrant on the 40-acre parcel described above, the officers were likewise involved in a search of the 600 to 800 acres of surrounding property (Tr. 77, line 23-25.). The search of the surrounding property included gravel pits, ponds, and lakes which were either searched by dive teams or simply walking by the land and wading through the water (Tr. 78).

Again the critical point expressed by SA Fassbender is that the search warrant was for a 40-acre parcel of land and not just for the residence of Steven Avery (Tr. 82). His residence was not the only place where the search was to occur. Evidence of the complexity and scope of the search is reflected in the fact that law enforcement applied for and obtained over 20 search warrants between November 5 and November 12 (Tr. 107-108). These additional warrants included specific warrants for the residence of Delores and Alan Avery, the parents of the defendant Steven Avery, and the residence of Charles Avery (not named in the original warrant as it was initially unclear how many residences were located on the parcel), as well as additional DNA warrants obtained for each member of the Avery family. Other warrants were obtained for telephone records and the like (Tr. 139-41). Finally, on November 9 at 4:40 p.m., the warrant was renewed (Tr. 141). A copy of that warrant is attached.

A. Law enforcement's efforts to execute the search warrant were reasonable and did not violate the one warrant—one search principle. These reasonable efforts reflected one continuing search.

It is undisputed that defendant's trailer was entered on eight occasions during the execution of the warrant before it was renewed on November 9, 2005, at 4:40 p.m. However, such conduct was reasonable under the totality of the circumstances. There are at least ten reasons why the efforts were reasonable and as such constituted one continuing search.

1. Foremost, the warrant was for a 40-acre parcel of land and not just for the defendant's trailer and garage that were located within the 40-acre parcel subject to the search. It

makes a significant difference in assessing the reasonableness of the manner in which a warrant is executed when the place to be searched is a 40-acre parcel of land with 15 buildings, including four residences, a business, and 3,800 junked cars. The defendant would have the court believe that the only place searched was his trailer and garage. The only way the defense argument “has legs” is for the court to believe that only his trailer and his garage were the objects of the search; and thus there were ample resources to complete the search in the manner he suggests. The facts belie that assumption.

2. There is a vast difference between searches aimed at locating and finding a human being and or non-trace evidence, and the actual location and collection of trace, fiber, and blood sample evidence. For example, SA Fassbender testified that during the early part of the week there were two evidence collection teams made up of individuals from the Calumet and Manitowoc County Sheriff’s Departments; one from the Crime Lab that came on Saturday night (to deal with the RAV 4) and returned on late Sunday afternoon; one evidence collection team made up of the Wisconsin Department of Justice, Division of Criminal Investigation’s arson squad, which reported to the scene after bone fragments were recovered on Tuesday (Tr. 127). Because of the magnitude of the search, it is not reasonable or prudent to expect that any and every sworn law enforcement officer should be expected to collect forensic evidence. After all, the search for a live person or a dead body is conceptually different and distinct from a search for “traces” of that person’s presence or their remains at a particular scene. While it takes perhaps a moment to a few minutes to search a location for a person, it can take hours, if not days, of painstaking searching to locate traces of that person. Especially when the place to be searched is a 40-acre parcel of land such as in the case at bar. Trace evidence can take hours to collect and days to process (Tr. 11, 17, 27-29). The collection of trace evidence also takes skill. It is not to

be left in the hands of untrained volunteers, firearm, or law enforcement officers. The case of the *People v. O.J. Simpson* (October 3, 1995, not guilty verdict) taught us that lesson.

3. The lateness of the day on Saturday, November 5, along with the impending weather, combined to slow down search efforts (Tr. 78). This darkness combined with the exhaustion factor all but required a cessation of the initial search efforts commenced on Saturday, November 5. It was, quite frankly, unsafe for the officers to continue searching under those conditions. It is unreasonable for them to continue searching straight through the night and into the next day without rest or relief. Agent Fassbender was concerned with the possibility of evidence being destroyed or lost (Tr. 82-83, 142-43). Thus, judgments had to be made along the way as to when to begin and when to stop the efforts to collect trace evidence.

4. The initial search efforts were broad in scope. At first the search teams were looking for the person or body of Teresa Halbach. These searches were described as “protective sweeps” by both Detective Remiker and SA Fassbender. Eventually, the search progressed to a search for evidence of her presence on the property. They began looking for her clothes, fiber evidence, blood, other articles of personal property. However, while members of the evidence collection team were searching the defendant’s trailer on Sunday, other officers were using cadaver dogs and blood hounds to search the 3,800 junk cars and other buildings for Teresa Halbach. These searches occurred Sunday through Tuesday (Tr. 133-35). It is also important to note that the cadaver dogs were also used for off-site searches based on discoveries outside the perimeter of the 40-acre parcel (Tr. 136). Thus, resources were taxed heavily.

5. It is unreasonable to expect that the law enforcement officers complete their search within one or two days given that fact that resources were strained and that every time something was discovered off site, personnel were assigned to investigate. For example,

SA Fassbender described finding a clandestine burial site (Tr. 98) located away from the Avery Salvage Yard. Additionally, a discovery at Maribel Cave's Park of women's pants and lotion caused the reallocation of resources to that location (Tr. 98, 136). Additionally, a cell phone was found in the ditch (Tr. 98), as well as some possible human bones elsewhere (Tr. 99). These were in addition to the ones found at the clandestine burial site. As a result, evidence technicians were utilized and taken away from the parcel. This reflects both the scope of the law enforcement effort and the corresponding strain on resources, making it impossible to complete the search any sooner than they did.

Again, it cannot be overstated that resources were also being utilized in Marinette County to interview members of the Avery family, including the defendant. Law enforcement officers were involved in the transportation of evidence to the Crime Lab. They were used to assist in searching areas outside the 40-acre parcel of the search warrant scene. All these initial efforts were focused on finding Teresa Halbach. Only with the discovery of human bones on Tuesday afternoon in the burn pit did it become apparent that Teresa Halbach was probably dead, her body dismembered, and her remains were actually on the Avery property. This discovery enabled law enforcement to refocus and concentrate all efforts on executing the search for the Avery property. Until it became clear that Teresa Halbach was dead, these parallel efforts to locate her in other areas of the county were required. The officers could not simply ignore these additional leads.

6. The search of the parcel in general and the defendant's trailer and garage in particular was ongoing and in compliance with Wisconsin law. Wis. Stat. § 968.15(1) requires that a search warrant be executed and returned not more than five days after the date of issuance. In this case, there were three searches of defendant's trailer on Saturday, two on Sunday, one on

Monday, one on Tuesday, and two on Wednesday⁸ before the warrant was renewed on Wednesday, November 9, 2005, at 4:40 p.m. What is important, however, is that all of these searches, whether they were eight or nine to the trailer and four to the garage, occurred before the original warrant expired. The original warrant authorized a search of these locations.

7. Since this was an ongoing search of a 40-acre parcel of land. The entire parcel was secured for the whole week. This was the point of the testimony of Lieutenants Kelly Sippel and Brett Bowe (Tr. 151-75). Sentries were posted at each corner of the property. Defendant Avery's property was in the Northwest corner. A guard was posted at that corner of the property for the entire week. Access to his trailer and that part of the property as a whole were restricted. Ingress and egress to the Avery Salvage Yard was restricted by use of checkpoints on the surrounding roadways. The officers maintained control of the entire premises as well as the general vicinity. They never left the scene and returned later to conduct "new" or "separate" searches. This is evidence of one continuing, ongoing search.

8. The purpose of the original warrant was never completely fulfilled after the protective sweep searches of Saturday afternoon or after the first search for trace fiber and blood on Saturday evening. Unlike *Keszthelyi* 308 F.3d 557, 569-71, where the initial search warrant was fully executed and the fruits recovered, the officers in this case did not complete their search on Saturday evening.

⁸ Actually, the two entries on Wednesday really constituted one entry. If the court accepts the attached summary of the searches, it is apparent that the Wednesday search of the trailer was simply interrupted by the arrival of a locksmith and then the search resumed within 40 minutes of the interruption. Whether there was one or two entries on Wednesday is, quite frankly, irrelevant to the court's analysis. The summary reflects the testimony obtained on August 9 and 10. It does contain a few facts (some of the items sized and not completely testified about) added in the interest of perspective and to provide context. The court is free of course to reject that information if it so desires.

Detective Remiker testified there could have been as many as fifty items of evidence collected (Tr. 17), with perhaps ten to twenty possible blood samples collected on that Saturday evening (Tr. 15). Remiker also testified that, in his opinion, they had not gotten all of the evidence that first evening (Tr. 19). They had questions about the relevance of pornographic magazines and other miscellaneous pictures (Tr. 19). They also knew they would be going back to the residence to get the shotguns and/or other guns in the bedroom (Tr. 19). The original search warrant (Exhibit 15) sets out these guns were properly and lawfully the subject of appropriate seizure. Similarly, SA Fassbender testified that, in his opinion, they were not done on Saturday evening and that they had more evidence to collect and that they would be going back in to the defendant's trailer (Tr. 84, 93-95).

The first entry of the trailer on Sunday was directed at obtaining the guns, bedding from the spare bedroom, and the actual vacuum cleaner. The vacuum cleaner bag had been seized on Saturday night. The second entry on Sunday evening was by the Wisconsin Department of Justice Crime Lab personnel. The entry was directed by SA Fassbender based on the recovery of suspected blood samples during the search on Saturday evening (Tr. 94). The Crime Lab went through the trailer with their specialized equipment to assist in identifying additional samples of suspected blood to be collected. SA Fassbender testified that Tuesday was set aside as the day to complete the search of the trailer (Tr. 95). As Fassbender explained, they had other duties to take care of on Monday, November 6 (Tr. 95).

9. The probable cause supporting the issuance of the November 5 search warrant never expired. *State v. Swain*, 269 N.W.2d 707,718-19 (Minn. 1978); *United States v. Gerber*, 994 F.2d at 1561; and *United States v. Huslage*, 480 F. Supp. 875. In fact, the "probable cause" expanded and grew in the days following its issuance. See, for example, the renewed search

warrant attached. Further, SA Fassbender testified that on Sunday, they received news from the Crime Lab technicians that testing of the blood found in Teresa Halbach's vehicle was presumptively positive for human blood (Tr. 86). Eventually, on Tuesday, SA Fassbender recalls being advised that there was a DNA match of Steven Avery's blood on file with the blood found in the Toyota RAV 4 (Tr. 96). Lastly, Tuesday is also the day the license plates were discovered (Tr. 97), and human bones, later identified to be those of the victim, were found in the fire pit (Tr. 96-97).

10. Requiring the state to obtain a separate warrant for each entry of the defendant's trailer and garage occurring after Saturday night/Sunday morning on the facts of this case is impractical and imposes an unrealistic burden on law enforcement. The defense argument is that because the officers had "time," and had gotten other warrants that week (as many as twenty), they should have gotten one for each entrance to the defendant's trailer. This is unreasonable and unnecessary to comply with the Fourth Amendment. *See, United States v. Gerber*, 994 F.2d 1556. As the *Gerber* court reasoned:

It is no answer to say that the police could have obtained a search warrant "[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." *Cooper v. California*, 386 U.S. 58, 62 (1967), quoting *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950).

Gerber, 994 F.2d at 1559.

Under the circumstances of this case and in consideration of the scope and complexity of the investigation, requiring additional separate warrants for each entry would impose an undue burden on the state's ability to investigate complex crimes. *See, e.g., United States v. Squillacote*, 221 F.3d at 558. As in *Squillacote*, notwithstanding the large number of law enforcement officers involved, there was no way this warrant could have been executed in one or even three days. The subsequent entries were not separate searches but a continuation of the

initial Saturday evening search. *Id.* at 557. This was as complex an investigation as the espionage one in *Squillacote*. Evidence of homicide comes in many forms including but not limited to trace evidence, weapons, statements and a variety of documents such as bank records, notebook paper, bills of sale. The list is almost endless; just as the list of possible places where such evidence could reasonably be found.

B. Inevitable discovery.

Even if the court were to find that the entries to defendant's trailer after Saturday evening and to his garage after Sunday morning were unreasonable and constituted separate searches requiring separate warrants, the evidence is, nonetheless, admissible because it would have been discovered by virtue of the renewed warrant issued on November 9. *See* attached warrant. Excluding the evidence obtained from the defendant's trailer after Saturday evening, and that from his garage after Sunday morning, which makes up paragraphs 14 and 15 of the affidavit in the renewed warrant, ample probable cause existed justifying renewed entry after 4:40 p.m. on November 9. The officers did, in fact, enter the defendant's residence after this time. *See* Fassbender's testimony at Tr. 109, 118-19, and attached summary.

The inevitable discovery rule has its roots in the case of *Nix v. Williams*, 467 U.S. 431 (1984). This case is best known as the "Christian Burial" case. Thus, if the court were to find that the evidence collected was illegally obtained, it would still be admissible if the state establishes that the unlawfully seized evidence would have been inevitably discovered absent any constitutional violation. *Nix v. Williams*, 467 U.S. 431; *State v. Weber*, 163 Wis. 2d 116, 471 N.W.2d 187 (1991).

For evidence to be “inevitably discovered” the state must demonstrate by a preponderance of the evidence that 1) a reasonable probability the evidence in question would have been discovered by lawful means but for the police misconduct; 2) the leads making the discovery inevitable were possessed by the government at the time of the misconduct; and 3) prior to the unlawful search the government was also actively pursuing some alternate line of investigation. *Accord, State v. Lopez*, 207 Wis. 2d 413, 559 N.W.2d 264 (Ct. App. 1996); *State v. Schwegler*, 170 Wis. 2d 47, 490 N.W.2d 292 (Ct. App. 1992); and *State v. Kennedy*, 134 Wis. 2d 308, 396 N.W.2d 765 (Ct. App. 1986).

In the case at bar, the evidence would have been discovered by virtue of the acquisition and execution of the renewed November 9 search warrant for the entire Avery Salvage Yard. As the affidavit in support of that warrant indicates, the police possessed a great deal of enhanced probable cause justifying a continued search of the salvage yard. The affidavit in support of the warrant is extensive and summarizes much of the information gathered by the officers during this investigation. It includes information obtained from interviews and from searches of the area not related to the search of the defendant’s trailer or garage. The government was actively pursuing an alternate line of investigation exemplified by the search of 600 to 800 acres outside the perimeter as well as investigative leads obtained from interviews off site and the search of the Halbach vehicle. An examination of the testimony of SA Fassbender along with the warrant which was renewed on November 9 at 4:40 p.m. allows the court to conclude the state easily meets this burden. Thus, even if the court were to accept the defendant’s argument, the evidence is admissible.

SUMMARY

In sum, law enforcement officers executed one search of a 40-acre parcel of land that took seven days. They searched fifteen buildings, four residences, and 3,800 junked cars. The search included an additional 600 to 800 acres. The defendant's trailer and garage were treated no different than any other area. Except that evidence of Teresa Halbach's disappearance and subsequent death were eventually recovered from his residence and his garage and not from the residence of any other family member or from the business as a whole. This was one ongoing, continuing search. The manner in which the warrant was executed was reasonable.

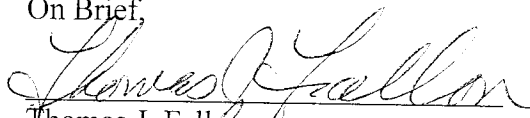
Finally, even if the court were to find the efforts unreasonable and that this was not one continuing, ongoing search, the evidence obtained after Saturday evening from the defendant's trailer and after Sunday morning from his garage would, nonetheless, be admissible under the inevitable discovery doctrine by virtue of the state's application, receipt, and execution of the November 9 search warrant.

Dated this 14th day of September, 2006.

Respectfully submitted,

Kenneth R. Kratz
Calumet County District Attorney
And Special Prosecutor
State Bar #1013996

On Brief,


Thomas J. Fallon,
Assistant Attorney General
And Special Prosecutor
State Bar No. 1007736

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E-mail: fallontj@doj.state.wi.us

Attorneys for Plaintiff

Avery Trailer Searches

Saturday 11-05-05

- | | | | |
|----|---------|-------------|--|
| 1. | Trailer | 15:48-15:58 | Remiker & Steier |
| 2. | Trailer | 17:35-17:40 | Dedering, Cramer & "Brutus" cadaver dog |
| 3. | Trailer | 19:30-22:05 | Tyson, Remiker, Lenk & Colborn |
| | | 19:47: | Trace, fiber, biological samples collected |
| | | 20:04 | Leg Irons, handcuffs, keys, prescription bottle, magazines |
| | | 21:36 | Bill of Sale Auto Trader magazine |
| | | 21:41 | Notebook, p2 with Victim's cell phone#
For Sale sign with Victim's cell # on back |

Sunday 11-06-05

- | | | | |
|----|---------|-------------|--|
| 4. | Trailer | 12:25-12:48 | Kucharsky, Remiker, Colborn & Lenk,

recovered weapons (.22 cal semi auto & .50 cal. black muzzle loader), bedding, vacuum. |
| 5. | Trailer | 18:15-19:50 | Crime Lab technicians with Tyson, Remiker & Colborn

Used alternative light sources to locate possible blood patterns/splatter |

Monday 11-07-05

- | | | | |
|----|---------|-------------|---|
| 6. | Trailer | 09:57-10:04 | Colborn, Lenk & Tyson

Obtain serial # off computer |
|----|---------|-------------|---|

Tuesday 11-08-05

- | | | | |
|----|---------|-------------|---|
| 7. | Trailer | 08:25-12:18 | Kucharsky, Lenk & Colborn

Collect porn, seize computer, take photo's, swabs for suspected blood,
Lenk steps out to get box for porn, upon return he observes Toyota Rav 4 key |
|----|---------|-------------|---|

[08:50-08:55 Dan Voss takes computer]

[License plates found for Toyota Rav 4 @ 09:00]

[Bone fragments in burn pit discovered @ 13:40 by Jost & Sippel]

Wednesday November 9, 2005

- | | | | |
|----|---------|-------------|--|
| 8. | Trailer | 10:39-10:59 | Wendling, Colborn & Lenk |
| | | | Looked for TH's garage door remote-"0"
Pair of women's gloves in paper bag under
desk, misc .22 cal bullets in drawer, 2
knives |
| | | 10:59 | Search interrupted-locksmith arrived..... |
| 8. | Trailer | 11:40-11:50 | Search resumed for Garage door opener |

**[@12:20-12:24 Burn pit searches- 2 hammers (wood & claw) &
rubber mallet]**

[Second Warrant Endorsed @16:40]

Saturday November 12, 2005

- | | | | |
|-----|---------|-------------|--|
| 9. | Trailer | 08:26-10:30 | Tim Austin, Chris Wendorf
Dedering and Fassbender |
| 10. | Trailer | 11:01 11:** | Wendorf, recovered cookie tin of white
ashes |

** The exact length of Wendorf's search is unknown but believed to be very short since the property was released at 11:30 AM.

Garage Searches

Saturday November 5, 2005

- | | | |
|----|--------------------|------------------|
| 1. | Garage 16:03-16:06 | Remiker & Steier |
|----|--------------------|------------------|

Sunday November 6, 2005

- | | | |
|----|--------------------|-------------------------------------|
| 2. | Garage 08:00-09:47 | Kucharsky, Remiker, Colborn & Lenk, |
|----|--------------------|-------------------------------------|

Possible blood samples, .22 casings, finger prints rear door Suzuki Samurai

Tuesday November 8, 2005

3. Garage 12:19-12:45

Kucharsky, Lenk & Colborn

Looking for matching tool set for wrench found in TH's Rav 4;

Wednesday November 9, 2005

4. Garage 11:51-12:10

Search for garage door opener & tool set, 1 duct tape and hanging electrical wires

Saturday November 12, 2005

5. Garage 08:15-08:20

Dedering & Fassbender do walk through

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

COPY

SEARCH WARRANT

TO THE SHERIFF OR ANY CONSTABLE OR ANY PEACE OFFICER OF SAID COUNTY:

WHEREAS, Investigator Jerry Pagel of the Calumet County Sheriff's Department, being duly sworn, has complained in writing to the said Court, and states on information and belief, that on November 9, 2005, in and upon certain premises on Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin, specifically:

- (1) 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Steven A. Avery, Sr. (DOB: 07/09/1962), more particularly described as follows: a single family trailer, red in color, with white trim around the windows. The trailer has an attached wooden deck and has the number 12932 on the front of the residence next to the front entrance. There is a detached garage next to the residence that is red and blue in color with a single white garage door and a white service door.
- (2) A trailer with a detached two-stall garage located on the east side near the northeast corner of the Avery Auto Salvage property, occupied by Charles E. Avery (DOB: 07/13/1954). The trailer is unsided on the east side of the trailer and has beige-colored siding on the south side of the trailer. There is a white door located on the east side of the trailer. There is also a two-stall garage with red and blue siding and with two beige garage doors located on the east side of the garage.
- (3) A single story trailer with green siding and a metal steel or tin-type roof located on the northeast corner of the Avery Auto Salvage, occupied by Alan K. Avery (DOB: 05/03/1937) and Delores Avery (DOB: 08/20/1937). There is an attached purple or lavender-colored deck on the trailer. The trailer has a detached one-car garage with green siding and a beige garage door.
- (4) 12930A Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Barbara E. Janda (DOB: 11/07/1964), more particularly described as a single family trailer with gray vinyl siding with maroon shutters. The numbers 12930A are located on the front of the residence. 12930A Avery Road has a detached garage with gray siding, two white garage doors and white trim around the windows and doors.

MANITOWOC COUNTY WISCONSIN
FILED
2005 NOV 14 AM 8:29
COURT CLERK OF
CIRCUIT COURT

- (5) The Avery Auto Salvage yard property located on Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin, including residences, garages, outbuildings and vehicles. The auto salvage yard is approximately 40 acres in size and is surrounded by a berm and some fencing. On the property, there are numerous outbuildings and vehicles, those that are operational and also junked and scrapped vehicles, associated with the salvage yard business.

There are now located and concealed certain things, to-wit:

- (1) Women's clothing including, but not limited to, blue jeans, a white button-down shirt, and a spring jacket.
- (2) The body of Teresa Marie Halbach, DOB: 03/22/1980, described as a white female, sandy blonde hair, 5'6", approximately 135 pounds.
- (3) Property belonging to Teresa Halbach including, but not limited to, cameras, film and photography equipment, electronic storage devices, and a cellular telephone.
- (4) Forensic evidence including, but not limited to, bone and tooth fragments, fiber evidence, blood, hair, saliva, semen, palm prints, and fingerprints.
- (5) Instrumentalities capable of taking a human life including, but not limited to, weapons, firearms, ammunition, knives, cutting instruments, ropes, and ligatures.
- (6) Blunt objects and other tools capable of hiding, destroying or distributing a human corpse, including but not limited to, crowbars, tire irons, and shovels.
- (7) Objects utilized to wrap or encase a body or object, including but not limited to, plastic bags, tarps, boxes and buckets.
- (8) Any other items which officers identify as being related to the investigation of the disappearance or homicide of Teresa M. Halbach (DOB: 03/22/1980).

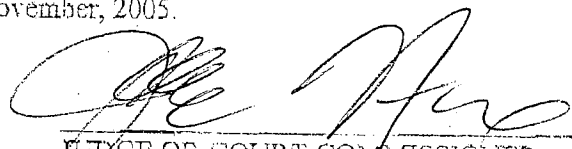
which things were used in the commission of, or may constitute evidence of a crime, to-wit: violations of secs. 940.01, 940.225, 940.30, 940.31 and 943.20, Wis. Stats.

and prays that a Search Warrant be issued to search said premises for said items.

NOW, THEREFORE, in the name of the State of Wisconsin, you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same, and the persons(s) in whose possession the same are found, and return

this warrant within forty-eight hours of service, before the said Court, to be dealt with according to law.

Dated this 9 day of November, 2005.

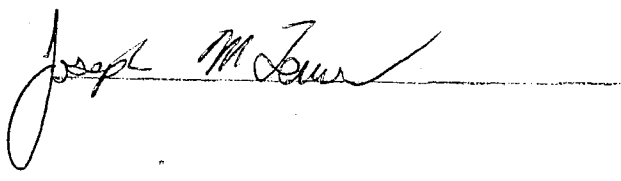


JUDGE OR COURT COMMISSIONER
MANTOWOC COUNTY, WISCONSIN

ENDORSEMENT

Received by me, November 9, 2005

at 4:40 o'clock P.M.



STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

058053

AFFIDAVIT FOR SEARCH WARRANT

WHEREAS, Sheriff Jerry Pagel of the Calumet County Sheriff's Department, being first duly sworn on oath, states on information and belief that the facts tending to establish the grounds for issuing a search warrant are as follows:

1. Your affiant is a Sheriff with the Calumet County Sheriff's Department. Your affiant has duties that include missing person investigations in and around Calumet County, Wisconsin. On November 5, 2005, the Calumet County Sheriff's Department was requested by the Manitowoc County Sheriff's Department to lead the investigation on behalf of the Manitowoc County Sheriff's Department under the doctrine of mutual aid.
2. Your affiant is informed that on November 3, 2005, at 5 p.m., Karen Halbach contacted the Calumet County Sheriff's Department. Halbach stated that her daughter, Teresa Marie Halbach, DOB: 03/22/1980, had not been seen or heard from since Monday, October 31, 2005. Halbach said it was unusual for Teresa not to have had personal or telephone contact with her family or friends for this length of time. Halbach stated that her daughter was driving a 1999 Toyota Rav 4, dark blue in color.
3. Your affiant is informed that on November 4, 2005, Investigator Dave Remiker of the Manitowoc County Sheriff's Department interviewed Steven A. Avery (DOB: 07/09/1962). Upon speaking with Steven Avery, Avery stated that he resides at 12932 Avery Road in the Town of Gibson, Manitowoc County, Wisconsin. Your affiant states that on November 4, 2005, Steven Avery gave permission for officers to search his residence. Avery also stated that Barbara Janda lives at 12930A Avery Road in the Town of Gibson, Manitowoc County, Wisconsin. Janda's residence is very close in proximity to the location where Teresa Halbach conducted her business on the Avery property on October 31, 2005.
4. Your affiant states that on November 4, 2005, Steven Avery informed officers that Teresa Halbach came to Avery Auto Salvage sometime in the afternoon on October 31, 2005 on behalf of her employer, Auto Trader, in order to photograph a vehicle which Avery was selling. Your affiant is aware that Steven Avery is the last confirmed person to see Teresa Halbach on October 31, 2005.
5. On November 9, 2005, your affiant observed the property and buildings located on Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin, and describes it as follows:

MANITOWOC COUNTY, WIS
CLERK OF COURT

2005 NOV 14 AM 8:29

CLERK OF COURT
CIRCUIT COURT

- (a) 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Steven A. Avery, Sr. (DOB: 07/09/1962), more particularly described as follows: a single family trailer, red in color, with white trim around the windows. The trailer has an attached wooden deck and has the number 12932 on the front of the residence next to the front entrance. There is a detached garage next to the residence that is red and blue in color with a single white garage door and a white service door. Your affiant states that based upon interviews conducted during this investigation and the location of personal papers and records during the execution of previous search warrants at 12932 Avery Road, your affiant is able to identify 12932 Avery Road as the residence of Steven A. Avery, Sr.

- (b) Also located on the Avery Auto Salvage property is a trailer with a detached two-stall garage located on the east side near the northeast corner of the Avery Auto Salvage property, occupied by Charles E. Avery (DOB: 07/13/1954). The trailer is unsided on the east side of the trailer and has beige-colored siding on the south side of the trailer. There is a white door located on the east side of the trailer. There is also a two-stall garage with red and blue siding and with two beige garage doors located on the east side of the garage. Your affiant states that based upon interviews conducted during this investigation and the location of personal papers and records during the execution of previous search warrants at this trailer, your affiant is able to identify this trailer as the residence of Charles E. Avery.

- (c) Also located on the Avery Auto Salvage property is a single story trailer with green siding and a metal steel or tin-type roof located on the northeast corner of the Avery Auto Salvage, occupied by Alan K. Avery (DOB: 05/03/1937) and Delores Avery (DOB: 08/20/1937). There is an attached purple or lavender-colored deck on the trailer. The trailer has a detached one-car garage with green siding and a beige garage door. Your affiant states that based upon interviews conducted during this investigation and the location of personal papers and records during the execution of previous search warrants at this trailer, your affiant is able to identify this trailer as the residence of Alan and Delores Avery.

- (d) 12930A Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Barbara E. Janda (DOB: 11/07/1964), more particularly described as a single family trailer with gray vinyl siding with maroon shutters. The numbers 12930A are located on the front of the residence. 12930A Avery Road has a detached garage with gray siding, two white garage doors and white trim around the windows and doors. Your affiant states that based upon interviews conducted during this investigation and the location of personal papers and records during the execution of previous search warrants at 12930A Avery Road, your affiant is able to identify 12930A Avery Road as the residence of Barbara Janda.

- (e) The Avery Auto Salvage yard property located on Avery Road in the Town of Gibson, County of Manitowoc, Wisconsin, including residences, garages, outbuildings and vehicles. The auto salvage yard is approximately 40 acres in size and is surrounded by a berm and some fencing. On the property, there are numerous outbuildings and vehicles, those that are operational and also junked and scrapped vehicles, associated with the salvage yard business.
6. Your affiant is informed that on November 5, 2005, officers received information from volunteer searchers that they had located a vehicle matching the description of the vehicle owned by Teresa Halbach at Avery Auto Salvage located 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin. Your affiant is informed that Investigator Remiker was provided with the VIN number of the Rav 4 located at Avery Auto Salvage; the searchers provided the VIN #JT3HP10V5X7113044 taken from the vehicle which they located. Investigator Remiker was able to confirm that VIN #JT3HP10V5X7113044 is the correct number for Teresa Halbach's Toyota Rav 4. During a visual observation of the vehicle, Investigator Remiker noted that there were tree branches covering the vehicle and also vehicle parts placed alongside of the vehicle which looked as though someone had attempted to conceal the vehicle.
7. Your affiant was also informed by Investigator Tom Fassbender from the Wisconsin Department of Criminal Investigation that blood was found in the 1999 Toyota Rav 4 belonging to Teresa Halbach and located within the Avery Auto Salvage Compound. Steven Harrington of the State of Wisconsin Crime Laboratory in Madison stated that technicians had located presumptive blood in the rear cargo portion of the vehicle and also in the front of the vehicle in the ignition area. Steve Harrington further indicated that technicians also located visible palm prints on the rear hatch area of the Toyota Rav 4.
8. Your affiant states that on November 5, 2005 Investigator Remiker carried out a physical search of the residence at 12932 Avery Rd., Town of Gibson, Manitowoc County, Wisconsin, the residence of Steven Avery. Investigator Remiker observed a dried red substance which appeared to be blood on the wood trim and side door of Steven Avery's residence. The door and trim was located in close proximity to a bedroom which contained identifiers for Steven Avery. Investigator Remiker also identified a dried red substance which appeared to be blood on the bathroom floor in front of the washer and dryer in the residence of Steven Avery.
9. Your affiant states on November 6, 2005, Investigator Remiker carried out a search of a detached garage next to the Steven Avery residence. Investigator Remiker located approximately seven different locations within the garage floor where a dried red substance which appeared to be blood was found. Investigator Remiker also located approximately eleven spent .22 caliber long rifle shell casings on the floor of the garage. Investigator Remiker also observed a five speed Suzuki Samarai vehicle, green in color. Investigator Remiker noted that there appeared to be latent finger and palm prints on the

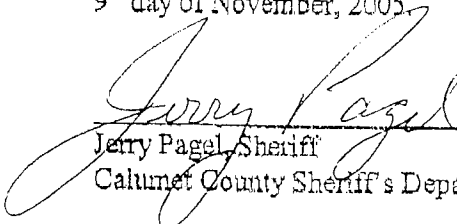
rear window of the vehicle. Investigator Remiker noted that the latent prints were found in close proximity to areas of dried blood on the garage floor.

10. Your affiant states that he was informed by Investigator Wendy Baldwin of the Calumet Sheriff's Dept. that she had found blood on a number of vehicles in the Avery Auto Salvage yard. Officer Baldwin indicated that on November 6, 2005 she was working with a cadaver dog known as Brutus handled by the Great Lakes Search Team. Investigator Baldwin indicated that Brutus "hit" on a plastic tarp that was found over a vehicle. Investigator Baldwin noted that Brutus "hit" on a second gray vehicle in an adjacent location and a subsequent search of the interior of the vehicle identified a rag which appeared to be blood stained. Investigator Baldwin indicated she was present when Brutus "hit" on a third vehicle and a subsequent search identified what appeared to be dried blood in both the front and back seat.
11. During the execution of search warrants of November 5, 2005, officers located a burn barrel near the residence of Steven Avery located at 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin. In that burn barrel, officers located burned clothing, a partially burned shovel, and fragments of a Motorola cellular telephone.
12. Officers also utilized trained cadaver dogs and handlers. On two occasions, the cadaver dogs "hit" on Teresa Halbach's Toyota Rav 4 which had been concealed on the Avery Auto Salvage property. Teresa Halbach's body was not located within the vehicle; however, a "hit" from the cadaver dogs indicates that at one time there may have been a corpse or blood in the vehicle.
13. On November 5, 2005, your affiant applied for and was granted search warrants for numerous buildings on the Avery Auto Salvage property, including the residence of Steven Avery located at 12932 Avery Road in the Town of Gibson, County of Manitowoc, State of Wisconsin. During the execution of the search warrant for Steven Avery's residence, officers located several items of restraints within Steven Avery's residence, including handcuffs and leg irons. Your affiant believes these items are capable and intended for use in holding person against their will for activities including sexual assault or other assaultive non-consensual behavior.
14. On November 6, 2005 Deputy Tyson and Deputy Kucharski searched a bedroom in the trailer located at 12932 Avery Road, Town of Gibson, Manitowoc County, Wisconsin, the residence of Steven A. Avery, Sr. Deputy Tyson located two firearms directly above the bed. Deputy Kucharski collected as evidence a .22 caliber semi-automatic rifle and a .50 caliber black powder muzzleloader. Deputy Kucharski noted that there was masking tape attached to the muzzleloader with the name "Steve" written on it. Deputy Tyson located a desk in the same room, which contained numerous magazines addressed to Steven A. Avery, Sr. at 12932 Avery Road. Also located in Avery's unattached garage were 11 spent .22 caliber shell casings.

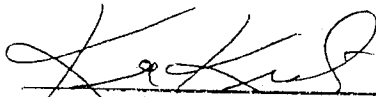
15. Your affiant is informed that on November 7, 2005, Deputy Dan Kucharski of the Calumet County Sheriff's Department located a Toyota ignition key adjacent to a night stand in the bedroom of Steven Avery's residence located at 12932 Avery Road in the Town of Gibson, County of Manitowoc, State of Wisconsin. Your affiant is informed that the key located adjacent to the nightstand in the bedroom of Steven Avery's residence was successfully used in the ignition of the Toyota Rav 4 owned by Teresa M. Halbach. The key started the vehicle.
16. Your affiant is informed that on November 8, 2005, while executing the search warrant of the Avery Auto Salvage property located on Avery Road in the Town of Gibson, Manitowoc County, Wisconsin, officers from the Calumet County Sheriff's Department located two Wisconsin license plates in a scrapped vehicle located on the north end of the salvage yard. The plates were crumpled. Said license plates were later identified as license plates that belonged to the 1999 Toyota Rav 4 owned by Teresa M. Halbach.
17. Your affiant is informed that on November 8, 2005, while executing the search warrant of the property located near the residence of Steven Avery located at 12932 Avery Road in the Town of Gibson, Manitowoc County, Wisconsin, officers located bone fragments and teeth in a fire pit area located approximately 20 yards south of a detached garage that is located next to the residence of Steven Avery. Officers also located remnants of steel belts of approximately six tires that were used as fire accelerants.
18. The bone fragments located were transported by Dorinda Freymiller, a special agent with the Division of Criminal Investigations, to Ken Bennett, a retired forensic anthropologist. Upon his analysis, Bennett believed that there were no distinctive animal bones present and that all the bones were very likely human and from only one individual. Bennett believed that based on the characteristics of the ilium bone, the bones are from an adult human female.
19. The five tooth fragments that were located in the burn pit area were delivered to Dr. Donald Simley, who is board-certified in forensic dentistry and has been practicing forensic dentistry since 1981. Dr. Simley's analysis of the five tooth fragments was that they appeared to be human teeth.
20. Your affiant states that a number of five-gallon type buckets have been located on the Avery compound property which appear to have been utilized to distribute the burned remains.
21. Your affiant received information that when Teresa Halbach was last seen, she was wearing blue jeans, a white button-down shirt, and a spring jacket. Your affiant believes that based upon Teresa's lack of contact with her employer and family members and her vehicle being abandoned at the Avery Auto Salvage yard, that Teresa Halbach is the

victim of a crime including, but not limited to, homicide, sexual assault, kidnapping, false imprisonment, and theft.

Respectfully submitted this
9th day of November, 2005.


Jerry Pagel, Sheriff
Calumet County Sheriff's Department

Subscribed and sworn to before me
this 9th day of November, 2005.


Notary Public, State of Wisconsin
My commission: 15 permar

MANITOWOC COUNTY, WIS
FILED

2005 NOV 14 AM 8:29

LYNN ZIGMUNT
CLERK OF
CIRCUIT COURT

RETURN OF OFFICER

State of Wisconsin
Circuit Court
Manitowoc County

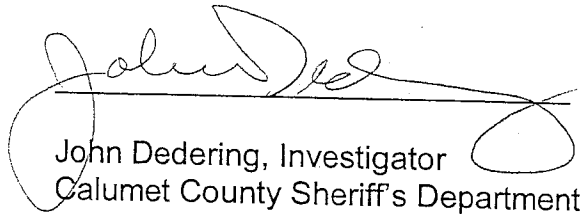
I hereby certify that by virtue of the within warrant, the property described on the face of the search warrant was searched and the following was seized:

1. "Audiovox" cellular telephone
2. "Hustler" magazine
3. Hair and fiber evidence
4. Material believed to be ashes
5. Zippered pouch
6. Hand tools
7. Dog feces
8. Duct tape
9. Clear light lens
10. Charred material appearing to be bones
11. Soil samples possibly containing DNA material
12. Red cut-off shirt
13. Power golf cart
14. John Deere 320 skid-steer
15. Commingled metal items
16. Metal automotive seat frame
17. Plastic jug with unknown substance
18. Clothing
19. Blanket
20. Plastic pail apparently containing dog food
21. Compact digital discs
22. Necklace
23. Debris piles
24. Bottle with white powder
25. Correspondence
26. Baking soda
27. Automotive parts
28. Tire impressions
29. Firearms
30. Ammunition
31. Cutting instruments

32. 2004 gun deer back tag
33. Personal identifiers of Steven Avery tending to establish residency
34. Material believed to be human muscle tissue
35. Material believed to be human skin

and have the same now in my control subject to the direction of the court.

Dated this 13TH day of NOVEMBER, 2005


John Dederling, Investigator
Calumet County Sheriff's Department